

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 18 October 2011

Public Authority: Animal Health and Veterinary Laboratories Agency (AHVLA)

Address: Block C
Government Buildings
Whittington Road
Worcester
WR5 2LQ

Decision (including any steps ordered)

1. The complainant submitted two requests to the AHVLA both of which sought information about compliance checks for farms under tuberculosis (TB) restrictions. In response to these requests the AHVLA provided the complainant with some information and relied on section 12 of the FOIA to refuse to provide any further information.
2. The Commissioner's decision is that the information requested is 'environmental information' as defined by the EIR and therefore AHVLA should have considered these requests under that access regime rather than under the FOIA.
3. The Commissioner requires the AHVLA to take the following steps to ensure compliance with the legislation:
 - Reconsider both of the complainant's requests – the first dated 15 December 2010 and the second dated 14 January 2011 – under the EIR. The AHVLA needs to provide the complainant with the information requested under both of these requests. If the AHVLA considers any of the requested information to be exempt from disclosure under the EIR then it should issue separate refusal notices for each request which comply with the requirements of regulation 14 of the EIR.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 15 December 2010 the complainant wrote to DEFRA with the following request which was subsequently transferred to the AHVLA:

'For the last full year since 2008 (either calendar or financial) for which you have information, please could you advise how many compliance checks have been made on the following in England:

1. *Movements on or off farms whilst under movement restrictions;*
2. *Movements of bovines off a farm without a pre-movement test;*
3. *Failure to isolate reactors and inconclusive reactors on farms*

Please could you advise how many illegal movements of bovines have been detected and how many farmers have been discovered failing to isolate TB reactors and inconclusive reactors? Please could you indicate how many of these instances have been referred to Local Authorities for enforcement?'

6. On 14 January 2011 the complainant submitted a second request, this time to the Welsh Assembly Government, which was also forwarded to the AHVLA. This request sought:

'Veterinary Improvement Notices (VIN) where [sic] introduced in the Tuberculosis (Wales) Order 2010, which came into force on 25th May 2010. Please could you indicate how many VINS have been issued in Wales since the legislation came into force? Article 11 of the Order lays down particular requirements that can be imposed by use of a VIN. Please can you indicate how many have been issued relating to:

1. *Erection of fences etc*
2. *Excluding groups of animals from parts of premises*
3. *Protecting feed and feeding areas from wildlife*
4. *Bio security of human visitors*
5. *Other*

How many VINs specifically relate to physical isolation of reactors and inconclusive reactors from bovines?

If no VINs have been issued to date, please explain why?

Is compliance on farms for bovine tuberculosis better or worse than for other issues that are checked? Please can you supply some comparative data for a recent 12 month period showing the relative compliance of farmers in England to the Tuberculosis (England) Order 2007 versus other issues (e.g. cattle identification, sheep licences, medicine records etc?)

There are a number of prosecutions against farmers for illegal movements of cattle whilst they were under TB restriction in the five annual reports on "Return of expenditure incurred and prosecutions under the Animal Health Act 1981" for the period 2004-2008. However, I can find no prosecutions taken against farmers for failing to isolate cattle during this period. Please can you advise how regularly Local Authorities contact DEFRA for evidence relating to breaches of isolation notices? For instance, how many section 9 witness statements have been requested from AHA in, say, the last two years? How many farmers were the recipients of other enforcement action, such as formal cautions or warning letters?

7. The AHVLA provided the complainant with a response to both requests on 18 January 2011. In respect of the first request it provided some of the information requested; explained that it did not hold other types of information and explained that it could not answer certain parts of the request as it did not maintain central records for the data in question. In respect of the second request the AHVLA refused to comply with the request in its entirety citing section 12 of the FOIA because it estimated that the cost of compliance exceeded the appropriate limit of £600.
8. The complainant contacted the AHVLA on 24 January 2011 and explained that he was dissatisfied with its handling of both requests. He reiterated his dissatisfaction in a further letter dated 1 March 2011.
9. The AHVLA informed him of the outcome of the internal review on 24 May 2011. The review broadly upheld the AHVLA's initial handling of the requests.

Scope of the case

10. The complainant contacted the Commissioner in order to complain about the AHVLA's decision not to provide him with all of the information he had requested.

Reasons for decision

11. Having considered the circumstances of this case the Commissioner believes that all of the requested information can be correctly described as 'environmental information' as defined by regulation 2(1) of the EIR. The Commissioner has set out his reasoning for this decision below.
12. Regulation 2(1) of the EIR defines 'environmental information' as any information in any material form on:

'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the

environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'

13. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
14. In the Commissioner's opinion all of the requested information in this case constitutes environmental information via regulation 2(1)(c) of the EIR. The measure, or in fact measures, in question are The Tuberculosis (England) Order 2007 and The Tuberculosis (Wales) Order 2010. In the Commissioner's opinion it is clear that these measures are likely to affect, or are designed to protect, biological diversity which is an element of the environment listed in regulation 2(1)(a). This is because the purpose of isolating and prohibiting the movement of animals under the pieces of legislation is to control or prevent the spread of TB. The prevention and/or control of the spread of TB affects the death rates and population levels of various susceptible species and thus biological diversity.

Other matters

15. The Commissioner wishes to confirm that should the AHVLA conclude that any of the requested information is exempt from disclosure on the basis of any of the exceptions contained in the EIR, he expects the complainant to exhaust the AHVLA's internal review procedure before he will accept a further complaint about its potential refusal to provide information under the EIR.

Right of appeal

16. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Lisa Adshead
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