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Rachel Salvidge
By email: [REDACTED]@watershedinvestigations.com

Our ref: EIR2024/02935
3 April 2024

Dear Rachel,

REQUEST FOR INFORMATION: Defra and Environment Agency (EA) – Per- and Polyfluoroalkyl Substances (PFAS)

Thank you for your request for information of 5 February 2024 about per- and polyfluoroalkyl substances (PFAS). We have handled your request under the Environmental Information Regulations 2004 (EIRs). Please note that we are only responding on behalf of Defra.

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

Your information request and our response are set out below.

I would like to submit an FOI/EIR to DEFRA and the Environment Agency on the topic of use, pollution, regulation, and restriction of per- and polyfluoroalkyl substances (PFAS), including F2 or fluorine gases, such as HFC's.

Please send me all documents related to physical, telephone or video communications and meetings (including diary entries, notes, minutes, correspondence produced before and after the communications and meetings) between DEFRA and the Environment Agency (including the secretary of state, ministers, under secretaries, and senior officials, chair, ceo) and the organisations listed below:

*AGC F2 Koura Dupont 3M Chemours Honeywell Solvay
National trade associations and groups: Chemical Industries Association, British Coatings Federation, European Fluorocarbons Technical Committee / Cefic Sector Group, Plastics Europe*

Reduce the timeframe the last 6 months of 2023.

We enclose a copy of some of the information you requested at Annex C and D.

Within these annexes and after careful consideration we have decided that the names, roles and contact details of junior Defra staff and third parties, and contact details of all Defra staff should be withheld under regulations 12(3) and 13(1) and (2A) of the EIRs as the information constitutes personal data relating to persons other than you. These



regulations exempt personal information from disclosure if that information relates to someone other than the applicant, and if disclosure of that information would breach any of the data protection principles in Article 5(1) of the UK General Data Protection Regulation (GDPR).

We consider that disclosure of this information is likely to breach the first data protection principle, which provides that personal data must be processed lawfully, fairly, and in a transparent manner. Disclosure would not constitute 'fair' processing of the personal data because the junior staff and third parties involved would not reasonably expect their names, roles and contact details to be disclosed in relation to this request for information, and equally the senior members of staff would not reasonably expect their contact details to be disclosed in relation to this request.

We have decided to withhold some information under the exception at regulation 12(4)(d) of the EIRs, which relates to material which is still in the course of completion, unfinished documents or incomplete data. The exception is engaged in this instance as the information within the scope of your request is material being developed in the context of our ongoing UK Chemicals Stakeholder Forum PFAS Working Group position paper and which is still in the course of completion.

This approach is in line with the Upper Tribunal (UT) case *Manisty* GIA/1589/2018 (December 2018). In that case, the UT was asked to decide whether documents that were in themselves complete could be covered by the exception. The outcome was that they were covered to the extent that the "information relates to material in the course of completion".

In applying this exception, we have had to balance the public interest in withholding the information against the public interest in disclosure. In considering the exception we have also applied a presumption in favour of disclosure, as required by regulation 12(2) of the EIRs.

Regulation 12(4)(d)

We recognise that there is a public interest in disclosure of information about the use, pollution, regulation, and restriction of per- and polyfluoroalkyl substances (PFAS), including F2 or fluorine gases, such as HFC's. We understand that release of this information aids accountability and transparency in government.

However, there is a strong public interest in withholding some of the information because releasing it at this stage while it is still being developed would divert valuable resources away from ongoing work in this area. It could also undermine effective government by discouraging frankness and candour in communicating with stakeholders. It is important that public authorities have a safe space in which officials can discuss policy options and develop material free from the distraction that would result if draft and/or incomplete material were to be released.

Regulation 12(5)(e)

In addition, we have also refused information under the exception at regulation 12(5)(e) of the EIRs, which relates to the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

We recognise there is a public interest in the disclosure of information relating to the use, pollution, regulation, and restriction of per- and polyfluoroalkyl substances (PFAS), including F2 or fluorine gases, such as HFC's. We understand that the release of such information will show transparency within government and inform the public what discussions are going on in relation to this matter.

However, it is important that the organisations are able to share information with Defra in confidence should they wish to. It is therefore important that commercial confidentiality is maintained so that various options can be explored without fear that disclosure of this information may reveal information that might affect the commercial interests of these organisations and/or damage competitiveness. If this information were to be disclosed then the relationship of trust between the bodies providing and receiving the information would be undermined, which in turn could lead to the bodies concerned being less willing to share further information for fear of disclosure. It could also be used by other suppliers to gain a competitive advantage which is not in the public interest.

Therefore, in all the circumstances of the case the exception is engaged.

Finally, we have also refused information under the exception at regulation 12(5)(d) of the EIRs, which relates to Confidentiality of public authority proceedings when covered by law.

In applying all these exceptions, we have had to balance the public interest in withholding the information against the public interest in disclosure. In considering the exceptions we have also applied a presumption in favour of disclosure, as required by regulation 12(2) of the EIRs.

Regulation 12(5)(d)

We have also decided that some of the information you have requested should be withheld under regulation 12(5)(d) which relates to the confidentiality of the proceedings of that or any other public authority where such confidentiality is proved by law.

In applying this exception, we have had to balance the public interest in withholding the information against the public interest in disclosure.

We recognise there is a public interest in the disclosure of information relating to the use, pollution, regulation, and restriction of per- and polyfluoroalkyl substances (PFAS), including F2 or fluorine gases, such as HFC's. We understand that the release of such information will show transparency within government and inform the public what discussions are going on in relation to this matter.

However, it is important that the organisations are able to share information with Defra in confidence should they wish to. We recognise there is a public interest in the disclosure of information relating the views of stakeholders on PFAS. However, it is also important that Defra can carry out its formal policy making processes in confidence. Defra carries out consultations in order to have free and frank conversations with industry and other stakeholders as part of its policy making processes, and the preservation of confidentiality is necessary to allow these processes to continue. We consider that the confidentiality arises from the common law expectation that this information is kept confidential. As this has created an expressed expectation of confidentiality, combined with the necessary

quality of confidence of the information, it means that Defra has a duty of confidence in relation to these proceedings. Therefore, we have concluded that in all the circumstances of this request, the information should be withheld.

Information disclosed in response to this EIRs request is releasable to the public. In keeping with the spirit and effect of the EIRs and the government's Transparency Agenda, this letter and the information disclosed to you may be placed on [GOV.UK](https://www.gov.uk), together with any related information that will provide a key to its wider context. No information identifying you will be placed on the GOV.UK website.

We attach Annex A, explaining the copyright that applies to the information being released to you, and Annex B giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact me.

Yours sincerely

Guy Mawhinney
Information Rights Team
[REDACTED] [@defra.gov.uk](mailto:[REDACTED]@defra.gov.uk)

Annex A

Copyright

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs or logos) can be also used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

Most documents produced by Defra will be protected by Crown Copyright. Most Crown copyright information can be re-used under the [Open Government Licence](#). For information about the OGL and about re-using Crown Copyright information please see [The National Archives website](#).

Copyright in other documents may rest with a third party. For information about obtaining permission from a third party see the [Intellectual Property Office's website](#).

Annex B

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 11 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Andrew Mobsby, Head of Information Rights via email at [\[REDACTED\]@defra.gov.uk](mailto:[REDACTED]@defra.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our website.

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner's Office (ICO) for a decision. Please note that generally the ICO cannot make a decision unless you have first exhausted Defra's own complaints procedure.

The ICO can be contacted using the following link:

<https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>