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Mr [Redacted]
Office of Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
KY16 9DS

Your ref: 201900504
Our ref: FOI/18/01553
16 July 2019

Dear [Redacted]

Application for Decision by the Scottish Information Commissioner
Applicant: Scottish Salmon Watch
Department/Agency: MARINE SCOTLAND

Thank you for your letter dated 1 July 2019 relating to Scottish Salmon Watch's request dated 4 June 2019 for information on salmon ova imports since 1 January 2017.

Regulation 10(5)(e) – Confidentiality of commercial or industrial information

I can confirm that we wish to maintain reliance on regulation 10(5)(e) to withhold information containing data on the imports of salmon ova to Scotland relating to Scottish Sea Farms (SSF).

When dealing with the initial request, Marine Scotland contacted all companies that had imported ova into Scotland since 1 January 2017, asking for their views on whether the information we held relating to them should be disclosed. In response, SSF set out their views against disclosing the specific information as they considered that it was excepted under regulation 10(5)(e) of the EIRs (although they incorrectly cited regulation 12(5)(e), which is the equivalent regulation under the EIRs in England). In support of this, SSF gave their reasonings and provided extracts of specific confidentiality clauses within contractual agreements that they have in place with their suppliers and contract growers. A copy of that correspondence is attached below:

[ATTACHMENT PROVIDED ELSEWHERE IN THIS RESPONSE]

We consider that there is a clear commercial nature to this information as it contains details of third party operators and source companies that have imported salmon ova into Scotland and, as detailed above, Scottish Seas Farms have entered into a mutual confidentiality

agreement with Aqua Gen AS, and Landcatch Natural Selection Limited. We believe that this shows that the information concerned is commercially confidential in nature, as it is covered by the terms of this agreement, and thus falls within the scope for assessment under Regulation 10(5)(e).

We believe that disclosure of this information would breach the terms of the confidentiality agreement in place, and cause substantial harm to the interests of SSF. If the information were released it would disclose company or commercial strategy in the production of salmon in freshwater, which would substantially prejudice future production strategies. In their email of 12 June 2018, attached above, SSF stated *"Specifically, the information categories relating to third party 'Operator' and 'Site of Destination' (Ormsary Hatchery, Landcatch Natural selection Ltd.), 'Source Country' for entries Republic of Ireland as Marine Harvest Ireland are the only supplier in that country and all entries under category 'Number' and 'Source Company', as this information is subject to confidentiality clauses within contractual agreements provided by law between Scottish Sea Farms Ltd., and third party producer or egg supplier respectively and as such the disclosure of the information would invalidate our contractual obligations. This confidentiality is protecting a legitimate economic interest as disclosure this information would reveal company or industrial commercial strategy for production of salmon in freshwater and intellectual property knowhow on commercial strategy of genetic selection programme which is based on an extensive research and development by Scottish Sea Farms Ltd."*

In our review response dated 19 September 2018 we provided a further release, which disclosed the number of salmon ova imported, although we continued to withhold the information highlighted within our schedule of information provided to you on 20 May 2019.

We accept that SSF do not have a veto on disclosure, and the final decision on whether information should be released sits with Marine Scotland/Scottish Ministers. However, having taken account of the views expressed by SSF we believe the above shows that the information concerned is confidential, as it is covered by the terms of this agreement.

We recognise that similar information relating to other companies has been released, however this is because those other companies did not object to the release of that information. SSF were the only company to provide evidence of a confidentiality agreement that they had in place with their suppliers and contract growers.

Consideration of the public interest test

We recognise that there is some public interest in release in order to promote openness and transparency, and to inform public debate, as the information relates to aquaculture, which is an industry of some importance to the Scottish economy and therefore may be of interest to some people.

However, we feel that there is a stronger public interest in avoiding significant harm to the commercial interests of Scottish Sea Farms by breaching its confidentiality agreement made between Aqua Gen AS, and Landcatch Natural Selection Limited. The public interest in protecting the confidentiality of companies that deal with the Scottish Government is high. Commercial companies should be able to trust that the Scottish Government can protect confidential information, and not release information that will cause substantial prejudice to their interests. We feel that maintaining this trust, and not damaging the commercial interests of companies that deal with the Scottish Government outweighs the public interest in the release of the information in this case.

Additional release of information

As requested in your further email dated 10 July 2019, attached below is a copy of the information sent to [Redacted] on 17 May 2019:

[ATTACHMENT PASTED AT THE END OF THIS DOCUMENT]

I would be grateful if all the comments provided in italics above, and the contents of the email received from [Redacted] of SSF, dated 12 June 2018 (attached to this submission), were not included in the Commissioner's decision notice, nor shared with the requester or anyone else.

I hope this is sufficient to allow you to conclude your investigations. However, if you require any further information, please do not hesitate to contact me.

Yours sincerely

[Redacted]
FOI Adviser

Attachment

From: [Redacted] (MARLAB)
Sent: 17 May 2019 16:32
To: [Redacted] (salmonfarmingkills@gmail.com)
Subject: Release of further information relating to Fol/18/01553

Dear [Redacted]

REQUEST UNDER THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (EIRs)

Further to your application to the Scottish Information Commissioner in relation to your request for information on salmon ova imports during 2017 and 2018 (Fol/18/01553), I am writing to advise you that we have now given further consideration to the information held within the scope of your request.

I can confirm that we have reconsidered the information previously withheld and have determined that some of this information can now be disclosed, and a copy of this information is attached. However, a small amount of information is being withheld because an exception under regulation 11(2) of the EIRs (personal information) applies to that information as it is personal data of a third party, and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. We also applied the exception under regulation 11(2) of the EIRs in relation to our original response sent to you in July 2018, please accept my apologies as you were not advised of this in the initial response sent relating to this request.

You will also note that some information has been redacted which is considered to be out of scope of your original request.

Should you have any queries or questions regarding this then please do not hesitate to contact me.

Regards,
[Redacted]



FoI-18-01553 -
Ministerial briefing