



Scottish Natural Heritage
All of nature for all of Scotland

Dr A D Hawkins
Kincraig
Blairs
Aberdeen
AB12 5YT

9 June 2009

Dear Dr Hawkins

Thank you for email of 16th May seeking a review of our response to your earlier request for information about freshwater pearl mussel location data.

I am writing to confirm that I have carried out a review of how SNH dealt with your request. I have concluded that your request was correctly handled under the terms of the Environmental Information (Scotland) Regulations 2004 and as a result uphold our response to you of 11 May 2009.

Under Regulation 10(5)(g) of the above, the requirement to provide information does not apply if 'disclosure would, or would be likely to prejudice substantially the protection of the environment'. In my view your request is one where such an exception to the general rule is justified.

My reasons for reaching this conclusion are as follows and I would like to stress that they in no way reflect upon your suitability as an individual to have access to such sensitive information. Rather they reflect the fact that the disclosure of sensitive information to any private individual automatically leads to these data being considered as being in the public domain. If we subsequently received a request from another individual for the same information, regardless of his or her motives in asking for it, we would have no grounds for refusal.

You state in your email that 'at least one of these reports has been seen by Jacobs, the agent for Transport Scotland.' Jacobs did receive a copy from SNH, but under licence. A licence of this kind prohibits the licensee from disclosing the information released to any other party without our agreement. The main criterion we apply when considering whether to release sensitive data under licence in this way is whether doing so is likely to serve the best interests of the species concerned. Jacobs' clients proposed activities that had the potential to cause significant damage to the freshwater pearl mussel population. We



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therefore felt it right to let them have access to the data to assess that risk and to ensure that any negative impact was avoided.

We sought advice from the office of Scottish Information Commissioner on the authority of the Aarhus Conventions Compliance Committee. Their advice was that SNH should continue to follow the provisions of the Environmental Information (Scotland) Regulations 2004 and follow the normal review process as set out in regulation 16. It is therefore our expectation that any representations you have made to the Aarhus Convention's Compliance Committee will, in the first instance, be referred to the Scottish Information Commissioner for consideration.

Under the above Regulations, dissatisfied applicants can appeal to the Scottish Information Commissioner for a decision on whether their request has been dealt with in accordance with the Regulations.

The Scottish Information Commissioner's details are:

Kevin Dunion
Scottish Information Commissioner
Kinburn Castle,
Doubledykes Road,
St Andrews,
Fife
KY16 9DS
Telephone: 01334 464610

Yours sincerely



John Thomson
Director of Strategy & Communications