

25 September 2023

Dear

ATISN 18976 – Wildlife Incident Investigation Scheme reports

Thank you for your request which we received on 13 September 2023. You asked for the final Fera Science Reports related to the Wildlife Incident Investigation Scheme, for the following investigations:

Reference Number					
W/15/36	W/20/06	W/15/15	W/20/24	W/11/14	W/14/04
W/16/09	W/21/23	W/15/31	W/21/30	W/13/04	W/14/15
W/16/10	W/21/28	W/15/34	W/09/09	W/13/12	W/14/24
W/17/12	W/14/23	W/15/37	W/10/23	W/13/13	W/15/35
W/18/08	W/15/17	W/16/22	W/11/02	W/13/26	

Your request is being considered under the Environmental Information Regulations (EIR).

Our response

We have decided that this information is exempt from disclosure under regulation 12(4)(b) of the Environmental Information Regulations and is therefore withheld. The reasons for applying this exemption are set out below.

We are aggregating this request with EIR requests 18773, 18875, 18895, 19031 and 19065. The other requests appear to come from different requestors, but based on their content they are apparently from people acting in concert with yourself. All the requests have been worded identically, have requested the same type of information (FERA Toxicology Reports) but for different dates and cases (with very minor overlap). It is reasonable to conclude from these requests that you and the other requesters are acting in unison to obtain an amount of information that would normally be above the threshold of what is judged reasonable under the EIR.

Further to our consideration, we have taken into account that these requests, their specificity and the information being requested, have not been previously requested from Welsh Government, and that there is no obvious reason why multiple members of the public would now be choosing to make such requests.

Section 12(4)(b) of the Regulations allows public authorities to refuse a request for information which is “manifestly unreasonable”. Guidance from the Information Commissioners Office (ICO) states that this exception can apply where cost of compliance with the request would be too great. This position was confirmed in the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT442 (AAC).

“Taking the position under the EIR first, it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as “manifestly unreasonable”, purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable.”

In assessing whether the cost or burden of dealing with a request is “too great”, the ICO advises that public authorities need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable, for example the resources available to respond to the request, including the extent to which the public authority would be distracted from delivering other services.

Approximately 208 documents have been identified that could fall within scope of these requests. A sampling exercise, informed by our previously released responses, was conducted to determine how long it would take to locate and extract all of the records identified so far. It took on average 11 minutes per document to locate, identify and extract information from the sample. Using this as a baseline it would take in excess of 38 hours to locate and extract the documents. Under the EIR regulation 12(4)(b) we may also factor in the time spent considering and redacting these documents, and so the total time required to process these requests will be well in excess of this. This is over the appropriate limit set out in the FoIA fees regulations. Whilst these do not apply to requests that fall under the EIR, ICO guidance is that the FOI appropriate limit gives a useful indication of what could be considered manifestly unreasonable under EIR.

Unlike s12 of the FoIA, Regulation 12(4)(b) is subject to the public interest test. The public interest in withholding this information lies in the amount of work requested, which has a clear cost to the public purse, and also to the delivery of public policy. The specialist nature of what has been requested requires that this request necessarily be handled by a policy team consisting of two people. To carry out this work, they would be required to cease their public tasks in this policy area. This would be to the detriment of public policy, which would clearly not be in the public interest.

In the absence of a strong countervailing public interest in responding to this request, we are of the view that the public interest favours withholding of this information. No public interest argument has been presented for the release of this information. Thus, we have decided not to provide you with the information you have requested.

You may wish to refine your request by narrowing its scope by being more specific about what information you particularly wish to obtain, including any dates or period of time relevant to the information required. If you do refine your request in this way, this will be treated as a new request.

Next steps

If you are dissatisfied with the Welsh Government’s handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government’s

Freedom of Information Officer at: Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

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

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely