



Animal &  
Plant Health  
Agency

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Our Ref: ATIC2385

[REDACTED]  
{By Email}

16 April 2021

Dear [REDACTED]

### PROVISION OF REQUESTED INFORMATION

Thank you for your request for information on a decision notice which we received on 16 March 2021. Your request has been handled under the Freedom of Information Act 2000 (FOI).

The information you requested and our response is detailed below:

"I am trying to find a copy of the decision in an unreported case: Sacker Potatoes Limited v C Meijer BV (2001), which was a compulsory licence application for a UK plant variety. Is this something you may be able to provide us with please?"

This request was responded to under ATIC2343, however once clarity had been received a new request was created.

The clarity was received on 16 March 2021 as follows:

"The above response does not contain the written decision handed down by the judge, but rather a decision notice from a publicly available Gazette which a member of your team had already provided me with on request. It details a brief summary of the judgment, but not the judgment itself.

A detailed review of the judgment was published by one of the parties' legal teams: <https://www.mondaq.com/uk/intellectual-property/15861/plant-breeders-rights-first-uk-compulsory-licence-challenge>, so the judgment must be available.

Can you please provide me with a) the full written decision in the case as per my initial request, or b) an explanation as to why this is not available?

DEFRA publish decision notices as specified here:

<https://www.legislation.gov.uk/uksi/1998/1027/regulation/5/made>

However the full details of the judgement are not routinely published. However having considered the public interest test in disclosure and the time passed since the decision was made the full decision can be found at Appendix 1 attached. Please be aware that some of the information has been redacted citing Section 40 of the Freedom of Information Act 2000.

## **Section 40**

Under section 40(2), read in conjunction with 40(3A)(a), (third party personal data), of the FOIA as the information constitutes personal data relating to a third party. Section 40(2), read in conjunction with 40(3A)(a), of the FOIA provides that personal data relating to third parties is exempt information if disclosure of that information would breach any of the data protection principles in Article 5(1) of the General Data Protection Regulation (GDPR).

APHA consider that disclosure of this information is likely to breach the first data protection principle in Article 5(1)(a) repeated in 35(1) DPA, which provides that personal data must be processed lawfully, fairly, and in a transparent manner in two ways. First, disclosure would not constitute 'fair' processing of the personal data, second, disclosure of that information would not be 'lawful'. Therefore, we have concluded that this information is exempt from disclosure under section 40 of the FOIA.

Information disclosed in response to this FOI request is releasable to the public. In keeping with the spirit and effect of the FOI and the government's Transparency Agenda, this letter and the information disclosed to you may be placed on GOV.UK, together with any related information that will provide a key to its wider context. No information identifying you will be placed on the GOV.UK website.

An Annex is attached which explains the copyright that applies to the information being released to you and contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact the Access to Information Team at the email address below. During the current Coronavirus outbreak, our offices will be closed.

Yours sincerely

## **ACCESS TO INFORMATION TEAM**

Email: [enquiries@apha.gov.uk](mailto:enquiries@apha.gov.uk)

## Annex

### Copyright

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs or logos) can also be used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

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Copyright in other documents may rest with a third party. For information about obtaining permission from a third party see the [Intellectual Property Office's website](#).

### 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 11 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to the Access to Information Manager at the address at the top of this letter or email [enquiries@apha.gov.uk](mailto:enquiries@apha.gov.uk) and the team will arrange for an internal review of your case.

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's Office (ICO) for a decision. Please note that generally the ICO cannot make a decision unless you have first exhausted APHA's own complaints procedure. The ICO can be contacted at:

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

### Coronavirus

If you need to contact the ICO during the Coronavirus pandemic, it's best to do so online. Please click [here](#) for contact details. You can also call them on 0303 123 1113.