

Department for Environment, Food and Rural Affairs  
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Our Ref: RFI 4538  
Date: 22/2/2012

Dear Captain Wayt,

### **Correspondence with Defra regarding Defra's handling of Foot and Mouth Disease**

I am writing to you concerning the many items of correspondence that you have sent to Defra requesting information under the Freedom of Information Act, and raising numerous and repeated queries to Defra Ministers, Defra staff and the Chief Veterinary Officer on the subject of FMDv (Foot and Mouth Disease virus), including the use of pen-side testing and Exercise Silver Birch.

We have reviewed all of the correspondence and have established that, since February 2011, you have sent these items of correspondence to Defra.

1. **On 24 February 2011** Greg Barker (your local MP) wrote to Defra on your behalf seeking information on import controls and animal diseases. On 24 May 2011, the Minister of State for Agriculture and Food, Jim Paice replied to you with the information requested.
2. **On 20 March 2011** you sent an email to the Minister of State for Agriculture and Food, Jim Paice, Greg Barker and Charles Hendry seeking information about FMD contingency. On 7 April 2011, Defra replied by supplying you with a copy of all of the information that you had requested
3. **On 23 May 2011** you e-mailed Defra requesting information relating to Research grants for FMDv testing. Your request was split into eight parts. On the 20 June 2011 all the information requested was provided to you under reference RFI 4023.



4. **On 1 June 2011** you emailed Defra requesting information on number of animals slaughtered during R&D relating to FMD from 1997 to 2010. On the 20 June 2011 a reply was sent confirming that the information wasn't held by Defra under RFI 4072.
5. **On 6 June 2011** you emailed Defra requesting information on FMD pen-side test kits and funding related research. Your request was again split into eight parts. On the 4 July 2011 all the information requested was provided to you under reference RFI 4051.
6. **On 30 June 2011** you sent an email to Defra, in which you stated that you felt that one of the scenarios in Exercise Silver Birch (IP10) was unrealistic. You were concerned by the lack of pen-side testing kits and also requested an updated FMD contingency plan. Defra responded to you on 31 August 2011 stating that there was nothing further to add about pen-side testing and that the summary of responses relating to the annual review of the contingency plan had been published on the website. You were also advised that an update about the lessons from Exercise Silver Birch was expected to be published on the AHVLA (Animal Health and Veterinary Laboratories Agency) website in the autumn.
7. **On 30 August 2011** you wrote to Defra via your local MP, Mr Gregory Barker, again seeking information about FMD contingency. On 14 September 2011 the Minister of State for Agriculture and Food, Jim Paice, replied to Mr Barker asking that he forward to you a copy of all of the information that you had requested.
8. **On 16 September 2011** you sent an email to the Minister of State for Agriculture and Food, Jim Paice expressing your concern about the present FMD Contingency Plan specifically the lack of a pen-side test kit
9. **On 16 September 2011** you sent a letter to Lord Taylor with identical content as the email you sent to the Minister of State for Agriculture and Food, Jim Paice.
10. **On 18 September 2011** you sent an email to Defra in which you stated that the question in your letter of 30 June about the Exercise Silver Birch scenario which you felt was unrealistic had not been answered. On 22 September 2011, Defra responded to you stating that it felt that the scenarios were realistic and that there was nothing further to add about pen-side testing as had been stated to you previously. The reply referred to the letters sent to Jim Paice and Lord Taylor on the 16 September 2011 and it was confirmed that there was nothing further to add.
11. **On 22 September 2011** you sent a further e-mail to Defra in which you expressed disappointment that the questions about Exercise Silver Birch and IP10 hadn't been answered and again you requested the full facts of IP10.
12. **On 18 October** you emailed Defra requesting information in regards to the paper trail for IP10. Your request was split into six parts. On the 25 October 2011 Defra responded to you and stated that the Exercise Silver Birch lessons learned would be published on the AHVLA website in the autumn. Other information was withheld under section 22, because it was due to be published on the website and it was explained

that providing information now would lead to disruption to the planning schedule under reference RFI 4318.

13. **On the 26 October 2011** you replied by e-mail and you confirmed that you were aware that information was due to be published, however you mentioned that you wished to lodge a complaint, because the information about IP10 hadn't been divulged. Following your complaint the matter was passed to the Information Rights Team for Internal Review. On the 23 November 2011 a reply was sent to you relating to the internal review. The conclusion was that the information was correctly withheld by the department engaging the exemptions of section 22.
14. **On the 5 November 2011** you sent a further letter to Lord Taylor, concerning a presentation given by Dr Breeze and also pen-side testing. On the 15 November 2011 a reply was sent to you which dealt with your question about identifying disease and stated that we were not aware of the specific presentation mentioned from Dr Breeze. With regards to pen-side testing there was nothing further to add.
15. **On the 20 November 2011** you sent a reply in which you stated that you felt your questions still hadn't been answered and that the matter in your letter hadn't been addressed. On the 14 December 2011 a letter was sent to you with the timeline for IP10, as no precise timelines getting sample to the laboratories for any of the simulated IPs had been published as part of the final report.
16. **On the 24 January 2012** you emailed Defra again about IP10 and Exercise Silver Birch. Your request was split into fifteen parts. The query was treated as RFI 4538.

### **Section 14 of the FOIA**

Under section 14 of the Freedom of Information Act 2000, public authorities do not have to comply with vexatious requests. There is no public interest test.

Section 14 states:

14.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval (normally 60 consecutive working days) has elapsed between compliance with the previous request and the making of the current request.

In deciding whether your request is vexatious, we have had to take into account the context and history of your request. In particular, we have considered the following questions:

### **1. Could the request fairly be seen as obsessive?**

The above timeline of your correspondence from February 2011 clearly indicates that you have ongoing concerns that UK Ministers have not taken the decision to use pen-side testing kits in the event of a Foot and Mouth Disease outbreak. Although you are aware of the extensive research Government and industry continues to undertake in regards to pen-side testing, no kit is currently authorised for use within any European country to test for FMDv in the event of an outbreak.

From June 2011 your correspondence has also focussed on Exercise Silver Birch, and the specific timeline of getting samples from Inverurie to Pirbright which was modelled as part of this exercise. Defra has consistently informed you that no actual physical movements of samples took place as part of that exercise. The purpose of Exercise Silver Birch was to test a large FMD outbreak spread across GB and this was the reason for having an IP in Scotland, we weren't testing the process of getting samples to IAH. However we maintain that this is a realistic exercise, as samples are very regularly transported during the normal course of business when suspicious cases are investigated.

The high volume of correspondence reopening issues that we have already dealt with and asking for information which has already been provided to you shows that this line of questioning can fairly be regarded as obsessive in accordance with the guidance provided by the Information Commissioner.

### **2. Would complying with the request impose a significant burden?**

Your continuing correspondence into matters that have been fully answered does impose a burden on officials in core Defra and AHVLA in replying to each of your requests, and diverts and distracts staff from their usual work. Although no actual detail of the time taken to respond to each of your requests is held, the cumulative burden of continually responding to your line of questioning in this very narrow subject area does create an unnecessary burden on officials. Government proactively publishes details of their animal disease contingency plans (which includes FMD) on an annual basis, and large scale animal disease outbreak exercises are carried out at regular intervals in accordance with EU requirements. Full details of these exercises and lessons learned are also published. Answering your latest correspondence, which comprises 15 separate requests on this issue, would in itself be likely to exceed the FOI "appropriate limit" of £600 (see section 12 FOIA) and could therefore be refused.

### **3. Does the request lack any serious purpose or value?**

We have consistently informed you that during exercise silver birch no physical movements of samples took place, however we did release to you the extracted timeline for getting samples from Inverurie to Pirbright. However, your continuing correspondence into the precise timeline for IP10 now includes requests for the actual weight of samples (there were none), sight of the forms that were issued (there were none), and what route planner was used to plan the journey from Gatwick to Pirbright

(there was none). Given that we have explained that this was a paper exercise, your questions on samples serve no serious purpose.

You are aware that the final 12 month report into Exercise Silver Birch was published on 28 November 2011. The Foot and Mouth Control Strategy for Great Britain, was also published on 29 November 2011 where the policy position on a number of matters including pen side testing was again made clear.

The Minister of State for Agriculture and Food and Defra officials have responded to your correspondence as fully as possible, providing you with a large amount of information and spending extensive time and resources in dealing with your correspondence. Our review of your repeated and numerous requests and correspondence has shown that they are unreasonably fixated on issues that have already been addressed. Furthermore, responding to your numerous items of correspondence on issues that have been addressed or where the correspondence has no legitimate merit unreasonably diverts staff from their usual work and imposes a significant and unreasonable burden on the Department.

In the light of the above, and in accordance with the Information Commissioner's guidance, we consider that your correspondence is vexatious. Therefore, in accordance with section 14(1) of the Freedom of Information Act 2000, Defra and its Executive Agencies will not be responding to further requests or correspondence on matters relating to the issues that have already been fully exhausted and lacks serious purpose and value. In addition, and, again, in accordance with the Information Commissioner's guidance, we will not respond to requests for information or any other correspondence from anyone else whom we believe to be attempting to continue the correspondence on your behalf.

For the avoidance of doubt, this is a designation which applies throughout Defra and all of its Executive Agencies.

In accordance with section 17(6) of the Freedom of Information Act, if Defra or our Executive Agencies receive any further requests that we consider to fall within this vexatious and manifestly unreasonable designation, we are not obliged to acknowledge or respond to them, even if an automated acknowledgement states that a reply will be sent. Moreover, Defra is not obliged to respond to those requests which we have already received to which we have not yet responded, as follows:

Therefore, we will not be responding to your email of 24 January 2012

Yours sincerely

John Leach

## **Annex A**

### **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 within 40 working days of the date of this letter. Please write to Brendan Walsh, Head of Defra's Information Rights Team at Area1B, Ergon House, Horseferry Road, London, SW1P 2AL, (email: [informationrights@defra.gsi.gov.uk](mailto:informationrights@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, you have 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