

Annex A

Request

For 2019 please state how many pieces of correspondence you received that could be described as ‘whistleblowing’ in relation to the mislabelling of food products?

For each piece of communication please state (i) the nature of the mislabelling stated (please ensure you include the product and the retailer manufacturer), (ii) a general summary of the allegations contained in the correspondence and (m) what follow up action was taken by your authority, accepting some information will be withheld as being exempt from disclosure under Section.41 of the Freedom of Information Act.

Response

For clarity the National Food Crime Unit (NFCU) handles all whistleblowing reports received by the Food Standards Agency (FSA).

Regarding the first part of your request, I can advise you that there were a total of 34 pieces of information received in 2019 from whistleblowers relating to the mislabelling of food products which were identified through a search of the Food Standard Agency’s (FSA) intelligence system.

It should be noted that information claims of this nature, received by the FSA, are not necessarily indicative that the activity described has occurred.

A summary of the whistleblowing reports within the scope of your request, excluding information exempt under sections 30, 31 and 41, is provided below.

Twenty-five (25) of these reports focused predominantly on the extension of “Use by” / “Best before” dates in businesses ranging from retailers to production plants.

Other issues raised in these and further reports included:

- Three (3) reports in relation to inaccurate / misleading kill or packing dates.
- One (1) report detailing false information with respect of the product’s country of origin.
- Three (3) reports claiming meat was being inaccurately labelled as compliant with religious requirements.
- Two (2) reports claiming the product was of a higher quality status
- One (1) report alleging discrepancies between ingredients used in production and those disclosed on the label.
- One (1) report in relation to suitability for freezing, inadequate ingredient and allergen information.

These allegations were either investigated by the NFCU or referred to the relevant local authority or law enforcement bodies. Further information about these reports is being withheld under sections 30 and 31 of the Act.

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Annex B

Exemptions

Section 30 (Investigations and proceedings)

The relevant section of the Act is as follows:

30 – (1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained - (i) whether a person should be charged with an offence, or (ii) whether a person charged with an offence is guilty of it,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct.

(2) Information held by a public authority is exempt information if –

(a) it was obtained or recorded by the authority for the purposes of its functions relating to – (i) investigations falling within subsection 1(a) or (b), (ii) criminal proceedings which the authority has power to conduct

Information relating to the specific detail of each instance of a whistleblowing allegation reported to the FSA has been withheld under section 30(1) (a) (b) and (c) and (2) (a) of the Act as the information is held for the purposes of law enforcement and disclosure would be likely to prejudice future law enforcement action.

We consider that sections 30(1) (a) (b) and (c) and (2) (a) are engaged as we consider disclosure of the information could prejudice or impede any future possible charges or criminal proceedings brought against food business operators and reduce the chances of a fair trial taking place.

Section 30 is a qualified exemption, and as required by the Act we have undertaken a public interest test to ascertain whether, on balance, the public interest favours disclosing the information that is held.

We recognise that there is a public interest in accountable, open and transparent regulation.

We also recognise that there is a public interest in the work of the NFCU, especially because the NFCU relies on the cooperation of the public in reporting suspicions about food crime.

However, we consider that there is a stronger public interest in withholding certain information that is held.

This is to preserve the integrity and effectiveness of the work the NFCU does to protect consumers from serious criminal activity that impacts on the safety or authenticity of the food and drink they consume.

The work of the NFCU is intelligence led and it provides confidentiality for sources as part of its investigative process.

Disclosing such information that is held could deter potential intelligence sources from sharing information in the future.

Therefore, I have determined that the balance of the public interest favours withholding the information that is held.

Section 31 (Law enforcement)

The relevant section of the Act is as follows:

31 - (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(2) The purposes referred to in subsection (1)(g) to (i) are—

(a) the purpose of ascertaining whether any person has failed to comply with the law,

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise

Information relating to the product and retailer manufacturer has been withheld under section 31(1)(a) (b) and (g) and 2(a) and (c) as the information is held for the purposes of law enforcement and disclosure would be likely to prejudice future regulatory action by appropriate authorities.

We consider that section 31(1) (a) (b) and (g) and 2(a) and (c) are engaged as we consider disclosure of information would be likely to prejudice a public authority's ability to determine the course of any future investigation and furthermore could hinder any enforcement action that may be taken as a result of future allegations.

Section 31 is also a qualified exemption and as required by the Act we have undertaken a public interest test to ascertain whether, on balance, the public interest favours disclosing the information that is held.

Once again, we recognise that there is a public interest in accountable, open and transparent regulation. We have also considered the public interest particularly in relation to the enforcement of food safety issues.

However, there is a stronger public interest in ensuring that other regulatory authorities' ability to take future enforcement action to secure compliance with the law is not prejudiced by the inappropriate disclosure of information.

The FSA is reliant on retaining the confidence of other authorities that information supplied to the FSA will be used appropriately and proportionately.

Disclosing the information that is held could undermine the regulatory and enforcement role of other enforcement authorities.

Therefore, I have determined that the balance of the public interest favours withholding the information that is held.

Section 41 (Information provided in confidence)

1) Information is exempt information if –

a) it was obtained by the public authority from any other person (including another public authority), and

b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

Section 41 is an absolute exemption, which requires the existence of an obligation of confidence.

The FSA has determined that an obligation of confidence does arise in relation to the information currently under consideration, as it was provided to and treated as confidential by the FSA at the time of receipt.

Although section 41 is an absolute exemption we have considered the public interest. In favour of disclosure, we have considered the public interest in increasing transparency and openness with regard to food authenticity and the correct labelling of food.

However, it is not in the public interest to disclose information into the public domain that will discourage others from coming forward with important information that will help to bring to light wrongdoing in the food industry.

This information was provided voluntarily to the FSA with the strict understanding that this would be held in confidence.

The information still retains this quality of confidence and it is likely that its disclosure would constitute an actionable breach of confidence by the FSA.

The FSA uses its best efforts to ensure that the whistleblower suffers no detriment as a result of making a public interest disclosure.

Every effort is made to protect the identity of the whistleblower, and any information that may lead to the identity of the whistleblower being deduced by his/her employer or any other party.

This is especially important where allegations may concern criminal wrongdoing, which is why specific detail about each instance reported to the NFCU has been withheld.

Further information regarding the FSA's policy relating to whistleblowing can be found at: <https://www.food.gov.uk/about-us/handling-disclosures>

On the balance of the public interest withholding the product/retailer/manufacturer details outweighs the public interest in disclosing it.

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