

Our Reference: FOI 1597

By email:

Date: 28 August 2014

Dear

FREEDOM OF INFORMATION REQUEST

Further to my letter of 5 August acknowledging your clarified request for information, which was received by us on 30 July, I am now in a position to respond.

You requested the following:

For the period 01/02/2014 and 23/07/2014, copies of all correspondence and records of all meetings between the FSA and i) the food industry (both food producers and food retailers) and ii) DEFRA regarding discussions about how data about campylobacter rates in chicken should be published (in March the FSA decided that food producers and retailers would be named; at the July board meeting it was decided that this data would be published in an anonymised form and would only include the names of food producers / retailers after a full year of data had been collected.)

Please provide the date of the meeting, those in attendance and any minutes that were taken.

I am handling your request under the terms of the Freedom of Information (FOI) Act 2000.

Please find attached in annex A information that falls within the scope of your request. This information will be published on the FSA website shortly.

Some information that falls within scope of this request has been withheld under exemptions provided by the FOI Act. In the attached documents some exempt information has been redacted (obscured). Where this is the case, the documents have been marked with the number of the relevant section of the FOI Act in square brackets. Any other wording in square brackets has been added for clarity and does not form part of the original documents. Other documents have been withheld in full. The exemptions used have been explained in detail in the annex to this letter.

Most documents produced by a government department or agency will be protected by Crown Copyright. Most Crown copyright information can be re-used under the Open Government Licence (OGL) (<http://www.nationalarchives.gov.uk/doc/open-government-licence/>). For information about the OGL and about re-using Crown Copyright information please see The National Archives website - <http://www.nationalarchives.gov.uk/information-management/uk-gov-licensing-framework.htm> .

If you have any queries about this letter, please contact me. Please remember to quote the reference number at the top of this letter in any future communications.

If you are not satisfied with the way the Agency has handled your request for information, you should write within two calendar months of the date of this letter to the Openness Team, and ask for an internal review. They will arrange for the Complaints Coordinator to conduct the review. Their address is Food Standards Agency, Room 2C Aviation House, 125 Kingsway, London, WC2B 6NH (email: Openness.team@foodstandards.gsi.gov.uk).

If you are not content with the outcome of the internal review, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Agency. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or through the website at: www.ico.gov.uk

Yours sincerely

Shehan Saldin
Head of Directorate Support Unit

Enc – attachment with information disclosed

ANNEX – use of exemptions

Section 40 (personal information)

Some names and personal information have been withheld under section 40(2)&(3)(a)(i) - (personal information) as to provide this information would contravene the provisions of the Data Protection Act 1998: the duty to process data fairly and lawfully (the first data protection principle). Information that has been withheld includes names of some FSA officials below civil service grade 7, civil servants in other government departments below the grade of Senior Civil Servant, and some names of staff in third party organisations, including trade associations and industry bodies,

Section 36 (prejudice to the effective conduct of public affairs)

Some information in email correspondence and notes of discussions between the FSA and Defra and the FSA and industry have been withheld under the exemption provided by section 36(2)(b)(ii) of the FOI Act, which states.

2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(b) would, or would be likely to, inhibit—

(ii) the free and frank exchange of views for the purposes of deliberation

As you may be aware, the use of section 36 to withhold information under FOI must be agreed to by a public authority's qualified person¹. The "qualified person" in the FSA for the purposes of section 36 is the Chair of the Board of the FSA, Tim Bennett. It is the Chair's reasonable opinion that disclosure of the information would be likely to inhibit the free and frank exchange of views between the FSA and officials in other government departments and among FSA officials for the purposes of deliberation.

In reaching his opinion, the Chair has taken account of the considerations outlined in this annex as to whether the different types of information are covered by the exemption above and whether the balance of the public interest weighs more heavily in favour or against disclosure².

