



Scottish Information  
Commissioner

*It's public knowledge*

Our Ref: 201201193

Your Ref

Mr G. Keith Allan  
Secretary & Treasurer  
The Salmon Net Fishing Association of Scotland  
By email to [Keith.Allan@raeburns.co.uk](mailto:Keith.Allan@raeburns.co.uk)

9 January 2013

Dear Mr Allan

Thank you for your recent communication; it was one of a number I received. I thought it might be helpful to send the same, full response to each of you, responding to all the points raised, so that you all have the same information. I have also copied this letter to the Scottish Ministers (the authority) and to Global Alliance Against Industrial Aquaculture (GAAIA, the requester), so that all parties are aware of what I have said.

I have read about the concerns raised and considered them carefully, particularly the points made such as:

*[disclosing the information] [...] will materially affect the safety of our members and could potentially result in significant harm to them personally or to the equipment and other assets used in carrying out legal salmon netting.*

*[You have] first-hand experience of threats made by "animal welfare" groups and other members of the public against us personally as well as threatening severe damage to our equipment such as cutting our nets or sinking our boats. Indeed, in recent years [...] has been subject to a death threat which was reported to police.*

*More recently, last year [...] our company became the target of hate campaign on Facebook and our operatives received a number of threats from local residents and others over our shooting of seals in a controlled legal manner in order to protect our fishery, equipment and livelihood.*

*[disclosing information could] put at risk the lives and property [...] There is a genuine risk of reprisals from animal rights activists and individuals who may decide to take the law into their own hands.*

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Scottish Information Commissioner

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Your statements include your belief that disclosure of who shot seals and where, will *"only serve to increase hostility by the uninformed public and will present a huge safety risk to our operatives who are carrying out the duties of their employment, with appropriate legal certification"* and voiced concerns about your companies' positions should an employee be harmed.

It may be helpful for me to set out the position regarding Decision 193/2012, which you may find helpful to have to hand to refer to (available at <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2012/201201193.asp>).

As you are no doubt aware, any person has a right to request information held by a Scottish public authority. The presumption is that the information will be provided, unless exempt under the terms of the Freedom of Information (Scotland) Act 2002 (FOISA) or the Environmental Information (Scotland) Regulations 2004 (the EIRs).

When a person receives a decision from a Scottish public authority with which they disagree (this includes refusal to disclose information because the authority considers it to be exempt), they have a right to a review by the public authority and if they remain dissatisfied they can then apply to me appealing the authority's decision.

Once an appeal to me is confirmed as valid, my investigating officer will contact the public authority giving notice of the appeal and an opportunity to provide comments on it. (I am required to do this under section 49(3)(a) of FOISA, which also applies to cases under the EIRs). I will consider the submissions made by the authority along with other information such as submissions from the requester or other third-party information and make a decision about whether the authority responded appropriately, directing disclosure or other action as necessary. Once my decision is made, I **cannot** reconsider it. The only way a decision can be challenged, and potentially changed, is on a point of law through appeal to the Court of Session, by the requester or the authority, or by judicial review.

As you will note from paragraphs 7- 9 of my decision, my investigating officer contacted Scottish Ministers, the Scottish public authority from whom the information was requested, on 20 June 2012 inviting comment and asking them in particular to justify their reliance on any provisions of the EIRs they considered applicable to the information requested. As you will also note from my decision, the Scottish Ministers relied on two exceptions from the EIRs, Regulation 10(5)(a) – public safety and Regulation 10(5)(g) – protection of the environment. The substance of the arguments made by the Scottish Ministers was summarised in my decision, and did not contain the specific points you are now making to me. It was a matter for the Scottish Ministers to have consulted with you as it considered appropriate under the Section 60 Code of Practice (available at <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>), seeking your views and any supporting evidence about the request. This could include why you thought exceptions applied and information should be withheld, or views about the public interest.



In reaching my decision, I weighed up the authority's arguments objectively and, in short, ordered disclosure because the arguments put forward by the Scottish Ministers did not provide compelling evidence to satisfy me that either of the exceptions they had relied on to withhold the information applied. My decision was also made in the knowledge that a significant amount of information is already available publically, such as which organisations have licences, how many seals have been shot (disclosed by the Scottish Ministers previously) and where sites are located (available from the Scottish Government website at <http://www.scotland.gov.uk/Uploads/Documents/FishSitesDec09.pdf> ).

While I understand your concerns and take them seriously, there is little I can, or on the current information I hold will, do. I cannot remake the decision, I cannot appeal it myself in light of new evidence, at best I can simply not enforce it.

The options open to you include:

1. You can apply for a judicial review of my decision. This is something about which you may wish to take legal advice.
2. Provide additional evidence to Scottish Ministers and discuss with them whether they would appeal my decision on a point of law (this would have to be done as a matter of urgency, given that appeals should be made to the Court of Session within six weeks of the issue of the decision).
3. Provide additional evidence to Scottish Ministers and discuss with them whether they would approach me with an argument about not enforcing my decision.

Please bear in mind, that the requester could seek to have any decision I made not to enforce a decision judicially reviewed, so for Scottish Ministers to persuade me that I should not enforce, they would need to make a very strong argument supported by evidence, not simply statements about fears and concerns. I would expect their arguments to show a causal link between the shooting of seals and the likelihood of direct action that put safety at risk. The sorts of matters they might want to consider are:

- i. Providing copies of actual threats received or telephone transcriptions of them that show action is threatened because of an organisation's record on seal shooting.
- ii. Evidence of what action the organisation took in response, for example:
  - a. Reviews of or changes to security arrangements
  - b. Additional training for staff
  - c. Issuing of guidance for staff
- iii. Information provided from and to the police – crime numbers, what action the police took, whether any prosecutions resulted, statements from the police about the likelihood of action and so on.

- iv. Evidence from other salmon fishing (or similar types of operation) companies outside Scotland of direct action that resulted from the shooting of seals (as opposed to general action in relation to animal rights).
- v. If there was a real likelihood of damage to property, the Scottish Ministers would need to show how this damage would result in a threat to public safety or have demonstrable impact on the environment.

I will defer taking any action to enforce my decision until 31 January 2013. This will give you an opportunity to take legal advice and/or contact the Scottish Ministers in relation to appealing or putting forward an argument not to enforce. I am taking this unusual approach in this case, because of the seriousness of the claims you are making regarding public safety. However, to be fair to all parties, including GAAIA, I will neither get involved in any decision of Scottish Ministers to take further action, nor will I provide you with advice about how to present your arguments to them. The deadline of 31 January 2013 will not be extended.

I appreciate that you will be disappointed that I am not simply agreeing to change my decision, but I hope you can appreciate that it is not in my powers to do so.

Yours sincerely



**Rosemary Agnew**  
**Scottish Information Commissioner**