This case law review looks mainly at decisions relating to flood management issues within the past two years from Scotland and England. In addition related references to the Scottish Information Commissioner over the past ten years are also considered. The material covers the following topics:

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Planning and flooding

*Bova v Highland Council*, 2013 SC 510

The petitioners lived next to an area of land subject to a planning application for housing and associated development. They brought judicial review proceedings against the planning authority’s grant of planning permission, arguing that the objections to the application based on the risk of flooding caused by the likely effects of the development on groundwater had not been properly understood or properly taken into account. They also argued that in granting final planning permission the planning authority had failed to adopt a precautionary approach to flood risk in accordance with paragraph 202 of SPP, which was published in February 2010. It was argued that this was a material consideration which should have been brought to the planning committee’s attention before granting final planning permission.

Documents before the court showed that the Council had been provided with a geo-environmental desk study report, a geo-environmental interpretative report, a drainage impact assessment and a SUDS strategy. The planning authority had proposed a planning condition for the development requiring that post-development runoff rates did not exceed pre-development runoff rates for all periods up to a 1-in-200 year storm event, and a
drainage design including a sensitivity test to the requirement that no built development
or critical infrastructure would be affected during a 1-in-200 year storm event. The report
to the Council’s planning committees summarised the main objections made against the
proposal, the first of which was flooding. The flooding issue was discussed at a local
planning committee meeting in August 2009 and reviewed by the main planning committee
in September 2009, where the planning officer expressed the view that the proposals
would ameliorate existing flooding problems and lead to an overall improvement. Various
statutory consultees, including SEPA, had also supported the proposal. Each committee
decided that consent in principle should be given. Final planning permission was granted
some six months later in March 2010.

The Court held that in light of all the information before the Council it could not be said
the Council had not given adequate consideration to the objections. Nor did the publication
para 202 of SPP amount to a new material consideration. At first instance Lord Pentland
had held that a change in language between the draft SPP (“erring on the side of caution”) to
the final version of SPP (“to emphasise a precautionary approach”) was merely a textual
or cosmetic change and did not amount to a change in national planning policy. On appeal,
the Inner House judges disagreed with that view. They decided that there was some
change in national planning policy with regard to flood risk. [The meaning to be attached
to a planning policy is a question of law and requires to be determined by the courts (see Tesco Stores v Ltd v Dundee City Council, 2012 SC (UKSC) 278)]. However the effect of
that change was considered to be relatively minor (“fine tuning”). The planning officer
had taken the view that a precautionary approach had been adopted, and there was no
real possibility that knowledge of the finalised SPP meant that the planning authority would
have reached a different conclusion.

R (on the application of Padden) v Maidstone Borough Council, [2014] Env LR 20

In 2003 conditional planning permission was granted in 2003 for works to create an area
for recreational fishing. That permission was subject to an Environmental Impact
Assessment (EIA). Over the next five years the works that were carried out were not in
accordance with the original grant of planning permission, and involved the deposit of
large amounts of construction waste. Groundwater flooding subsequently occurred on
adjacent land which was attributable to the unauthorised works. The planning authority
granted retrospective permission for some of the unauthorised development in 2010 and
in 2011 a further application was made for retrospective permission for the retention of
two completed lakes furthest from the land affected by the flooding, and also for the
retention and completion of three reservoirs immediately to the east of the land affected.
The application for that retrospective permission was accompanied by an environmental statement, which was challenged as being flawed on the basis that it used the date of 2010 as its base point for significant unlawful development, rather than the position in 2003. It therefore did not deal with the issue of groundwater flooding. Neither the report to the planning committee nor the briefing by officers at the meeting gave the committee members any idea that the development was an EIA development, and that approval was therefore subject to the existence of exceptional circumstances. Nor was the committee advised of the concerns of the Environment Agency about the effectiveness of a proposed condition to alleviate the effects of flooding. The planning authority granted the further application for retrospective permission in 2012. The owner of the land affected by the flooding contended that the local planning authority had failed to (1) consider whether there were exceptional circumstances justifying the grant of retrospective permission; (2) make reasonable enquiries to obtain the information necessary to provide a proper basis for its decision and to inform the planning committee that concerns had been raised about the issue of groundwater flooding.

The Court held that both the 2011 applications and the 2012 applications were for the retrospective grant of planning permission for an EIA development and was the sort of "retention application" that the European Court of Justice had in mind in Commission of the European Communities v Ireland (C-215/06), [2008] E.C.R. I-4911 and therefore could only be granted in exceptional circumstances. The environmental statement in support of the 2012 application was inadequate as it failed to deal with the environmental effects of the unauthorised development that had taken place before 2010. It thus failed to address the issues of groundwater controls which might otherwise have been brought to the attention of the planning committee. The failure to consider that issue was therefore unlawful. Nor had the planning authority made reasonable enquiries to try to obtain the factual information necessary for its decision. The views of the Environment Agency had not been communicated to the members of the planning committee and there was no other adequate information on which to evaluate the issue. The local authority could have deferred consideration of the matter to await a report from the Agency but had not done so. The outcome of the application might have been different if the Agency’s concerns had been disclosed to the committee. As a result the permission was quashed.
O’Connor v Secretary of State for Communities and Local Government, [2014] EWHC 3821 (Admin), 20 November 2014

A co-owner of land formerly used as a recreational chalet plot within a holiday estate had applied for planning permission for change of use to create two pitches for gypsy caravans and an area of hard standing. Most of the site lay within an area categorised as having a medium probability of flooding (Zone 2), and a small part of the site was within an area categorised as having a high probability of flooding (Zone 3a). The planning authority had refused the application, in part because the proposed development was said to be located in a flood zone. On appeal, a planning inspector decided that the greater part of the land was in Zone 2, and noted that on the basis of a formal flood risk assessment the Environment Agency had not objected to the proposal. In addition, subsequent levelling works resulted in some land-raising, which had the practical effect that the part of the development in Zone 3a was at no greater risk of flooding than the land in Zone 2. The planning inspector decided that subject to additional precautionary measures being taken there was a probability that the development would be safe for its lifetime. He recommended that temporary permission be granted for four and a half years. The Secretary of State rejected that recommendation and refused the appeal. That decision depended, at least in part, on a finding that as a matter of designation part of the land was in Zone 3a and that the occupants of the site would be exposed to an unacceptable flood risk.

The Secretary of State had not been entitled to disagree with the planning inspector’s assessment of the facts unless there was a sound evidential basis for doing so. He had failed to take into account the inspector’s factual conclusions and judgement about the flood risk. It could not be said that the decision would necessarily have been the same had he concluded that there was no unacceptable flood risk, or that the risk of flooding was within the range for a site designated as Zone 2 and that there were measures to ensure that the risk was no greater than that.

Reservoirs Act 1975


A charity whose objects include the preservation of Hampstead Heath in its “wild and natural state” and the promotion and maintenance of the amenities and characteristics of the environs of the Heath applied for judicial review of a decision to approve and proceed with proposals for reservoir safety works to ponds on the Heath, subject to obtaining
planning permission from the London Borough of Camden. The ponds were originally built as reservoirs and were created by damming the natural springs and streams in the valleys, on either side of Parliament Hill. Each pond in the chain is linked by pipes and/or streams allowing the water to flow down to the adjacent lower pond. The lowest pond in each chain discharges into the sewers. Despite the fact that they are no longer used as reservoirs, the three largest ponds fall within the scope of the Resevoirs Act 1975, imposing legal duties on the ‘undertaker’, who was now the Mayor of the City of London. Under section 10(3) of the 1975 Act, an inspecting engineer can make recommendations as to “any measures required in the interests of safety” [a similar provision is to be found in Section 35(1) of the Reservoirs (Scotland) Act 2011]. On the advice of a series of consultant civil engineers it was decided that substantial works were required to ensure that the dams to the ponds do not breach, and cause extreme flooding to densely inhabited areas around the Heath. ICE guidance (Floods and Reservoir Safety (3rd ed. 1986)) categorised the risks which dams present according to the risk to life and property in the event of a breach. As the risks to life and property increase, so did the stringency of the safety requirements. In the case of the three ponds, the inspecting engineer in 2007 applied the minimum standard (1:10,000 years) rather than a higher general standard. He also found that the overflow capacity was insufficient and recommended a downstream impact assessment be carried out to determine the level of risk of breach and to establish the appropriate flood standard. In assessments carried out subsequently, by different engineers at different dates, it was concluded that the overflowing of the dams was not ‘tolerable’ and the general standard should apply. In proposing how the works would be carried out the civil engineers selected differing implementation options, with the express aim of preserving the landscape and visual amenity, saving trees so far as possible, and reducing the intrusive impact of ‘hard’ engineering by using earth dams, timber cladding and grass spillways instead of concrete. The charity opposed the proposals as being unnecessary and over-engineered, and “as the most serious threat to the Heath's historic landscape since the ‘parkification’ of the Heath began in the 1890s which the Society was founded to oppose”.

The first ground of challenge was that the decision was based upon a flawed interpretation of the meaning of the words “measures required in the interests of safety” in section 10(3)(c). The Society argued that the provision (i) was not concerned with absolute or near safety, but with a level of safety that was reasonable in all the circumstances; (ii) was to be read as subject to and qualified by the City’s statutory duties not to build on and to preserve the natural aspect and state of the Heath pursuant to the Heath Act, which were contravened by the proposals; (iii) did not require that “measures” only involve physical engineering and a “passive system” when active measures such as
early warning systems and human intervention could ameliorate risk; (iv) did not exclude consideration of safety measures in place under regimes outside the 1975 Act; (v) did require consideration of the historical, social, ecological value of the Heath that will be disturbed or harmed by the proposals. By applying ICE guidance which required that the pond dams be able to resist the “probable maximum flood” and so “virtually eliminate risk”, the Defendant had wrongly construed the level of “safety” required as absolute, or near absolute.

The Court held that the purpose of the 1975 Act is to prevent the escape of water from large raised reservoirs to avert the potential danger to persons and property from such an escape. Its purpose is not to mitigate the effects of an escape, by flood warning and evacuation strategies. The ICE guidance was consistent with the statutory purpose. There is an assessment of risk but the risk which is assessed is the likely consequence of a breach, not the probability of a breach occurring. In many cases, including the three ponds, the statistical probability of a breach is low. However, because the ponds are located on a hill running down to a large, densely populated urban area, including many basement flats, the consequences of a breach were assessed in the highest category. The Court agreed that agree that safety is a relative concept. However, different safety standards applied to different situations. Under section 10 of the 1975 Act Parliament expressly conferred responsibility upon independent civil engineers to decide what safety measures were required for any particular dam, exercising their professional judgment and expertise. Even a challenge to a section 10 recommendation is determined, pursuant to section 19, by another engineer acting as referee, not by a court. Section 4 provides for a panel of independent civil engineers to be appointed by the Secretary of State in consultation with the ICE. There was no expert evidence from dam engineers before the court which called into question the validity of the assessments which have been made under the 1975 Act and the ICE guidance. Neither the 1975 Act, nor the ICE guidance, provided for the inspecting engineer to balance considerations of safety against competing factors such as preservation of the landscape, protection of the environment, or heritage assets. The court took the view that it would have been evident to Government and Parliament when the 1975 Act was passed that reservoirs and dams are situated in a wide variety of locations, including areas of outstanding beauty, and in the case of ornamental lakes, in historic settings close to heritage assets. This knowledge would also be available to the authors of the ICE guidance. So it was significant that the only legislative consideration was public safety.

Parliament cannot have intended that the inspecting engineer should make his recommendations in complete disregard of legal restrictions which would prevent the
undertaker from complying with those recommendations, thus undermining the efficacy of the whole legislative scheme. Assessing the feasibility of the proposed solution to remedy the problem is an essential part of any professional person's exercise of judgment.

In making recommendations under section 10 the inspecting engineer is performing a statutory function; he is not acting in a purely private capacity. He is subject to general public law requirements to act rationally and fairly and to take into account all material considerations. Any legal restrictions on development at the site are plainly material considerations when deciding the manner in which to secure the safety of the dam. So too are environmental considerations to reduce any adverse environmental impact.

There was no breach of the Hampstead Heath Act 1871. There was no other statutory provision which reduced the extent of the obligations under the 1975 Act. The proposals addressed one discrete issue: the risk of the dams breaching.

