

10 February 2021

Dear

Re. ATISN 14814 – Welfare of Gamebirds

Information requested

Thank you for your request which I received on 28 January 2021. You asked for the following:

- Copies of all correspondence, in whatever form, between the Minister for Environment, Energy and Rural Affairs, her officials and the Department for Environment, Food and Rural Affairs (DEFRA) regarding the welfare of game birds, including reference to the code of practice for the welfare of gamebirds reared for sporting purposes, between 30 April 2019 and 25 January 2021.
- Copies of all correspondence, in whatever form, between the Minister for Environment, Energy and Rural Affairs, her officials, and the League Against Cruel Sports along with information on any meetings held between both parties between 30 April 2019 and 25 January 2021.
- Copies of correspondence, in whatever form, between the Welsh Government and Natural Resources Wales regarding the release of game birds between 30 April 2019 and 25 January 2021.

Our response

You asked for the above information under the Freedom of Information Act. Nevertheless I have taken the view that the appropriate regime for Animal Welfare Policy is the Environmental Information Regulations (EIR).

‘Environmental information’ is defined in the Regulations as (inter alia) information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, and also factors such as substances, energy, noise, radiation or waste likely to affect the state of the elements of the environment above.

In the recent Court of Appeal decision in *The Dept for Business, Energy and Industrial Strategy v The Information Commissioner and Alex Henney*, it was held that the statutory definition of ‘environmental information’ does not mean that the information itself must be intrinsically environmental. They confirmed it is well established that the term “environmental information” in the Directive is to be given a broad meaning and that the intention of the Community’s legislature was to avoid giving that concept a definition which could have had the effect of excluding from the scope of that directive any of the activities engaged in by the public authorities.

Guidance from the Information Commissioner states that “Public authorities should interpret ‘any information on’ broadly. Information that would inform the public about matters affecting the environment or enable them to participate in decision making, and help to achieve that purpose is likely to be environmental information, even if the information itself does not directly mention the environment”.

I have thus considered your request under these regulations.

Because of this, I have given consideration to the exceptions contained within Regulation 12 of the EIRs. Regulation 12(4)(b) does not oblige a public authority to release information where the request is ‘manifestly unreasonable’.

Under the EIRs, and unlike under FoIA, there is no appropriate costs limit above which public authorities are not required to deal with requests for information. However, 12(4)(b) can apply if the cost or burden of dealing with a request is too great. This position was confirmed in the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT442 (AAC).

“Taking the position under the EIR first, it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as “manifestly unreasonable”, purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable.”

Further, under the EIRs, it may be valid for a public authority to take into account the cost of separating out the environmental information from the non-environmental information, when considering if the request is manifestly unreasonable. This is different from the position under FoIA because regulation 12(4)(b) is not limited by the FoIA fees regulations. Also, the identification of environmental information would not be classed as applying an exception under the EIR.

This request captures a substantial amount of information. Over the extended period of time specified, there are very large numbers of documents including correspondence, meeting minutes, emails and information reports.

Initial review of one of the 3 areas of information requested for just a 3 month period indicated that it would take 2 hours to consider the data requested, discover where this would be located and the processes needed to retrieve it. Following this, it would take a further 6 hours to firstly obtain the information due to the number of different individuals and departments who would have had involvement, and secondly to interpret the information in order to extract the relevant data. The information would then need clearance from a relevant grade officer which would add a further 2 hours to ensure all the information was correct and applicable.

This does not include other aspects of the collation of data, which would include review of wildlife policy files, liaison with third parties, etc. This is well in excess of

the 24 hour limit that applies in the FoIA, and against which we also judge this request to therefore clearly be manifestly unreasonable.

Unlike s12 of the FoIA, Regulation 12(4)(b) is subject to the public interest test.

The Welsh Government recognises the general public interest in openness and transparency and releasing the information would help the public gain a better understanding of the decisions made by Government. We also understand that the policy area in question is one of wide public interest, and that the interests of the public are served in showing that policy is formulated on the basis of evidence that has been carefully and fully considered.

The public interest in withholding this information lies in the amount of work requested, and at a time where the resources of government are severely stretched. Owing to reconfiguration of government in response to the COVID crisis, this request would need to be handled by a team of just two people, and it would be necessary for them to cease their public tasks in order to handle this request. This would clearly not be in the public interest

In the absence of a strong countervailing public interest in responding to this request, we are of the view that the public interest favours withholding of this information. Consequently, I have decided not to provide you with the information you have requested.

You may wish to refine your request by narrowing its scope by being more specific about what information you particularly wish to obtain, including any dates or period of time relevant to the information required. If you do refine your request in this way, this will be treated as a new request.

Next steps

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,

Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely