

Mr Don Staniford  
Global Alliance Against Industrial Aquaculture  
By email  
<mailto:salmonfarmingkills@gmail.com>



Our ref: Fol/13/00026  
6 February 2013

Dear Mr Staniford

## **REQUEST FOR INFORMATION: EC HABITATS DIRECTIVE AND ATLANTIC SALMON**

Thank you for your email of 10 January 2013 requesting information under the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIRs) as relevant. You requested copies of all official correspondence with the European Commission and copies of internal correspondence (including draft responses, briefings and other documents) relating to a complaint submitted to the European Commission which alleged a failure of the United Kingdom Government to comply with the EC Habitats Directive with respect to Atlantic salmon.

As the information you have requested is 'environmental information' for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under those Regulations. We are applying the exemption at section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA. As the exemption is conditional we have applied the 'public interest test'. This means we have, in all the circumstances of this case, considered if the public interest in disclosing the information under FOISA outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

The information you requested can be divided into two categories, namely:

1. Official correspondence with the European Commission
2. Internal correspondence (including draft responses, briefings and other documents)

and I will deal with each of these in turn.

## 1. Official correspondence with the European Commission

Correspondence from the European Commission relating to alleged infringements of European Law is addressed to the Member State. In the UK, such correspondence is forwarded as necessary to the relevant devolved administration(s) in confidence. Therefore under the terms of regulation 2(2) of the EIRs, such information is not held by the Scottish Government because we hold it in confidence having received it from the UK Government. This means we are unable to disclose it in response to a request under the Scottish EIRs. However, you may wish to submit a new request under the UK Environmental Information Regulations 2004 to the Department for Environment, Food and Rural Affairs at Nobel House, 17 Smith Square, London SW1P 3JR who should be able to help you further.

I have enclosed a copy of the reply provided to the European Commission (which was copied to the party who first submitted the complaint).


## 2. Internal correspondence (including draft responses, briefings and other documents)

We do endeavour to provide information whenever possible. However, in this instance an exception applies to the information requested namely Regulation 10(4)(e) which provides that a Scottish Public Authority may refuse to make environmental information available to the extent that the request involves making available internal communications.

As this exception is conditional we have applied the 'public interest test'. This means we have, in all the circumstances of this case, considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is always a public interest in disclosing information as part of open, transparent and accountable government. However, this is outweighed in this case by the public interest in affording Scottish Ministers and their officials a private space within which to discuss the particulars of an ongoing case alleging infringement of an EU Directive.

If you are unhappy with this response, you may ask us to carry out an internal review by writing to Dr Bob McIntosh, Director for Environment and Forestry, the Scottish Government, 1-D North, Victoria Quay, Edinburgh, EH6 6QQ. Your request should explain why you wish a review to be carried out, and should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If you are not satisfied with the result of the review, you then have the right to make a formal complaint to the Scottish Information Commissioner.

Yours sincerely,



Steven Dora