The public interest factors in favour of disclosure that the FSA Chair considered are the public interest in openness and transparency and the influences that are brought to bear on FSA decision-making, which increases trust and engagement with the public, and the public interest in building confidence in the FSA and how it exercises its role as a body at arm's length from government.

¹ The "qualified person" in a non-ministerial government department is the "person in charge" of the department (section 36(5)(c) of the FOI Act). In the FSA, the Chair is the "qualified person".

² Advice on the application of section 36 of the FOI Act is provided on the Information Commissioner's website:

http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/section_36_prejudice_to_effective_conduct_of_public_affairs.ashx

Public interest factors against disclosure that the FSA Chair considered are the public interest in ensuring that there is a safe space for Ministers and senior officials to share information and consider options so that decision-making is informed and based on the best available information, and for officials to undertake candid assessments of risks involved in particular actions. The Chair also considered that the FSA has already placed information in the public domain the issues that were raised by the proposed publication of the campylobacter retail survey data with the names of the retailers and producers on a quarterly basis, and that the FSA had been open about the fact that representations to the FSA against publication of data before the survey had been completed had been made by other government departments and sections of industry. The information can be found in the FSA Board paper 'Reduction of Campylobacter from Poultry: Publication of the Retail Survey Results'³, which was submitted to the Board in July 2014. The Board members' discussion of the paper, in which these issues were aired, was held in public on 23 July and the videoed recording of the discussion remains available on line⁴.

Given these factors, the FSA chair considers that the balance of the public interest lies in withholding the information.

³ FSA Board paper, <http://multimedia.food.gov.uk/multimedia/pdfs/board/board-papers2014/fsa-140707.pdf>

⁴ Video and audio recording of the FSA Board meeting, 23 July 2014, <http://www.food.gov.uk/about-us/how-we-work/our-board/board-meetings/boardmeetings2014/230714/board-video-230714>

ANNEX A - Information disclosed – correspondence/meetings

Document 1

Letter from FSA to retailers – notification of retail survey

26 March 2014

<Address>

<Date>

Dear

RE: A UK WIDE MICROBIOLOGICAL SURVEY OF CAMPYLOBACTER CONTAMINATION IN FRESH WHOLE CHILLED CHICKENS AT RETAIL SALE

A sampling officer from Public Health England/Agri-Food and Biosciences Institute has been authorised by the Food Standards Agency to carry out food sampling work, and will be purchasing chicken from one or more of your premises as a food sample, which is to be used for a food surveillance survey.

The aim of this particular survey is to ascertain the incidence and contamination level of Campylobacter in raw UK produced chicken available to consumers at retail in the UK. Whole chickens are being sampled and tested during a 12 month period.

This survey is being funded by the Food Standards Agency which has commissioned Public Health England (PHE) and its sub-contractor Agri-Food and Biosciences Institute (AFBI) to carry out the sampling.

Your premises have been highlighted as one of the retail outlets where people may buy raw chicken - the subject of this survey. The raw chicken purchased from your premises will be taken to one of the PHE/AFBI laboratories for testing. Please note that the survey is not for enforcement purposes.

The results of the samples taken in this survey will be collated and will form part of a report on the incidence and contamination level of the pathogen Campylobacter on the surface of the packaging and on fresh whole chilled UK chicken on retail sale within the UK. This report will be published by the Food Standards Agency. Throughout the survey, a set of results of the chicken sampled in the previous quarter will be published on the Agency's website www.food.gov.uk. This will include details of where samples were purchased. You will be provided with the results of your own chickens tested by a letter from the Food Standards Agency in advance of this publication.

