

Mr Carroll
By email:
request-33070-39106937@whatdotheyknow.com

18 June 2010

Reference: IR 58

Dear Mr Carroll

Request for Internal Review re: Rattlechain Lagoon¹

1. Thank you for your e-mail of 23 March (timed at 18:40) listing five detailed comments and questions arising from the Food Standards Agency's ('the Agency') response to your Freedom of Information Act 2000 ('the FOI Act') request about the work of the Chemical Hazard and Identification Risk Surveillance group ('CHaIRS'). That original FOI request was handled by the Agency under FOI reference number 850.
2. The questions and comments in your e-mail of 23 March are:
 - (1) *Can you confirm or deny if you have been given all of the information by the VLA that I have described about this incident, including the video evidence which I supplied them with? As I took the video, I am the intellectual property holder and therefore wish to know to whom my video has been forwarded. I hope that it has been forwarded to all the organisations within the CHaIRs group and I have no problem with any members of the public viewing it either as I believe it is in the public interest that its distressing content is seen by as many people as possible.*
 - (2) *Can you confirm or deny that the Rattlechain Mere site incidents, and or white phosphorus poisoning of wildfowl on it and subsequent 2 positive tests carried out on a mute swan and Canada goose that have found white phosphorus within certain tissues tested, has*

¹ The Environment Agency has advised the FSA that the correct terminology for this body of water is 'lagoon' rather than 'mere'. We therefore use 'lagoon' throughout, except when quoting from your email of 23 March.

been redacted within the minutes or "final notes" of the information supplied to me previously?

(3) Confirm why it was deemed to be in the public interest to redact this information when this is not a food safety issue? (unless people are eating wild birds that have died on this site).

(4) Why section 31 of the exemptions within the FoI Act have been cited for these redactions whereby "ongoing incidents where disclosure may prejudice the investigation". Why would the disclosure of this specific information requested prejudice, or be likely to cause prejudice?

(5) I am concerned that the "ongoing investigation" concerning Rattlechain Mere and birds suspected of dying from white phosphorus poisoning on it is NOT being conducted in any way satisfactorily by those organisations within the CHaIRs group, and therefore I have no way of challenging this unless I have seen what this investigation has entailed.

3. As you know, the Agency dealt with point (1) above as an FOI request (reference number 873) and responded to it by letter dated 18 May.
4. Regarding point (5), I referred you in my acknowledgement letter dated 28 April to the complaints procedure of the Environment Agency ('EA'), which is the government organisation leading on the investigation of Rattlechain lagoon.
5. In relation to points (2), (3) and (4), these are the issues that therefore remain to be dealt with under this internal review. It should be noted that the FOI Act does not place public authorities under any legal obligation to answer questions; instead, it requires them to release requested information unless an FOI Act exemption applies. However, the questions that you have posed in points (2) to (4) will be addressed by the Agency reviewing its decision to apply section 31 of the FOI Act to elements of the information it supplied to you in response to your original FOI request (reference number 850). Accordingly, the application of section 31 to that material is considered below.

Request

6. On 1 March you requested by email addressed to the Department for Environment, Food and Rural Affairs ('Defra') (timed at 21:10) the following information about the Chemical Hazard Identification and Risk Surveillance group ('CHaIRS'):

- (i) its terms of reference and role;
- (ii) membership (who and from which organisations sit on it); and
- (iii) minutes of meetings held so far.

7. Defra passed the request to the Agency on 2 March, as it is this Agency that provides the secretariat for the group. The Agency acknowledged your request by letter dated 11 March.
8. The Agency wrote to you again on 30 March to extend the deadline for responding to your request in order to consider where the balance of the public interest lay in applying the qualified exemption provided in section 31(1)(g) in conjunction with section 31(2)(a) to (c) of the FOI Act in respect of information that the Agency considered would be likely to prejudice law enforcement activities.
9. The Agency responded to your request on 15 April enclosing the information requested under paragraphs (i) to (iii) of your request, but subject to redaction of details of a number of ongoing incidents where disclosure would be likely to prejudice investigations being conducted by members of the CHAIRS group. The information was withheld under section 31(1)(g) in conjunction with section 31(2)(a) to (c).
10. The response explained that as the exemptions in section 31 are qualified exemptions, a public interest balancing test had been conducted weighing (i) the public interest in openness and in understanding how investigations involving law enforcement activities are conducted against (ii) the public interest in investigations and possible prosecutions being able to run their course. The Agency considered that the latter public interest (i.e. against disclosure) was stronger than the former (i.e. in favour of disclosure) and determined that the details of ongoing incidents should therefore be withheld.

Review of response of 15 April

11. The purpose of an FOI internal review is to enable the public authority (the Agency in this case) to take a fresh decision, by someone not involved in the original decision, after reconsidering all of the information relevant to the request.

12. Having reviewed all of the relevant information, I can confirm that the only elements of the information that was withheld that relate to Rattlechain lagoon (referred to in the minutes as "the Rhodia² incident") are:

- (a) paragraphs 6 to 9 of the June 2009 minutes;
- (b) paragraphs 2 (final bullet only) and 3 to 8 of the September 2009 minutes; and
- (c) paragraphs 4 and 5 of the December 2009 minutes.

13. For the avoidance of doubt, there was no information relating to Rattlechain lagoon (i.e. the Rhodia incident) in the remaining three minutes that were released to you under FOI reference number 850, i.e. minutes of December 2008, March 2009 and February 2010.

14. As part of the internal review I also considered information in the public domain i.e. statements made by spokespersons of the Environment Agency and the Veterinary Laboratories Agency in reports in local newspapers that are available on the internet and letters which those Agencies and the Health and Safety Executive wrote to a member of the public regarding Rattlechain lagoon between September 2009 and May 2010.

15. I have concluded that the vast majority of the information about Rattlechain lagoon in the minutes is now in the public domain, and therefore it can no longer be validly withheld under any exemption in the FOI Act, including section 31, and must be disclosed.

16. Therefore, please find enclosed revised copies of the three minutes referred to at paragraph 11(a) to (c) above, which now show all of the information relating to Rattlechain lagoon. For the avoidance of doubt, there is now no information about Rattlechain lagoon in the CHaIRS minutes that the Agency has withheld. A small amount of personal information in the September 2009 minutes has been redacted under section 40(2) and 40(3)(a)(i) of the FOI Act, as that information constitutes third party data and disclosure of it would breach the fair processing principle of the Data Protection Act 1998, i.e. the individual who supplied it would have no expectation that it would be made available to the public.

17. In relation to the statement in paragraph 5 of the December 2009 minutes:

"The Chair commented that as P4 probably caused the death of the swan the investigation confirms current environmental contamination in or around the lagoon could poison wildlife or humans."

² Rhodia is the company that owns the Rattlechain lagoon site.

the CHaIRS group has asked that I clarify that this comment only applies to wildlife or persons coming into direct contact with sediments in and immediately around the lagoon by swimming, wading or interfering with sediments or soil in or immediately around the lagoon, where P4 may have been disposed of or contaminated.

18. Please remember to quote the reference number above in any future communications.
19. If you are not satisfied with the outcome of this internal review you have the right to apply directly to the Information Commissioner for a decision as to whether your request has been properly dealt with. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or through the website www.ico.gov.uk.

Yours sincerely

A handwritten signature in black ink that reads "Rosemary Cairns". The signature is written in a cursive, flowing style.

Rosemary Cairns
FSA Complaints Coordinator

