

15 August 2023

Dear

ATISN 18773 – wildlife and rodenticides

Thank you for your request which we received on 26 July 2023. You asked for the final Fera Science Reports related to the Wildlife Incident Investigation Scheme, for the following investigations:

Ref no	Location	Ref no	Location	Ref no	Location
W08 05	Montgomery	W18 18	Pembroke	W21 09	RCT
W07 15	Denbigh	W18 20	Denbigh	W21 12	Powys
W16 02	Cardiff	W18 27	Merthyr Tydfil	W21 16	Powys
W16 05	Powys	W18 29	Conwy	W21 18	Powys
W16 24	Denbigh	W18 30	Powys	W21 24	Flint
W16 25	Denbigh	W19 15	Conwy	W21 25	Wrexham
W16 26	Powys	W19 14	Carmarthen	W21 30	Gwynedd
W16 29	Powys	W19 16	Denbigh	W21 31	Wrexham
W17 02	Powys	W19 18	Denbigh	W 22 01	Denbigh
W17 04	NPT	W20 01	Anglesey	W 22 02	Powys
W17 05	Gwynedd	W20 09	Powys	W 22 03	Ceredig
W17 10	Denbigh	W20 25	Powys	W22 10	Angles
W18 08	V of Glam	W21 01	Wrexham	W22 25	Bridgend
W18 10	Ceredig	W21 02	V of Glam	W22 28	Carmarthen
W18 15	Powys	W21 07	Denbigh	W22 30	Wrexham

Incident 34 in Appendix 4 of PPA 2005 (page 40)
Incident 45 in Appendix 4 of PPA 2005 (page 41)
Incident 49 in Appendix 4 of PPA 2005 (page 41)
Incident 13 in Appendix 3 of PPA 2006 (page 32)
Incident 33 in Appendix 4 of PPA 2006 (page 44)
Incident 34 in Appendix 4 of PPA 2006 (page 44)
Incident 38 in Appendix 4 of PPA 2006 (page 45)
Incident 45 in Appendix 4 of PPA 2006 (page 45)
Incident 46 in Appendix 4 of PPA 2006 (page 45)

The documents listed are all enclosed with the following exceptions:-

- W/22/01 – no records held as tissues were not sent for analysis due to a positive avian influenza result.
- W/21/1 – no bird submitted therefore no tissues were available for analysis.
- W/19/14 – no samples submitted to Fera for analysis (starvation at PM).
- W/21/24, W/22/28, W/22/30 – cases on-going.
- Incident 45 Appendix 4 2005 – no information held, incident occurred in Somerset, England.
- Incident 33 Appendix 4 2006 – no Fera report is held.

We have decided that some of the information is exempt from disclosure under section 12(5)(b) and section 13 of the Environmental Information Regulations (EIRs) and is therefore withheld. The reasons for applying these exceptions are set out in full at Annex A to this letter.

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

Annex A

Environmental Information Regulations

Regulation 12(5)(b)– The course of justice and inquiries

Regulation 12(5)(b) states:

12 (5)

For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – ...

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

Three of the documents captured by your request refer to ongoing and active investigations.

Regulation 12(5)(b) provides an exception to disclosure for information “to the extent that its disclosure would adversely affect” the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature. Here, “adversely affect” means there must be an identifiable harm to or negative impact on the interests identified in the exception.

Release under these regulations is release to the world and not just the requestor. This means that release would also be to any parties involved in the investigation. I find that disclosure of the information held, while the matter is still under investigation, would have an adverse effect on that investigation.

Public interest arguments in favour of disclosure

The release of information would help provide a complete picture of all such incidents, and there is a clear research interest in that full information being available, with as complete data as possible. It is in the interests of the openness and transparency of government as well as in the interests on understanding the range and extent of contamination incidents to inform research, scientific understanding and public debate.

Public Interest arguments in favour of withholding

It is not in the public interest that premature release of information, while an incident is still under investigation, should prejudice the ability to investigate and, where applicable, prosecute cases of contamination. The regulatory and investigatory work of government and other authorities is a clear service of the public interest.

Public Interest conclusion

Although there is a clear public interest in favour of disclosure of the information, that public interest can still be met without subverting the very strong public interest in favour of withholding. This is because the public interest in favour of withholding is time limited, and only applies until investigations are complete and the matter resolved. At such time the information may be released, in line with other information that is being released. I therefore find that the balance of the public interest lies with withholding at this time.

Regulation 13– Personal data

Regulation 13(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Regulation 13(1) of the EIRs, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:]

“processed lawfully, fairly and in a transparent manner in relation to the data subject”
The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

We are not aware of any legitimate interest in the disclosure of the identities of individuals in receipt of the reports or indeed the individual who produced it. Nor in the precise location that would identify individuals.

2. Is disclosure necessary?

We do not believe it is necessary to identify individuals or precise locations that would identify individuals.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

As we do not believe there is a legitimate interest in identifying the individuals, nor is it necessary to identify these individuals or precise locations to understand the reports, we are of the view that disclosure would breach the fundamental rights and interests of these individuals, and as such would be a breach of data protection legislation. Consequentially, we are of the view that the information should be excepted from disclosure.