Should you have any queries, please contact [s40(2)&(3)], Food Safety Policy on the following telephone number: 020 [s40(2)&(3)], or send an e-mail to [s40(2)&(3)],

Yours sincerely

[s40(2)&(3)],
Food Safety Policy

Document 2:

From: Wight, Michael
Sent: 24 June 2014 16:56
To: [FOI s40(2)&(3)] [FOI s40(2)&(3)]
Cc: Humphreys, Stephen; Wearne, Steve; Martin, Robert
Subject: ACTION: Retail Campy survey

At a meeting with CE and me at M&S today they asked that we give them as much time as possible to consider their response to the Campy results. I said that survey guidelines usually suggested 3 days turnaround but they said as much time as possible and certainly 5 days would be better so they can get their PR and COMS teams lined up. I think we have built this now into our timetable that Stephen H commented on but this just supports a letter setting out process and timings for those involved to provide clarity on timing and next steps.

Document 3:

Extract of note of meeting between Andy Robertson [NFU], Phil Hudson [NFU], Catherine Brown [FSA] and Hefin Davies [FSA] - 10 April 2014.

Attendees

Catherine Brown (CB)
Andy Robertson (AR) NFU
Phil Hudson (PH) NFU
Hefin Davies (HD)

Campylobacter

AR noted the positive collaboration and was keen to maintain a 'no surprises' policy with stakeholders on *Campylobacter*. He also requested that the date of release for the quarterly testing results be made known in advance although he accepted that NFU would not be told results prior to their publication, which CB agreed to raise with Stephen Humphreys.

Action: Stephen Humphreys to consider whether the date of release for the quarterly testing updates can be made known to stakeholders in advance

Document 4:

Extract from British Retail Consortium letter to FSA, 11 Feb 2014

11 February 2013 [sic]

Robert Martin
Food Standards Agency

Sent by email

Dear Bob,
BRC Response to Final Consultation on Campylobacter Retail Protocol.

Publication of Results

The decision to intermittently report results is a significant change from the last protocol and should have been the subject of more extensive consultation. If the intention of the survey is to establish a UK baseline it seems inappropriate to publish results before the final study is complete. Please clarify that the monthly reporting requirement is for the laboratories to the FSA and not for wider publication.

We would welcome early consultation/embargoed copies on publication of reports and web stories particularly if companies will be named.

Elizabeth Andoh-Kesson
Food Policy Advisor
British Retail Consortium

Document 5:

Extract from FSA reply to British Retail Consortium letter, 14 March 2014

Elizabeth Andoh-Kesson
Food Policy Advisor
British Retail Consortium

Sent by email

14 March 2014

Dear Elizabeth,

Re: BRC Response to Final Consultation on Campylobacter Retail Survey Protocol

Page 6: Publication of results

We intend to publish results after every 3 months of sampling during the course of the survey, to start making data accessible to consumers, retailers and poultry processors, in line with the strategy agreed by the Board in September 2013. The information published for every sample will contain details about the outlet the chicken was bought, what abattoir processed it, what category of bird (standard, free range, etc.), if the sample has been positive or not for Campylobacter and an enumeration of bacteria on the sample.

Retailers will be provided with a copy of their own results that are due to be published in the quarterly reports, and given at least 3 working days to respond/comment, prior to their publication.

When publishing these quarterly results we will ensure that they are accompanied by appropriate caveats about the data, to avoid inappropriate or unwarranted interpretation of the data. We will publish a full statistical analysis on completion of the whole survey, as we normally would.

I can clarify that the monthly reporting from the laboratories to the FSA is a normal part of our procedure for managing surveys and is to ensure regular reporting of data that will enable us to make any adjustments to sampling that are required to deliver the sampling plan. This data will not be published on a monthly basis but instead will be included in the data that is published each quarter.

[s40(2&(3)]
Food Safety Policy

Document 5:

Extract of minutes from the Joint Working Group on Campylobacter, 12 February 2014

Representatives from:

Representatives (including membership companies) from the following organisations: British Poultry Council (BPC), British Retail Consortium (BRC), Food Standards Agency (FSA), Department for Environment, Food and Rural Affairs (Defra), National Farmers Union (NFU), Food Standards Agency.

