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Our ref: RFI6796, 6797 & 6798
Date: 1 December 2014

[redacted]

REQUEST FOR INFORMATION: COMMUNICATIONS BETWEEN DEFRA AND (I) BAYER, (II) SYNGENTA AND (III) ROTHAMSTEAD RESEARCH IN RELATION TO NEONICOTINOIDS FIELD TRIALS

Thank you for your requests for information about communications in the last 12 months (including letters, emails, faxes, minutes of meetings and telephone conversations) between Defra and (i) Bayer, (ii) Syngenta and (iii) Rothamstead Research in relation to the funding and design of field trials investigating the effects of neonicotinoids on bees, which we received on 1 August 2014. I apologise for the delay in replying to you. It has taken some time to gather the relevant information together and ensure you have a full and accurate response to your request.

As you know, we have handled your requests under the Environmental Information Regulations 2004 (EIRs).

We have interpreted your requests for information to include all communications referred to above to cover the period from 1 August 2013 to 31 July 2014. This letter is a combined response to all three requests. We have excluded information that falls within the scope of your requests but which would add nothing to your understanding of these matters, e.g. housekeeping emails, such as meeting arrangements and acknowledgements.

Following careful consideration, we have decided to disclose most of this information. As there are so many communications in scope of your request, I have numbered them in chronological order in that hope that this is useful in identifying specific communications. Please be aware however that many of the letters and emails contain information that is out of scope (i.e. not about field trials). All this information has been redacted.

- Defra 1 - Letter from Syngenta to Defra of 2 August 2013 accepting a meeting request to discuss plans for further work required in the context of the revised regulatory requirements and the EU's 2015 review;

- Defra 2 - Email exchange from 2 to 5 August 2013 between Defra's Pesticide Policy team and Syngenta, concerning the programme of study work in the UK and Germany;

- Defra 3 - Letter from Bayer to Defra of 14 August 2013 accepting a meeting request to discuss plans for further work required in the context of the revised regulatory requirements and the EU's 2015 review;

- Defra 4 - Email exchange from 10 to 14 October 2013 between Defra's Pesticide Policy and Syngenta officials on Syngenta's planned research work;

- Defra 4a - Syngenta/Bayer's proposed demonstration project entitled 'Pan-European study of the effects of neonicotinoids on pollinator populations' (attached to Defra 4);

- Defra 5 - Letter of 12 October 2013 from the (former) Secretary of State (SoS), the Rt Hon Owen Patterson MP to Bayer concerning research into the impact of neonicotinoids on bee health and behaviour;

- Defra 6 - Letter of 5 November 2013 from Defra's Chief Scientific Advisor (CSA), Professor Ian Boyd, to Bayer regarding research needs for neonicotinoids;

- Defra 7 - Letter of 5 November 2013 from the Defra CSA to Syngenta regarding research needs for neonicotinoids;

- Defra 8 - Email exchange from 4 to 6 November 2013 between Defra's Pesticide Policy and Syngenta officials regarding publication of the results of a 'Four-Year Field Program Investigating Long-Term Effects of Repeated Exposure of Honey Bee Colonies to Flowering Crops Treated with thiamethoxam';

- Defra 9 – Email of 8 November 2013 from Syngenta to the CSA (in response to Defra 6) that also includes information on the publication of the results of a 'Four-Year Field Program Investigating Long-Term Effects of Repeated Exposure of Honey Bee Colonies to Flowering Crops Treated with thiamethoxam';

- Defra 10 – Email of 5 February 2014 from Syngenta to Defra Pesticide Policy officials requesting discussions on the current position with field trials;

- Defra 11 – notes of a meeting (dated 1 March 2014 - see 'Meeting 6' on page 4) between Defra Pesticide Policy and Syngenta officials on the position with field trials. **Document withheld (see below)**

- Defra 12 – Email exchange of 3 & 4 March 2014 between Defra Pesticide Policy and Syngenta officials regarding thiamethoxam studies;