**Damages Claims**

*H v The Scottish Ministers*

The owners of a home claimed damage following flooding of their property on three dates in October 1998, and on two further dates in October 2000. On each occasion the flooding of the property happened following periods of very heavy rainfall, when water in a covered roadside culvert backed up the culvert past the house to a point where the culvert opened up, the water accumulated at this point and the level of the accumulated water continued to rise until it flooded onto the adjacent grass verge and road. Once on the verge and road it ran back downhill towards the property. Drop kerbs placed in the verge to allow for normal surface water run-off from the road into the verge also allowed the flood water on the road to return to the verge. The accumulated flood water then continued to run downhill and into the property. The cause of the accumulation of water in the culvert was a significant blockage (or possibly more than one) in the closed culvert. This blockage interfered with the flow of water through the culvert so that the culvert could not cope with the volume of water trying to pass through it. Liability of roads authority for the culvert was not certain, but the roads authority had carried out certain maintenance works on the culvert in the past, see *AF plc v Northumberland County Council & Tyndale District Council*, Justice Bell, 13 April 2000 (unreported) - for the purpose of an action based on nuisance the County Council was the occupier of culverts and trash screens. The action itself was settled without a court hearing on any of the disputed issues.

A local authority appealed against a decision that it was liable for damage caused by floodwater to a holiday village. The flood damage occurred in 2006 and 2008. Following heavy rainfall, water from a property on the other side of a road often flooded the road. In 2000 the local authority installed a series of drains and gullies in the road which prevented flooding provided they were not blocked. To discharge its duties under section 41 of the Highways Act 1980 the local authority employed a company which provided numerous road maintenance teams with responsibility for defined areas. The team responsible for the area in question was led by a charge hand who, on his own initiative, usually travelled to the road in question during heavy rainfall to clear any blockages because it was considered the greatest risk in his area. Before each flood in 2006 and 2008, there had been heavy rainfall all day. The gullies had not been cleared for six weeks before the first flood and for around two months before the second, and they were blocked. The judge had found that the local authority owed a duty to do all that was reasonable to minimise the known risk of flood damage to the property, and that its system to prevent blockages of the drains was flawed because the local teams were not required to identify risk locations and to check them during bad weather. Whilst the system was adequate because of the action the chargehand normally took, it was his unexplained failure to follow his normal practice that caused the flood damage.

The appeal was dismissed. Whilst the Appeal Court agreed that there were limits upon what could be expected from local authorities in relation to flood prevention, the judge in this case did not apply too high a standard of care on the Council. He properly took into account all the relevant circumstances. Although he was carrying out a multifactorial assessment, he considered all the factors raised by the local authority and properly highlighted those that were particularly significant, although he could have explained more fully why he discounted the others. In many flooding situations, the water was often from an external source. Measures had been taken to reduce the effect of the flooding, but they were not implemented on the two dates in dispute. Even though the local authority had a large network of roads to maintain and its principal duty was to preserve the safety of road users, the same measures, namely the checking and clearing of drains, were needed to protect motorists against flooded roads and to protect flood damage to adjacent properties. The issue of resources was important, but the local authority had decided that the flood risk was serious enough to warrant the infrastructure works that were implemented in 2000. The complaint was that proper use had not been made of that installation. Even when making due allowance for the pressures on local authorities, the duty on the local authority required it to take reasonable steps to keep the drainage
installation in question functioning properly. The judge had taken into account the character of the road in question, the few floods that had occurred since the drains were installed and that there was an adequate system in place. However, there was no good reason why the system failed on the two instances in question. The question of insurance was not of any great relevance in the present case. The flood could and should have been prevented by following normal practices and no additional resources were required.

Abandonment of existing flood defences

_Falkner v Gisborne DC, [1995] 3 NZLR 622_

Residential proprietors fronting a beach sought objected that a previous policy of coastal protection works should be discontinued and replaced by a new policy of managed retreat. The Minister of Conservation directed that any proposed structures by the owners of individual properties for protection of their own properties should be determined by him rather than by the local council. The proprietors also sought declarations that the new policy and the determination were repugnant to the Crown’s common law duty to protect the realm from the inroads of the sea and that as frontagers they had a right to protect their property without requiring consent to do so.

It was accepted by the Court that a duty at English common law to protect the realm from the inroads of the sea also applied in New Zealand. However that common law right duty was in the interests of the public in general and was not for the exclusive benefit of individual frontagers. Nor could that duty be asserted in the face of legislation which impliedly or expressly restricted or abolished such common law rights. It was a necessary implication of the Resource Management Act 1991 that common law property rights pertaining to the use of land or sea were subject to that Act. Coastal protection works were subject to the procedures of that Act. The governing philosophy of sustainability did not require the protection of individual’s property to be weighed more heavily than the protection of the environment. The absence of any statutory provision for compensation was noted with concern by the court.

Protective Expenses Orders

Protective Costs Orders have been available at common law in England for a number of years. The leading case on this subject is the English case of _R (Corner House Research) v Secretary of State for Trade and Industry_, [2005] 1 WLR 2600, which set out a number of principles to be applied when considering whether or not to make such orders. That
case has been commented on in a number of other subsequent cases, including *Morgan and Baker v Hinton Organics (Wessex) Ltd*, [2009] 2 P&CR 4 where it was said that the court should apply the principles “flexibly” and not to regard a private interest as a disqualifying factor but rather to treat its weight or importance in the overall context as a flexible element in the court’s consideration of whether a PCO should be made.

In *McCarthur v Lord Advocate*, 2006 SLT 170 Lord Glennie held that a Protective Expenses Order could be granted at common law in Scotland under the general discretionary power of the court to regulate matters of expenses. In 2012 the Supreme Court granted a PEO fixed at £5,000 in *Uprichard v The Scottish Ministers*. The request for a PEO was based on the application of the Corner House case. In *McGinty v The Scottish Ministers*, 2014 SC 81 the Inner House of the Court of Session upheld a cap of £30,000 which the judge at first instance had fixed using the common law power.

The Aarhus Convention contains provisions concerning access to information and to public participation which have led to EU Directives that are relevant to EU regulated environmental issues. In implementation of these Directives Chapter 58A of the Court of Session Rules makes provision for Protective Expenses Orders in challenges to a decision, act or omission which is subject to the public participation provisions of those Directives [Directive 2011/92/EU – the Public Participation Directive; Directive 20008.1.EC – the IPPC Directive]. Under RCS 58A.4 the applicant’s liability in expenses to the respondent can be capped at £5,000, but may be lower.


There was no dispute about the competency of a protective expenses order, but as the petitioners were not challenging a decision, act or omission to which the public participation provisions Directive 2011/92/EU the provisions of Chapter 58A of the Rules of the Court of Session were not relevant to this application for a PEO and the matter was determined by reference to the common law criteria. The Inner House considered that there was nothing to be resolved or determined as a matter of general public interest. What was challenged was a planning permission for a relatively modest development. Whilst any increased risk of flooding was important to all the individuals who fear that their properties may be affected, that did not make it a matter of general public importance. The interests involved were predominantly local and predominantly private. The case was very far from a public interest challenge at the instance of a disinterested petitioner.
**Freedom of Information**

*Decision 045/2005 – Mr Geoffrey Jarvis, The Clyde Heritage Trust and Glasgow City Council*

The Council received a request for advice between legal adviser and client. The information requested was withheld on the basis of section 36(1) of the Freedom of Information (Scotland) Act 2002 (information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings). That decision was upheld by the Commissioner.


*Decision 184/2006 – Hendersons Chartered Surveyors and East Dunbartonshire Council*

The subject matter of the request was Senior Counsel’s opinion about the interpretation of section 11 of the Flood Prevention (Scotland) Act 1961 (compensation provision). The opinion had been obtained from another local authority and was provided in confidence to the Council. When the Council asked the original local authority whether it objected to the disclosure, that other local authority requested that the opinion be kept confidential. The Council therefore withheld the information section 36 of FOISA. That decision was upheld by the Commissioner.


*Decision 086/2009 Mr John Rennie and Scottish Water*

Mr Rennie requested from Scottish Water details relating to flooding in a particular location between 1983 and 2004. Scottish Water responded by providing information to Mr Rennie which it considered addressed his request. Following a review, Mr Rennie remained dissatisfied and applied to the Commissioner for a decision.

Having agreed with Scottish Water that the request was for environmental information and therefore should properly have been dealt with under the EIRs, the Commissioner found (given that it had been wrong at the time of dealing with the request, to conclude that it did not hold any further relevant information) that Scottish Water was not entitled to refuse the request under regulation 10(4)(a) of the EIRs. However, all further relevant information was located and provided to Mr Rennie during the investigation and therefore the Commissioner did not require Scottish Water to take any action.
Decision 144/2012 Mr William Speirs and Scottish Water

Mr Speirs asked Scottish Water for information relating to flooding which affected his property. He did not accept that Scottish Water had provided him with all of the information it held and which fell within the scope of his request. Following an investigation, the Commissioner identified a failure to recognise the requests as requests made under the Environmental Information (Scotland) Regulations 2004 (the EIRs) and to deal with them as such, but also concluded that Scottish Water held no further relevant information.

Decision 063/2013 Zurich Insurance plc and South Lanarkshire Council

On 17 February 2012, Zurich Insurance plc asked South Lanarkshire Council for a wide range of information regarding flooding on the Earnock Burn. The list of calls was lengthy, but was very similar in style and nature to the type and number of calls for documents that might be made by one party against another in the course of an ongoing court litigation. The Council informed Zurich that its request was manifestly unreasonable and a response would not be provided. Following an investigation, the Commissioner found that the Council was entitled to withhold the information under regulation 10(4)(b) of the EIRs. She did not require the Council to take any action.

The Commissioner noted that there is no definition of "manifestly unreasonable" in the EIRs, or in Directive 2003/4/EC from which they are derived. There is no single test for what sort of request may be manifestly unreasonable. In her view the matter was to be judged on each individual request, bearing in mind all of the circumstances of the case. Generally, in applying this exception, the Commissioner would likely to take into account the same kinds of considerations as she would in reaching a decision as to whether a request is vexatious, in terms of section 14(1) of FOISA. As with a "vexatious" request, there may be circumstances where the burden of responding alone justifies deeming a request to be "manifestly unreasonable". Unlike FOISA, there is no cost limit on complying with a request for environmental information, but there may be cases where the time and expense involved in complying with a request for environmental information means that any reasonable person would regard them as excessive. Although the cost limit prescribed by the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004
may be a useful starting point in considering the application of regulation 10(4)(b), the fact that a similar request may be rejected under the provisions of section 12 of FOISA is just one factor to consider and does not, in itself, render a request made under the EIRs manifestly unreasonable. In terms of regulation 8, there are circumstances in which an authority can charge any reasonable fee for the provision of environmental information. Other important factors to be taken into consideration before concluding that environmental information can be withheld under regulation 10(4)(b) included whether complying with the request would cause a disproportionate burden in terms of the workload involved, taking into consideration the size and resources of the public authority; the presumption in favour of disclosure in regulation 10(2)(b); the requirement to interpret exceptions restrictively (in regulation 10(2)(a)); and any other relevant circumstances particular to the case. The key reasons why the Commissioner agreed with the Council was that Commissioner accepts that the burden of providing the information would fall on a small team of people with the technical knowledge required to identify information covered by the request. Given the volume of information potentially covered by Zurich’s request, the Commissioner accepts that dealing with the request would require a significant amount of these officers’ time, and would divert a disproportionate quantity of its resources away from other essential core operations. The factual matters in support of this conclusion are to be found at paragraphs 24 to 28 of the Commissioner’s decision.

24. During the investigation, the Council was asked to provide a cost estimate for the work involved. The Council reiterated that it was difficult to quantify the specific number of documents associated with the request. However, to assist the Commissioner in understanding the work involved, the Council looked at one of the sites on the Earnock Burn, and noted that it took two minutes to retrieve 965 relevant records from its database. The Council stated that it would take 30 minutes to print these records and 965 minutes (one minute per record) to review each record. The Council advised that this site was just one of more than 20 similar flooding sites on the watercourse, and the figure of 965 records excluded any site photographs or supplementary reports associated with a site visit, maintenance works or improvement works which may or may not be available within other systems.

25. The Council went on to explain that the requested information is held in four separate locations, which would increase the time required to retrieve all the relevant information. The Council also explained why technical staff would have to complete the work as opposed to administrative staff whose hourly rate would be significantly less.
26. The Council reiterated that it was difficult to calculate the costs that would be incurred in complying with the request, but it had estimated that the costs of provision would equate to £9,789.65, of which £8,949.15 would be staff costs. The Council stressed again that the cost associated with providing the information was not the primary reason for refusal and that the Council was not seeking to charge a fee at this time.

27. The Council explained that its key concern was the burden that would be placed on its Flood Risk Management team, if the information covered by the request was to be retrieved and provided. All six members of the team had been involved with the Earnock Burn over the years, and all would be required to input into fulfilling the request. One individual from another small team would also be required to work on the request. Removing these officers from these teams to respond to the information request would mean that essential legislative and operational duties would be compromised with resulting implications.

28. The Council provided a list of the numerous responsibilities under the Flood Risk Management (Scotland) Act 2009 that the team had to attend to in addition to other routine work. It explained that the increasing frequency and seriousness of flooding events means that officers are required to respond to emergency incidents and manage the follow up situation. Removing officers from these duties to respond to this information request would mean that these essential legislative and operational duties would be compromised, with resulting implications.”