Item Eight: Update on Retail Survey

24. The draft protocol has been finalised and circulated. Final comments were sent by the BRC on 11/2/14. Sampling started on 17/2/14. The results will be reported to FSA monthly and published every Quarter with appropriate caveats. It is expected that the first results will be received around mid-May and published towards the end of June 2014. Sample owners will have sight of their results before publication. BRC requested a response to their comments on the retail survey.

Document 6:

Extract from email from Catherine Brown re: NFU conference [25 February 2014]

From: Brown, Catherine
Sent: 03 March 2014 11:01
To: Dominguez, Javier
Cc: Wearne, Steve; Wight, Michael
Subject: campy at NFU conference - protect

Later I spoke at the poultry break out session – about 80 people, including reps from main retailers as well as farmers.

There was a bit of worry about the publication of the quarterly results – [36(2)(b)(ii)] by saying that as we had failed to deal with this for years, publishing now may give the misleading impression that the issue is “pressing”, which enabled me to point out that as people are dying it is pressing...)

In answer to a question on whether they would see results pre-publication I gave an equivocal reassurance. I assume that we will share with BRC a few days before publication? Could you confirm arrangements for pre-sharing? Thx

Document 7:

Extract of agenda of meeting with Defra – 12 June 2014

Meeting between George Eustice, MP and Tim Bennett (FSA)

Thursday 12 June 2014

16:00-16:45

Room 650, Nobel House

Agenda

2. Campylobacter reduction

Document 8:

From: Steve Wearne [FSA]

Sent: 23 July 2014 17:49

To: McNamara, Helen [Cabinet Office] [s40(2)&(3) - email address]; Shirley-Quirk, Helen [Department of Health] [s40(2)&(3) - email address]; Church, Sarah [DEFRA] [s40(2)&(3) - email address]

Cc: Humphreys, Stephen; Wight, Michael

Subject: RE: OFFICIAL - SENSITIVE: Publication of results of Campylobacter retail survey

Helen, Helen, Sarah,

The FSA Board discussed our recommendation at its open meeting this morning and agreed, following a vote (unprecedented in the fourteen years of the Board) and on the Chair's casting vote, to agree our recommendation with the proviso that we investigate and then revert to a Board sub-committee on how we might accelerate the pace of the survey towards being able to publish attributable results with an analysis of their relevance.

Steve.

Steve Wearne

Director of Policy

Food Standards Agency

t: 020 [s40(2)&(3)]

m: [s40(2)&(3)] – PLEASE NOTE NEW MOBILE NUMBER FROM 18 JULY

e: [s40(2)&(3)]@foodstandards.gsi.gov.uk

Document 9:

From: Wearne, Steve [FSA]

Sent: 15 July 2014 11:59

To: McNamara, Helen [Cabinet Office] [s40(2)&(3) - email address]; Shirley-Quirk, Helen [Department of Health] [s40(2)&(3) - email address]; Church, Sarah [DEFRA] [s40(2)&(3) - email address]

Cc: Humphreys, Stephen [FSA]; Wight, Michael [FSA]

Subject: OFFICIAL - SENSITIVE: Publication of results of Campylobacter retail survey

PROTECT UNTIL PUBLICATION

Helen, Helen, Sarah,

As discussed by telephone, we now plan to go to our Board at its open meeting next Wednesday with a clear recommendation that we do not publish retailer and producer provenance with the quarterly news stories from the survey. I attach the paper that we will circulate to Board members this afternoon and publish on our website tomorrow (the normal process for such papers).

Best regards,

Steve.

Steve Wearne

Director of Policy

Food Standards Agency

t: 020 [s40(2)&(3)]

m: [s40(2)&(3)]

e: [s40(2)&(3)]@foodstandards.gsi.gov.uk

[FSA Board paper: *Reduction of Campylobacter from Poultry: publication of the Retail survey results, 14/07/07* is available at:

<http://multimedia.food.gov.uk/multimedia/pdfs/board/board-papers2014/fsa-140707.pdf>]