- Defra 12a - Solitary Bee Protocol sent to the European Food Safety Authority (EFSA) entitled 'A Field Study to Evaluate Side Effects on Red Mason Bees (*Osmia bicornis* L.) in Winter Oil Seed Rape in Germany (Tübingen)' (which was attached to Defra 12). **Document withheld (see below);**

- Defra 13 - Email exchange of 17 to 28 April 2014 between Pesticide Policy and Syngenta officials regarding the Joint Bayer/Syngenta field trials;

- Defra 14 – Letter of 4 June 2014 from Defra's CSA to Syngenta regarding joint industry neonicotinoids field trials;

- Defra 15 – Email of 23 June from Syngenta to Sarah Church (the Director of Defra's Food and Environmental Risk division) concerning the emergency authorisation of 'Cruiser OSR' which included reference to field trials.

- Defra 16 – Email exchange of 27 June to 2 July 2014 between Sarah Church and Bayer concerning an update on neonicotinoid field trials.

- Defra 17 – Email exchange between Defra's Pesticide Policy team and Syngenta between 12 & 16 June regarding the final Study Outline Protocol*.

* Please note that we have not disclosed the Neonicotinoids Field trials Protocol referred to in the email exchange at Defra 17. This information is readily available from the Centre for Ecology & Hydrology's (CEH) website (N.B. The demonstration project referred to at Defra 4 is a different project).

In addition to the above, I can confirm that there have been a number of meetings and/or telephone conversations between Defra Ministers, the CSA and/or Defra Policy Officials with Bayer and Syngenta. I have listed these below and disclosed the notes of the meetings (if taken) where field trials were discussed (other issues discussed at these meetings are not in scope and therefore, have been excluded):

- Meeting 1 (13 September 2013) attended by Defra's Pesticide Policy Officials and Bayer and Syngenta (see Defra's 1 & 3). The objectives of the meeting were (i) to understand each other's current and planned work on the effects of neonicotinoids on pollinators, and (ii) To explore what further work might help to inform the EU review scheduled for 2015. No notes were taken of the meeting;

- Meeting 2 (6/7 October 2013) - The (former) SoS, Owen Patterson attended the Anuga Trade Fayre in Monheim, Germany where he met with Bayer officials where neonicotinoids (amongst other issues) were discussed. There is no mention of neonicotinoid field trials within the notes of the meeting, however, an exchange of correspondence followed (see Defra 5) that did discuss trials;

- Meeting 3 (5 November 2013) attended by the SoS, the Defra CSA, officials from Defra's Pesticide Policy team and the Chemicals Regulation Directorate, and officials from Syngenta. The meeting discussed a number of issues including neonicotinoid field trials. The notes from the meeting state 'On neonics: Ian (Boyd – the Defra CSA) suggested he should have further discussions with Syngenta on the evidence base and methodology for field trials. Ian also suggested that we should work to get buy-in to the methodology from environmental groups'. There then followed an email exchange between Defra Pesticide Policy and Syngenta officials (see Defra 8);

- Meeting 4 (9 December 2013) between the CSA and Syngenta. No notes were taken from the meeting;

- Meeting 5 (16 December 2013) between the CSA and Bayer. No notes were taken from the meeting;

- Meeting 6 (28 February 2014) audio conference between Defra's Pesticide Policy and Chemicals Regulation Directorate officials, and officials from Syngenta (see below for the reasons why we are withholding the record of this discussion) to discuss the current position with field trials;

- Meeting 7 (5 June 2014); telephone conversation between Arwyn Davies (of Defra's Chemicals and Emerging Technologies) and a Syngenta official regarding consultation with the wider community about their field trials. A note of the conversation was sent to the CSA stating 'By way of update, I spoke to (Syngenta) yesterday and reinforced these points, which he has fully noted (and will be exploring with his colleagues what the position is on this with respect to the other MSs involved as well). He has also said he has been pushing hard for earlier delivery of their field trial protocol and is optimistic that this will happen.

