



Department
for Environment
Food & Rural Affairs

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Your ref:

Our ref: RFI 6697

Date: 13 October 2014

Dear [REDACTED]

REQUEST FOR INFORMATION: EMERGENCY AUTHORISATION FOR THE USE OF A NEONICOTINOID INSECTICIDE ON OILSEED RAPE

Thank you for your request for information about the application for an emergency authorisation for the use of a neonicotinoid insecticide on oilseed rape, which we received on 26 June. I apologise that we missed the deadline for response to your request. It has taken some time to ensure you have a full and accurate response. In addition, we are currently experiencing a high number of EIRs/FOIA requests making it difficult to respond within the deadlines. The Department is taking action to address this issue.

You have made three requests for information, these being:

1. The application made by Syngenta to Defra for an emergency derogation on the suspension of the use of its neonicotinoid insecticide on up to 186,000ha of crops;
2. Communication (including emails, letters, notes of phone calls and meetings) between Defra and Syngenta on this topic from 1 April 2014 to date [26 June 2014], and;
3. Communication (including emails, letters, notes of phone calls and meetings) between Syngenta and the Advisory Committee on Pesticides on this topic from 1 April 2014 to date.

This letter is in response to request 2 only. The information requested at 1 & 3 above is not held by Defra, but you will recall that, at your request, we transferred those requests to the Chemicals Regulation Directorate (CRD) and to the secretariat of the Advisory Committee on Pesticides (ACP) respectively.

As you know, my letter of 4 July 2014 advised that we were handling your request under the Environmental Information Regulations 2004 (EIRs). The EIRs apply to requests for environmental information, which is a broad category of information defined in [Regulation 2 of the EIRs](#) and which give similar access rights to the Freedom of Information Act 2000 (FOIA).



Following careful consideration, we have decided to disclose some of the information requested and enclosed copies of the communications where relevant. A list of the information that Defra holds that falls within the scope of your requests is at Annex A. For ease of reference, the following is a summary of the details in this Annex:

Three email messages have been withheld as they contain information that:

- were supplied to Defra voluntarily. Syngenta has not given Defra consent to disclose these communications, and therefore, disclosure of this information would be unauthorised. These communications contain information in support of Syngenta's application for an emergency authorisation for the use of a neonicotinoid insecticide on oilseed rape. The communications were not required as part of the application and were not a data requirement set under EC Regulation 1107/2009 concerning the placing of plant protection products on the market. This information is withheld under Regulation 12(5)(f) of the EIRs, and;
- is subject to commercial confidentiality. The communications contain non-public information with commercial value that was provided to Syngenta (which paid for the information) on a confidential basis. This information is withheld under Regulation 12(5)(e) of the EIRs.

In applying the exceptions under regulation 12(5)(e) and (f), we have had to balance the public interest in maintaining the exceptions against the public interest in disclosure. We have taken account of the presumption in favour of disclosure as required by regulation 12(2) of the EIRs.

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; 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 are being made on a sound basis.

These public interest arguments are reduced in strength because Syngenta withdrew its application. As a result, it was not necessary to take a decision on the application for emergency authorisation to which the request for information refers.

- On the other hand, there is a strong public interest in maintaining the exception under regulation 12(5)(f) because Defra did not require Syngenta to supply this information in support of their emergency authorisation application. Syngenta supplied the information voluntarily. Syngenta were not under (and could not have been under) any obligation to provide the information to Defra. The communications were sent to CRD (the competent authority for the regulation of pesticides) and copied to Defra for information only;
- The information was not supplied in circumstances such that Defra or any other public authority was entitled apart from the Environmental Information Regulations to disclose it;
- Syngenta has not consented to its disclosure; and
- Protection of confidential discussions between applicants, Defra and CRD. It is important that applicants for emergency authorisations are able to discuss and progress their applications without confidential information being at risk of being disclosed publicly.

There is also a strong public interest in maintaining the exception under regulation 12(5)(e) because:

- Disclosure of the communications would adversely affect Syngenta's interests for the reasons set out above in the final bullet relating to the exception under regulation 12(5)(f);
- The commercial nature of the information. Disclosure of this information under the EIRs will damage Syngenta's interests;
- Disclosure of some of the information would put Syngenta in breach of its confidentiality obligations with another company that provided Syngenta with data; and
- Disclosure would assist competitors and undermine fair and equal competition. It is important that companies submitting applications for pesticides can submit confidential information to support the evaluation, without fear that the information would be disclosed to commercial competitors.

Therefore, we have concluded that, some of the information requested should be withheld.

We are able to disclose some of the communications requested despite Syngenta not consenting to their disclosure under regulation 12(5)(f). We have concluded that the communications do not include any confidential commercial information under Regulation 12(5)(e), and that no harm would be caused by their disclosure. However, you should note that some of these communications contain personal data relating to Syngenta employees, junior civil servants and/or other third parties. This information has been redacted under Regulation 12(3) and 13 of the EIRs. We consider that disclosure of this information is likely to breach the first data protection principle in Schedule 1 to the Data Protection Act, 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 of the EIRs.

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


Defra FOI and EIRs Team
InformationRequests@defra.gsi.gov.uk

Annex A

Ref No'	Date	Document	Comments
Defra 1	4 April 2014	E-mail from a representative of Syngenta to an official from the Chemicals Regulation Directorate (CRD) regarding the application for an Emergency Authorisation.	Document withheld under Regulation 12(5)(e) & 12(5)(f) of the EIRs.
Defra 2	28 April 2014	E-mail from representative of Syngenta to CRD and Defra. The email contains a technical document.	Document withheld under Regulation 12(5)(e) & 12(5)(f) of the EIRs.
Defra 3	1 May 2014	E-mail exchange between Syngenta and CRD regarding the application for an Emergency Authorisation (further to Defra 2).	Document withheld under Regulation 12(5)(e) & 12(5)(f) of the EIRs.
Defra 4	18 June 2014	E-mail exchange between Defra and Syngenta concerning Cabinet Office discussion of Syngenta's application.	Partial disclosure. Personal information of Syngenta officials redacted.
Defra 5	19 June 2014	<p>Telephone call from Sarah Church (Defra) to a Syngenta official. The note of the call states</p> <p>'They (Syngenta) had good robust arguments about how they were planning to keep an emergency authorisation clear of wider field trials which they will make sure Arwyn (Davies of Defra) is aware of. I said that would be helpful, but that it was extremely unlikely that they would get a decision in the next day or so.</p> <p>They are very disappointed and (as predicted) are seriously considering withdrawing their application. They were at pains to say that they know that the SoS (Secretary of State) has been very supportive both publically and privately. They'll aim to make a decision today/tomorrow and will let us know'.</p>	Disclose in full.
Defra 6	26 June 2014	Telephone call from Arwyn Davies (Defra) to a Syngenta official. The note of the call states 'There seemed to be genuine appreciation that we (Defra) were keeping the lines of communication open, even though I was reporting continuing active consideration but no basic change. I said you'd (Sarah Church) provide a response to his e-mail (Syngenta's) tomorrow'.	Disclose in full.

Annex B

Copyright

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Annex C

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:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF