Environmental information, and how to obtain it

Introduction

The Environmental Rights Centre for Scotland (ERCS) aims to increase people's awareness of their rights relating to the environment. One of the most basic of these is the right to obtain environmental information held by public bodies.

This is the first in a series of ERCS information sheets on environmental rights. It covers different ways of obtaining environmental information:

- from public registers held by many public bodies, mostly now held online;
- by searching online disclosure logs and publication schemes; and
- by making a specific request under the Environmental Information (Scotland) Regulations 2004.

The key points to note are:

- A public body can take up to 4 weeks, sometimes longer, to respond to a request, so you may find what you're looking for more quickly using one of the above-mentioned online sources.
- It's usually a good idea to phone a public body and ask to speak to someone who can tell you where best to look. Contact details are often available on public bodies' websites.
- Recent changes made to the Freedom of Information (Scotland) Act 2002 in response to the coronavirus outbreak do not affect the Environmental Information (Scotland) Regulations 2004.

Public registers

For decades the public have had the legal right to view certain types of environmental information. Planning authorities and the Scottish Environment Protection Agency (SEPA) are obliged to keep public registers containing copies of applications they receive and permissions and notices they issue.

You used to have to make an appointment to visit a public register, but nowadays, all local authorities keep their planning registers online, making access much easier.

SEPA's registers hold vast amounts of information about the sites and operations it regulates, in electronic form, but they are only just starting to come online, so if you can't find what you're looking for there, contact registry@sepa.org.uk, and they should send the information attached to an email or, for larger amounts, on a disk – usually within a couple of days.

The Environmental Information (Scotland) Regulations 2004

Most types of environmental information are not held on public registers. The Environmental Information (Scotland) Regulations 2004 (the "EIRs") give the public a general right to obtain any type of information falling within the broad definition of "environmental information" contained in the EIRs.

That definition is long and complicated, but in essence it covers information, in any form, on:

a) the natural environment, including air, water, land, animal species and their habitats;

b) human factors that affect the environment, such as noise, air pollution and waste; and

c) policies, plans, programmes, agreements and other measures that affect (a) or (b).

Publication schemes and disclosure logs

The EIRs require public authorities to organise the environmental information they hold "*with a view to the active and systematic dissemination of that information to the public*". This means they have to publish it online, usually as part of their 'publication scheme' or 'guide to information'. An example is the publication scheme of Scottish Natural Heritage (SNH). And some public bodies keep a 'disclosure log' listing past requests for information they have received, along with copies of the information they have disclosed in response. SEPA's disclosure log can be searched using date and subject filters.

Requesting environmental information

If you can't find what you're looking for online or in public registers, then all you need to do is ask for it. The EIRs state that "*a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant*".

Unlike a request under the Freedom of Information (Scotland) Act 2002, a request for environmental information does not have to be in writing – one of several differences between the two regimes. Nevertheless, the Office of the Scottish Information Commissioner recommends that you put your request in writing, so that you have a record of what you asked for and when.

You are entitled to receive a response to your request within 4 weeks. The EIRs say that the public authority must respond "*as soon as possible and in any event no later than 20 working days after the date of receipt*", but most Scottish public bodies seem to treat this time-limit as a target, and it is very unusual to receive a response anything less than 4 weeks after making it.

If the "*volume and complexity*" of the environmental information requested is such that it would be hard for the authority to respond within 20 working days, then the EIRs allow them 20 more working days to do so, provided they tell you before the first time-limit has expired.

The coronavirus pandemic

Under emergency legislation passed by the Scottish Parliament in April 2020 called the Coronavirus (Scotland) Act 2020, the time-limit for responding to requests for information under the Freedom of Information (Scotland) Act was controversially amended from 20 working days to 60 working days (and in some circumstances by another 40 working days), but these amendments did not apply to requests under the EIRs, and were repealed the following month by the Coronavirus (Scotland) (No.2) Act 2020.

For further information contact info@ercs.scot.

Web addresses of useful resources:

Scottish Information Commissioner: http://www.itspublicknowledge.info/Law/EIRs/EIRs.aspx
SEPA: https://www.sepa.org.uk/about-us/access-to-information/
SNH: https://www.nature.scot/about-snh/access-information-and-services/access-information
EIRs: http://www.legislation.gov.uk/ssi/2004/520/contents
Freedom of Information (Scotland) Act 2002: http://www.legislation.gov.uk/asp/2002/13/contents