- Meeting 8 (11 June 2014); telephone conversation between Arwyn Davies and a Syngenta official regarding 'Industry Field Trials'. A note of the conversation was sent to the CSA which states 'As promised, I pressed Syngenta yesterday about their proposed joint trials with Bayer and why they hadn't delivered their protocol for this yet. (Syngenta) indicated that CEH were finalising a few loose ends yesterday and that the plan was that we would receive it today (along with a detailed timeline). We're pulling together a short briefing note for Sir Mark (Walport – the government CSA), as requested.

- Meeting 9 (27 June 2014) between Sarah Church (the Director of Defra's Food and Environmental Risk division) and Bayer. No notes were taken of this meeting but a subsequent email exchange followed (see 'Defra 16').

Documents Withheld:

We have decided to withhold two communications, which are Defra 11 and 12a. I have listed these below under the relevant exceptions.

<u>Regulation 12(4)(e), Internal Communications - Defra 11</u>

The meeting notes were produced by and for Defra officials, and were not shared outside of the Department.

Regulation 12(5)(e), confidentiality of commercial or industrial information - Defra 12a

The field study is commercial information which Syngenta paid for, and which has a commercial value to Syngenta. It is not publically available and is not of a trivial nature. As mentioned above, there is also an implied obligation of confidence, which places Defra under a duty of confidence. Disclosure of this document would also adversely affect Syngenta's legitimate economic interests. Furthermore, Syngenta has not given Defra consent to disclose Defra 12a, and therefore, disclosure of this information would be unauthorised.

Regulation 12(5)(f), interests of the person who supplied the information - Defra 11 & Defra 12a

The information was provided voluntarily. Syngenta was not under any legal obligation to provide the information to Defra. The information was not supplied in circumstances such that Defra was entitled apart from the EIRs to disclose it, and disclosure of the communications would adversely affect the interests of Syngenta. Finally, when the information was shared with Defra, there was an implied obligation of confidence. This places Defra under a duty of confidence in relation to the information.

In applying these exceptions, we have had to balance the public interest in maintaining the exceptions against the public interest in disclosure. We recognise that there is a public interest in disclosure of information:

- in respect of understanding Government-decision making on matters of significant public importance, particularly with high profile issues such as neonicotinoid insecticides and bee health, which can also raise concerns over the wider ecology and environment;

- to enable members of the public to become better informed of the high profile issues surrounding neonicotinoid insecticides, so that they can form part of the public debate;

- openness and transparency in the risk assessment process and how Defra manages the risks posed by neonicotinoid insecticides; and

- transparency and accountability to increase public confidence that Government decisions on this policy area are being made on a sound basis.

On the other hand, there is a strong public interest in maintaining the exceptions because;

Regulation 12(4)(e), internal communications - Defra 11

Defra needs to have the necessary space to think in private. It is important that, particularly with neonicotinoid insecticides and bee health which are high profile issues, Defra officials are allowed the safe space to discuss and develop ideas and to debate live issues.

This document is a recording of a telephone conference where officials freely voiced their views on field trials, and made notes of the meeting for their own internal use. This internal document has subsequently been used as an aide-memoire for internal deliberations, and forms part of the decision making process and Defra's 'private thinking space'.

Disclosure of this internal document would inhibit free and frank discussions in the future, and could lead to officials either being less candid in meetings, or less likely to record meetings in such detail. This in turn would mean that subsequent internal deliberations would not have the same level of detailed notes to refer to, which runs the risk of important points and issues being missed. The loss of frankness and candour would damage the quality of advice and lead to poorer decision making.

Regulation 12(5)(e), confidentiality of commercial or industrial information - Defra 12a

The thiamethoxam study contains important technical information generated at Syngenta's cost, using technical expertise paid for by Syngenta. Disclosure of the study plan would therefore damage Syngenta's interests and would be of value to, and assist Syngenta's competitors by providing them with useful and valuable technical information without having to make the same investment in its creation. Disclosure of the study plan would therefore undermine both Syngenta's investment in creating the study plan and competition in the market (to the detriment of Syngenta).

A healthy plant protection sector requires competition to spur on new development in the market. Disclosure of the thiamethoxam study plan would undermine this, as other companies would not need to pay for their own studies. Proper investment in research and development is in the public interest because it is often through differing studies that developments are made. However, Syngenta, and other companies in this field, are only prepared to make such investment if their legitimate interests in the results are protected, and if they are reassured that Defra will not willingly disclose commercially confidential information (i.e. that we will maintain the 'level playing field').

It is also important that companies submitting applications for pesticides can submit commercially confidential information to support the evaluation, without fear that the information would be disclosed to commercial competitors. If this were not the case then companies may be less inclined to provide such thorough evaluations, which will lead to applications taking longer as Defra officials will need to go back to the companies to clarify issues, which would be a waste of the Department's resources and would not be in the public interest.

Regulation 12(5)(f), interests of the person who provided the information - Defra 11 & Defra 12a

Defra is under a duty of confidence to withhold the information, and to disclose the information would adversely affect Bayer's and Syngenta's interests. In particular Syngenta's interests would be damaged by supplying their competitors with the expertise that they have provided in confidence to Defra as a stakeholder.

It is also worth highlighting that in this case, the majority of the information has been disclosed, with only two documents being withheld. It is therefore not in the public interest to breach the confidentiality agreement in relation to these documents when all of the remaining information has been disclosed.

As well as the affect disclosure would have on Syngenta, disclosure would also be detrimental to Defra's interests. If we disclosed this information, then Syngenta will be less likely to share information and expertise with Defra in the future. This may also have a 'knock-on' effect with our relationships with other stakeholders, who may have concerns that their confidential information may also be disclosed by the Department. This would lead to a decrease in the free flow of voluntary information, stakeholder engagement and expertise into the Department - which would ultimately lead to poorer decision making and a detrimental effect on Defra's functions, decision making and subsequent policies.

Therefore, we have concluded that, in all the circumstances of the case, and taking into account the presumption in favour of disclosure under regulation 12(2) of the EIRs, it is in the public interest for Defra 11, and 12a to be withheld.

We have also withheld some of the information under regulations 12(3) and 13(1) (third party personal data) of the EIRs, as the information constitutes personal data relating to third parties and/or junior civil servants. Regulations 12(3) and 13(1) of the EIRs provide that personal data relating to third parties is exempt information if disclosure would breach the Data Protection Act 1998 (DPA). We consider that disclosure of this information is likely to breach the first data protection principle in Schedule 1 to the DPA, which relates to the fair and lawful processing of personal data, in two ways. First, disclosure would not constitute 'fair' processing of the personal data, second, disclosure would not satisfy any of the conditions for data processing set out in Schedule 2 to the DPA. Therefore, we have concluded that this information is exempt from disclosure under Regulation 12(3) and 13(1) of the EIRs.

Finally, I can confirm that there have been no communications between Defra and Rothamstead Research in relation to the funding and design of field trials investigating the effects of neonicotinoids on bees. However, an official from Rothamstead Research, Professor Lin Field is a member of the Pollinators Expert Advisory Group (PEAG) which is an independent panel of experts, brought together by the CSA to oversee a range of activities that will contribute to the development of the National Pollinator Strategy (NPS). The PEAG meets regularly and discussions have included references to neonicotinoid field trials to which Professor Field may have contributed. The minutes of these meetings are available from the Gov.uk website.

In keeping with the spirit and effect of the EIRs, and in keeping with the government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact the address below.

Yours sincerely,

[redacted]
Defra FOIA and EIRs Team
InformationRequests@defra.gsi.gov.uk

Annex A

Copyright

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Annex B

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our website.

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

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