

From: "Tony Hawkins" (a.hawkins@btconnect.com)

To: (FOI@snh.gov.uk);

CC:

Date: 16-05-2009 21:41:48

Subject: Ref CNS TR AWPR

Message: For the attention of Erica Knott, Policy and Advice Manager, and the section of SNH dealing with FOISA issues

Dear Erica

With reference to my request for information in relation to the AWPR, contained in my email of 8th April 2009, and your reply of 11th May 2009, I wish to appeal to SNH against its decision not to provide me with information on the state of freshwater pearl mussels within the River Dee SAC.

You say in your letter of 11th May that if you were to release this information to me you would be obliged to release it to any other person who asked. I seek justification of this statement. I believe I am an appropriately qualified person to receive this information (and can provide details of my career and qualifications if required). If what you say is true then it would follow that showing the reports concerned to anyone (outside SNH?) would establish a precedent which would then allow you to show the reports concerned to anyone else who asked, including me. I must therefore ask you for a complete list of who else has seen these reports both within and outside SNH, and for information on how you decide who should receive such information and who should not. I understand that at least one of the reports has been seen by Jacobs, the agents of Transport Scotland. I would therefore ask what justification exists for showing the information to Jacobs, or indeed anyone else outside SNH, but not to me.

I have registered a complaint with the Aarhus Convention Compliance Committee with respect to my request. In particular I have argued that in denying access to independent reports on the state of mussel populations SNH is protecting its own position and preventing the public from calling SNH and the Scottish Government to account for their failure to act with regard to the protection and conservation of threatened populations. In this respect SNH and the Scottish Government are failing to comply with Article 5 (c) of the Aarhus Convention, which in the event of any imminent threat to the environment (in this case to freshwater pearl mussels, a protected species) requires that there must be access to information which could enable the public to take measures to prevent or mitigate harm arising from the threat. I have argued that without access to the reports commissioned by SNH, which point to deterioration in the status of freshwater pearl mussels within the Dee, I will be unable to draw effectively the attention of the European Commission to the lack of enforcement of the Habitats Directive by the SNH and the Scottish and UK Governments.

The withholding of this information on the status of freshwater pearl mussels within the SAC is therefore a serious matter, and I would ask you to reconsider your position. I believe that by withholding the information I have asked for you are breaching the provisions of FOISA, the Environmental

Information (Scotland) Regulations and the Aarhus Convention.

I anticipate a reply from SNH on this matter within 20 working days.

One further point. I am grateful to you for providing some of the information I asked for. However, I would question the need for SNH, a government agency charged with conservation, to provide information in the form of a large quantity of photocopied pages delivered by post. This is an expensive, inconvenient, archaic and environmentally unfriendly way of providing information in this modern age. I would ask whether you have a policy which requires you to deliver documents in the cheapest, most user-friendly, and environmentally conscious way. And if you not, why not?

I would prefer any further correspondence and exchange of information to be conducted electronically.

Yours sincerely

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Attachments: