



Animal &
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Agency

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Don Staniford
{By Email}

Our Ref: ATIC1836

10 March 2020

INTERNAL REVIEW RESPONSE

Dear Don Staniford

Thank you for your email of 25 October 2019, in which you have requested a review of our decision to withhold information in relation to photos obtained via APHA inspections. We can confirm that this review has been undertaken by an officer unconnected with the original decision regarding your request.

Your original request was dealt with under the Freedom of Information Act 2000 (FOIA). We have handled your request for an internal review under the same legislation after concluding that was the correct regime to be used.

I would firstly like to apologise for the long delay in responding to your request for an internal review, and for any inconvenience caused.

The Request

APHA received a request for information from you on 16 September 2019 as follows:

“Please provide information since 1 January 2018 in relation to photos of farmed salmon and salmon farms. Please include photos obtained via APHA inspections, unannounced site visits, email correspondence with salmon farming companies, whistleblowers & vets and other sources. Please include correspondence, emails, letters, press briefings and other information relating to photos including the non-disclosure and non-publication of photos. Please include any legal correspondence with lawyers acting for salmon farming companies”.

APHA responded to that request on 11 October 2019 withholding the information under Section 40 – Personal Information, Section 38 - Health and Safety and Section 43 – Commercial Interests.

Discussion and Investigation

Within your request for a review of our response you refer to a Scottish Government publically available response to a similar request, “Please read the Scottish Government reply and disclosure relating to FOI-19-02133 (the same FOI request filed with APHA) via

<https://www.gov.scot/publications/foi-19-02133/>". As part of this review, we have considered the response you have referred to.

You will note the following within that published response from the Scottish Government; "From July 2018 onwards, active publication of photographs taken as part of the FHI aquatic animal health surveillance programme has been undertaken. You can find this information on the Scottish Government website: <https://www2.gov.scot/Topics/marine/Fish-Shellfish/FHI/CaseInformation>".

And

"Photographs and FHI case information

Your request asked for an explanation as to 'why photos of diseased farmed salmon are absent from much of the FHI case information'. Photographs are taken as they are a useful tool to support site inspections and provide further evidence of observations made. In the case of sick and moribund fish, photographs may be taken to support any differential diagnosis offered through diagnostic sampling. It may not be necessary to take photographs in many cases and there is no statutory requirement to do so. The decision on collecting photographic images is one for the inspector to make at the time of the visit with consideration of any benefit they may add to the case being conducted".

The APHA are responsible for investigating allegations relating to the welfare of farmed fish. We do not have the same role as Scottish Government and would not necessarily retain the same information or need to retain it to undertake our role. We do not necessarily take photos during visits. The Scottish Government have explained (as extracted above), that they do not always take photographs and have explained that they do not have a statutory requirement to do so. Photographic evidence gathering is not generally undertaken by APHA for our purposes.

We have looked again at the wording of your request. You have asked to include photos and information relating to those photos taken as part of our inspections. APHA can confirm that no photographs were taken during inspections from 1 January 2018 to the date of your request. Therefore we hold no information relating to photos taken. We can confirm this part of your request is no information is held.

We do hold photographs that have been sent to us by third parties as part welfare allegations, following which we have undertaken investigations. However, we do not hold any press briefings in relation to those photographs. We do not have any legal

correspondence with lawyers regarding the photographs held. This part of your request is no information is held.

With the photographs obtained from third parties, we have included all correspondence held in our response to you in your later request. This is reference ATIC1896 in which you requested all information relating to inspections. These inspections were carried out in response to welfare allegations/complaints from third parties, which in cases sometimes included photographs. Therefore because this has already been provided to you, it will not be issued again.

Photographs held, as received from third parties will not be released under the following exemptions of the FOIA:

Section 31 - Law Enforcement

Section 31(1)(g) states:

31 – (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –
(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

This is read in conjunction with the following sub sections:

31 – (2)(a) the purpose of ascertaining whether any person has failed to comply with the law,

The photographs have been retained as part of a third party allegation of poor fish farm welfare. The photos are retained as part of the allegation to be investigated. The source of the investigation is also withheld. Investigations into allegations of poor welfare, particularly those protected by section 31(1)(g) via 31(2), can be aided by either individuals, or organisations providing information to the APHA. Such information is either volunteered by a confidential source, for example someone who has provided information on the understanding that they will not be identified and the information and identity of its source will be protected by section 30(2). However, even where the provider of the information is not a confidential source, APHA consider there is still a public interest in not releasing the details of those providing information so as to not discourage others from providing information on a voluntary basis. This includes photographs.

Public Interest Test

The exemption in section 31 is subject to a Public Interest Test to ensure it is being appropriately applied.

We recognise that there is a public interest in disclosure of the photographs in order to increase transparency and aid well-informed debates concerning our work on investigating farm welfare complaints. However, the public interest in withholding the information arises from the fact that at the time of receiving the photographs no inspections had been carried out to confirm or deny allegations and APHA cannot confirm the origin of any photographs received.

Release of any related investigatory information will disrupt our processes in investigating allegations and likely to prejudice our ability to liaise with Local Authorities and/or Fish Health Inspectorates to undertake their functions.

Therefore we have concluded the public interest in withholding photographs received from third parties will be withheld.

Section 43 – Commercial Interest

The photographs have been provided by third parties. Following considerations into this request, APHA have considered the level of harm and the impact possible disclosure would have and have withheld the photos under Section 43(2) – Prejudice to Commercial Interest.

The third party provided photos are part of allegations made from anonymous (or otherwise) sources. It may be harmful should the photos be released as APHA cannot verify the photos. If released, the photos could cause the farms negative publicity.

Public Interest Test

The exemption in Section 43 is subject to a Public Interest Test to ensure it is being appropriately applied.

The disclosure of the information you have requested has the potential to prejudice the commercial interests of the farm. We believe that in releasing unverified photographs could potentially lead to an adverse working relationship between APHA and the farm interfering with us carrying out our statutory duties. Releasing photos alleged of a particular farm could interfere with the business and running of a farm in completion with its competitors.

Internal Review Decision

The result of this Internal Review is that the response dated 11 October 2019, should not have indicated information was held as requested, by applying exemptions.

It is correct that APHA do not hold any photographs taken during inspections and therefore no correspondence relating to those photos.

APHA confirm we do hold photos received as part of welfare allegations/complaints from third parties. We have explained above and under what exemptions we are withholding these photos.

Section 38 Health and Safety has not been applied in this review. This request relates to photographs of particular farms and as we cannot verify the photographs we hold in relation to complaints, the health and safety of farms would not be at risk.

Section 40 Personal Information, has been upheld and details of the application explained within our response to you in ATIC1896 issued on 10 March 2020. This is for the information related to photos held from third parties, in connection with our inspections.

Yours sincerely

ACCESS TO INFORMATION TEAM

Email: enquiries@apha.gov.uk

Complaints

If you are not content with the outcome of the Internal Review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF