

Don Staniford
salmonfarmingkills@gmail.com

Our Reference: 202000118346
Your Reference: Review request re. FOI-202000118346

23 March 2021

Dear Don Staniford,

Thank you for your request for a review of our response to your request under the Environmental Information (Scotland) Regulations 2004 (EIRs) for information on seals killed by salmon farmers since 1 January 2020 (Case ref 202000118346). I have been asked by the Director of Marine Scotland to carry out the review because I was not involved in handling your original request and can undertake a fair and objective review.

I have reviewed the searches undertaken to identify all relevant information in relation your case. During my search I identified some additional documents that should have been released during the original case. Our apologies that these were not released at the time. One document contains information that is publicly available and therefore under regulation 6(1)(b) of the EIRs this does not need to be released. The information in the document was from the Scottish Marine Animal Strandings Database, which can be found here: <https://www.strandings.org/cgi-bin/smass/map.pl> using the search for "Physical Trauma, Anthropogenic". Six emails that should have been released at the time have also been identified, a number of these are additional parts of email chains that have already been released, and are attached to this letter.

I have also undertaken the review in relation to the original point requested in your email on 10 February 2021 and two points from your email on 11 February 2021, which also relate to Case 202000118346 and have therefore been considered within the scope of the review. My conclusions are outlined below.

1. *FOI-202000118346 redacted the names of 'nominated marksmen' which were "issued by Police*

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Scotland" for dozens of licences to kill seals. Scottish Salmon Watch assumes that the nominated marksmen may be the same or contain repeat names on different licences but there may be over a dozen marksmen. Please therefore provide their names and remove the redaction.

In the original response from the Scottish Government the names of the nominated marksmen were withheld under EIR Regulation 11(2) – To the extent that environmental information requested includes personal data of which the applicant is not the data subject and in relation to which either the first or second condition set out in paragraphs (3) and (4) is satisfied, a Scottish public authority shall not make the personal data available.

I have reviewed your request in relation to this point and find that the original decision should be upheld and that the regulations have been correctly applied. However I can confirm that the total number of marksmen in the redacted licences provided as part of the response is 52.

2. "Please also provide the report to Police Scotland's Wildlife Crime Unit cited in the following email disclosed via FOI-2020-00118346 on 1 February 2021."

In the original response an exception under regulation 10(5)(b) (the course of justice, etc.) of the EIRs was applied to some of the information you requested. This exception applies as release of this information would, or would be likely to, cause substantial prejudice to the Governments operational and law enforcement capabilities. In particular that such information which could potentially allow people to examine and analyse our methods and mechanisms of operating and try and identify ways to circumvent them or otherwise thwart our activity. This exception is subject to the 'public interest test'

I have reviewed the information withheld and the most recent guidance available and find that the information should have been released, as this was not the subject of an ongoing criminal investigation at the time of the your EIR request and therefore regulation 10(5)(b) should not have been applied. We apologise for this misinterpretation and the two redacted documents are attached to this letter.

A small amount of information has been redacted from these two documents under regulation 11(2) of the EIRs (personal information) because 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. This exception is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exception.

3. FOI-2020-00118346 also included a letter sent by Marine Scotland to Scottish Sea Farms in Shetland dated 14 January 2021 - It appears that there may be missing documentation pertaining to this case - either refused or omitted via FOI-2020-00118346.

In any case, this FOI requests information on this case (and any others) up to today's date and may therefore include a reply from Scottish Sea Farms.

Having reviewed the information relating to the letter outlined above I can confirm that there was no response from Scottish Sea Farms. Unfortunately however the date of the letter in PDF 55 is incorrect. The letter was actually issued on the 5/3/2020, however as the letter used a template the date

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automatically updated to the date the PDF was created and not the original date. We apologise for this oversight.

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. Information on how to make an appeal, along with an application form, is available on the Commissioner's website at: <https://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

You can also contact the Commissioner at:

The Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
E-mail: enquiries@itspublicknowledge.info
Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely,

John Mouat

John Mouat
MPP : Marine Conservation

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