



Department
for Environment
Food & Rural Affairs

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Dr Helen Wallace,
Director
GeneWatch UK

By email to: helen.wallace@genewatch.org

Your ref:
Our ref: RFI 5439/5589

Date: 11 April 2014

Dear Dr Wallace,

REQUEST FOR INTERNAL REVIEW: MEETINGS AND COMMUNICATION BETWEEN DEFRA AND OTHER BODIES

Your email of 13 January requested an internal review of the response you received from Defra on 17 December 2013, regarding:

- all communications since 1 September 2012, including letters, emails and phone calls, between Defra and: (i) the Agricultural Biotechnology Council (ABC), and (ii) the ABC's member companies (BASF, Bayer CropScience, Dow AgroSciences, Monsanto, Pioneer Hi-Bred, and Syngenta)
- all meetings since 1 September 2012 between Defra and the ABC and/or its member companies, including dates, attendees, agendas and minutes relating to GM issues.

Firstly, please accept my sincere apologies again for the long delay in replying. We are dealing with your internal review request under the Environmental Information Regulations 2004 (EIRs).

In accordance with Defra's internal review procedures, your case has been reviewed by the Information Standards Team within Defra in discussion with colleagues who handled your original request.

Summary

We have considered your appeal, including your arguments in favour of disclosure of emails circulated within Defra about the three bodies mentioned above relating to GM issues and letters exchanged between third parties. We have concluded that although you were provided with extensive information, some of the information could not be disclosed, and the GM Policy and Regulation team were right in withholding it in accordance with the exceptions provided for under the Environmental Information Regulations 2004 (EIRs). At



the same time, as part of this review I am able to let you have additional information which should have been included with the reply to your original request

I set out below a fuller explanation of our decision.

Chronology

On 16 April 2013, Defra received your request, asking for information on meetings and communication between Defra and ABC and its member companies. Your request was logged under reference RFI 5589.

On 16 May 2013, GM Policy and Regulation team wrote to you to extend the time for responding to the request by a further 20 working days from the original deadline, because of the complexity and the volume of the information you had requested.

In their letter of 17 December 2013, GM Policy and Regulation team replied to your request for information. They provided you with a significant amount of information that they could release, but withheld some information in accordance with the exceptions provided for under EIRs.

On 13 January 2014, you emailed the "requestforinfo" mailbox asking for an internal review of the response you had received from GM Policy and Regulation team. This mailbox was not monitored as it should have been and your request was not allocated and overlooked until you wrote to me personally on 13 March.

In my letter of 18 March, I apologised for the failure in our internal systems and initiated an investigation, as well as enquiries to address the specific questions you had raised.

FOI or EIRs

Your request was handled under the EIRs. The EIRs are the applicable information access regime since your request meets the definition of environmental information in regulation 2 of the EIRs. This is because information you requested on companies involved in Genetically Modified Organisms, falls under measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment including genetically modified organisms.

Timeliness (regulation 5)

We have considered whether Defra complied with the requirement in regulation 5(2) of the EIRs to respond to a requester no later than 20 working days after the date of receipt of the request. On 16 April 2013, Defra received a request for information between Defra and: (i) the Agricultural Biotechnology Council (ABC), and (ii) the ABC's member companies (BASF, Bayer CropScience, Dow AgroSciences, Monsanto, Pioneer Hi-Bred, and Syngenta), and logged it under RFI 5439/5589. GM Policy and Regulation team sent you a substantial reply on 13 December 2013. We have therefore failed to comply with regulation 5(2). I duly apologise for this failure; such a lengthy delay is not acceptable.

Refusal letter (regulation 14)

Regulation 14(1) states that if a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and

comply with the following provisions of this regulation: The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request and shall specify the reasons not to disclose the information requested, including any exception relied on under regulations 12(4), 12(5) or 13;

The refusal shall also inform the applicant that he may make representations to the public authority under regulation 11; and of the enforcement and appeal provisions applied by regulation 18.

In their letters of 24 July 2013 and 17 December 2013, GM Policy and Regulation team informed you of your right to make representations and of enforcement and appeal provisions.

Defra has therefore complied with regulations 11 and 18.

Exceptions and Public Interest considerations

In your request for an internal review, you asked me to consider the following:

- i. The released material states that on 10th June 2013 there was a teleconference between Defra and ABC to discuss progress on the Agri-tech Strategy, but no note was kept. This seems rather surprising and we would like confirmation of the absence of a note (e.g. of action points at least, if not formal minutes) to be part of your investigation. In addition, we would expect at least some emails were sent organising and following up this meeting, including a list of participants and an agenda, and we would like copies of these documents as they fall within the remit of our original requests.

Further searches have been carried out and I can confirm that no notes, minutes, action points exist. We are aware that there was a phone call between Defra's Agri-tech Strategy team and ABC about a general update on progress on the Agri-tech Strategy and that no note was kept as reported previously. The Agri-tech strategy goes much wider than GMOS so it is possible this topic wasn't covered.

- ii. The "15 April 2013 – email from ABC Message on media suggestions" would appear to contain withheld material other than names – only the names should have been redacted. We would like a redacted copy of this document, rather than for it to be omitted altogether.

I have reviewed this document which is about the launch of the Agri-tech Strategy and the people who should be there. However, none of this information contained in this email is GMO-related. Therefore it did not fall within the scope of your query and was included in error.

- iii. In "12 March 2013 – email from Alan Raybould at Syngenta to GM team in Defra", the sections of the presentation that Dr Raybould is referring to appear to have been omitted. We would like a full copy of this email, if other parts exist, rather than what appears to be an incomplete selection of material, and confirmation that no other emails between Dr Raybould and the GM Team exist.

I can confirm there are no other emails between the GM Policy and Regulation team and Dr Raybould. The attachments to the 12 March email were Dr Raybould's biography and abstract of the talk he was going to give at an open meeting of ACRE. These were left unchanged and are included under "From note on speakers and abstracts" dated 21 March 2013

- iv. In "8 February 2013 – email to GM team from Monsanto" an attachment or other information (referred to "as discussed") appears to have been omitted. We would like a copy of this information.

This email also appears to be a part of an ongoing discussion and we would like you to investigate whether there were any further emails between Monsanto (or the ABC or its other member companies) and Defra on this topic. We would like copies of these emails.

I can confirm Defra does not hold any more information relating to this correspondence

Regulation 12(4)(a) – information not held

Although regulation 12(4)(a) is a qualified exception, the Information Commissioner, who is the independent regulator for requests made under the EIRs, takes the view that a public interest test in cases where the information is not held would serve no useful purpose. Therefore, in line with the Information Commissioner's view, Defra has not conducted a public interest test in this case.

- v. Under "3 October 2012 – letter from ABC" Defra states "Similar letters were sent to the Secretary of State and Lord de Mauley" but copies of these letters and any further correspondence are not provided. We would like copies of this information.

I have enclosed the letters from ABC to Lord de Mauley and Secretary of State. The Secretary of State did not reply, but Lord de Mauley's reply is attached. I can confirm the meeting Lord de Mauley was offering was never set up.

- vi. An AP201 form for suppliers has been included, as well as an expenses form, but no information has been provided about the uses to which this form was put i.e. what services if any the ABC or its member organisations provided to Defra as a "supplier" and any correspondence regarding these services.

These forms were sent with our email of 18 March 2013 and are referred to as documents 4 and 5 under that date. These are the forms sent to Dr Raybould so he could be set up as a payee and pay his travel expenses when he spoke at the ACRE meeting on 21 March 2013. The forms were sent to our Finance team for processing but they contain personal data so cannot be released, in line with regulation 13.

Regulation 13 – Personal data

(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

(2) The first condition is in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles; or section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing personal data outweighs the public interest in disclosing it.

(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and, in all the circumstances of the case, the public interest in not disclosing the personal data outweighs the public interest in disclosing it.

Regulation 12(4)(e) - disclosure of internal communications

An email origination from Assistant Private Secretary to David Heath and circulated to a number of Defra officials was withheld under regulation 12(4)(e) of the EIRs. Also withheld under the same regulation was an email circulated internally about a meeting with Agricultural Biotechnology Council - Summary and Questions. In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosure. We recognise that there is a public interest in disclosure of communication between ministers' offices and senior officials. The public has an interest in disclosure of information about the process of government policy formulation in the interests of greater transparency to make government more accountable to the electorate and increase trust.

On the other hand, there is a strong public interest in withholding this piece of internal communication because good government depends on good decision-making, which needs to be based on full consideration of all the options without fear of premature disclosure. Ministers and officials also need to be able to conduct rigorous and candid risk assessments of their policies and programmes including consideration of the pros and cons without there being premature disclosure which might close off better options. There needs to be a free space in which it is possible to 'think the unthinkable' and use imagination, without the fear that policy proposals and suggestions will be put in the public domain.

Regulation 12(5)(f) – The interests of the person who provided the information

A public authority may refuse to disclose information to the extent that its disclosure would adversely affect the interests of the person who provided the information where that person—

- (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
- (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
- (iii) has not consented to its disclosure

Letter to Commissioner Borg 20/12/12 – from the Food and Feed Chain Coalition (FFCC) was copied to us by ABC. We have contacted the FFCC and asked if we could release this letter into the domain, but they did not give us their consent to release. Therefore, the interests of this third party would be adversely affected by disclosure of this letter, since they are not legally obliged to supply this information to a public authority.

Conclusion

Having conducted a full review of the handling of your request, we consider that the above exceptions were applied correctly in this case.

I hope that you consider that this letter fully addresses your concerns. However, if you are not satisfied with the outcome of this internal review, you have the right to appeal 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

<http://www.ico.gov.uk/complaints.aspx>

Yours sincerely,

Mike Kaye

Head of Information Standards Team