

# Enforcement of Decision 193/2012



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The Scottish Information Commissioner's reasons for enforcing Decision 193/2012 Global Alliance Against Industrial Aquaculture and the Scottish Ministers, despite objections from the Salmon Net Fishing Association of Scotland



## Background

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1. On 3 April 2012, Global Alliance Against Industrial Aquaculture (GAAIA) asked the Scottish Ministers (the Ministers) for information about seals killed under seal killing licences issued by the Ministers, specifically:
  - (a) To which companies did the Scottish Government issue licences?
  - (b) How many seals were actually killed, by which salmon farming companies at which sites?
2. The Ministers provided some of the requested information - a list of companies that had been issued with seal killing licences for 2011 and 2012 and the total numbers of seals shot by each company in the first three quarters of 2011.
3. GAAIA was not satisfied with the Ministers' response in respect of part (b) of the request. On 14 June 2012, GAAIA emailed the Commissioner, stating its dissatisfaction, applying to her for a decision in terms of section 47(1) of FOISA (which also covers applications made to the Commissioner under the Environmental Information (Scotland) Regulations 2004 (the EIRs). The Commissioner issued her decision, 193/2012, on 26 November 2012 finding that the Ministers had wrongly withheld information on seal killings and required it to be disclosed. This information included locations of where seals were shot under licence, not the names of individuals who carried out the shooting.
4. Following the issue of her decision the Commissioner was contacted by representatives of the Salmon Net Fishing Association of Scotland. The correspondents set out their concerns about the information being put into the public domain by virtue of being disclosed through an EIRs request. These concerns included:

*[disclosing the information] [...] will materially affect the safety of our members and could potentially result in significant harm to them personally or to the equipment and other assets used in carrying out legal salmon netting.*

*[Correspondents have] first-hand experience of threats made by "animal welfare" groups and other members of the public against us personally as well as threatening severe damage to our equipment such as cutting our nets or sinking our boats. Indeed, in recent years [...] has been subject to a death threat which was reported to police. More recently, last year [...] our company became the target of hate campaign on Facebook and our operatives received a number of threats from local residents and others over our shooting of seals in a controlled legal manner in order to protect our fishery, equipment and livelihood.*

*[disclosing information could] put at risk the lives and property [...] There is a genuine risk of reprisals from animal rights activists and individuals who may decide to take the law into their own hands.*



The statements voiced concerns about the companies' positions should an employee be harmed. They set out the belief that disclosure of which company shot seals and where, would *“only serve to increase hostility by the uninformed public and will present a huge safety risk to our operatives who are carrying out the duties of their employment, with appropriate legal certification”*.

5. Similar concerns were also raised by a small number of other individuals. In response to this, the Commissioner wrote to the correspondents. She explained that she was taking the points raised seriously but that she did not have the power to alter her decision. The decision could be challenged through appeal to the Court of Session or judicial review, but the only action the Commissioner could take was to elect not to enforce her decision. The Commissioner expressed a willingness to consider this latter course of action, explaining how this could be approached. She emphasised that this was a one-off approach, reflecting the serious nature of the issues raised. In future she would expect the arguments to be made during the course of the request. For authorities this means; consulting as appropriate under the Section 60 Code<sup>1</sup> with third-parties when dealing with the request to enable them to inform the authority's decision, and presenting their arguments to the Commissioner during the course of her investigation.
6. The Commissioner set out a number of questions and issues for which she would expect to see evidence to support the argument that release of information was not in the public interest and advised the correspondents to write, with such evidence, to the Scottish Ministers (about whom the decision was taken). It was a matter for Scottish Ministers to write the Commissioner to ask for the decision not to be enforced, presenting reasoning supporting this.
7. The Commissioner wrote to Scottish Ministers informing them of the approach she had taken and inviting them to write to her as they saw fit.
8. The points the Commissioner suggested to the correspondents they address were:
  - (i) Providing copies of actual threats received or telephone transcriptions of them that show action is threatened because of an organisation's record on seal shooting.
  - (ii) Evidence of what action the organisation took in response, for example:
    - (a) Reviews of or changes to security arrangements
    - (b) Additional training for staff
    - (c) Issuing of guidance for staff

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<sup>1</sup> Scottish Ministers' Code of Practice on the discharge of functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (December 2010)



- (iii) Information provided from and to the police – crime numbers, what action the police took, whether any prosecutions resulted, statements from the police about the likelihood of action and so on.
  - (iv) Evidence from other salmon fishing (or similar types of operation) companies outside Scotland of direct action that resulted from the shooting of seals (as opposed to general action in relation to animal rights).
  - (v) If there was a real likelihood of damage to property, how this damage would result in a threat to public safety or have demonstrable impact on the environment.
9. The main tenet of the argument put forward was that the public interest in disclosing the information was outweighed by the public interest arguments relating to safety of individuals, particularly employees. The purpose behind the points raised by the Commissioner was to give the parties sufficient opportunity to enable them to provide the Ministers with robust, first-hand evidence so they, in turn, could reason why the decision should not be enforced on those grounds.
10. This in turn would provide the Commissioner with sufficient information to form a view about whether a direct causal link could be established between disclosure of retrospective details about the number of seals shot by location and the likelihood of threats being made and acted upon. This would be by weighing and balancing factors such as; considering the likelihood of the events claimed occurring, actual frequency and level of threat, how seriously threats were taken by various parties as evidenced by their own actions and changes to behaviours, whether there was evidence that threats had been acted upon.
11. Scottish Ministers wrote to the Commissioner requesting the decision is not enforced on public interest arguments about safety, based on the evidence considered below.

## **Arguments and evidence put forward**

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12. The Commissioner considered the evidence provided in relation to each of the points above, 8(i) to 8(iv) (no evidence was provided in relation to point 8(v)). Much of what was provided was second-hand accounts which provide context but do not provide specific or corroborating support for the points raised. The Commissioner has, therefore, focused on the first-hand evidence and similar.



## Evidence to support 8(i) above – actual threats

13. Two specific links were given as containing evidence of threats.

- (i) The first of these, to a Facebook site called “Save Scotland’s Seals from being killed”<sup>2</sup> did not contain a specific threat at the time of viewing (early April 2013), although the views expressed were extreme. They were in response to a photograph posted on the site of a dead, shot seal on a Scottish beach with the caption “*Another murdered grey seal on Gardenstown beach by the USAN salmon fishery, taking death toll to 8 in past 3.5 weeks :-((((*”

While the posts expressed deeply felt condemnation of the shooting, the views were not, in the Commissioner’s view, indicative of an intention to attack people, so much as calls for a change in farming practice (e.g. using special nets), for politicians to act, or for people generally to stop eating fish, particularly farmed fish.

The site was evidently moderated as shown by a post published on 15 June 2012 [13:03], which read “*We have deleted a number of comments that are either pro-seal killer or pro-violence against people. Some posters have been banned as clear trouble makers. We operate a zero tolerance policy of moderation on this page, we have a single purpose and that is to unite those people who wish to end the Scottish Seal Cull by legal and peaceful means. Please support us in this aim or otherwise refrain from posting.*”

This suggests that violent intentions had been expressed at some point but there is no evidence that they were so specific as to have resulted in action being taken as a consequence.

The following are also noteworthy: the person who posted the comment appeared to be already aware of the detailed circumstances of the shooting, and the reactions were in relation to a past event and would have occurred whether the actual location of the shooting was known or not.

- (ii) The second link was to a Scotsman article from 2006 about a seal shooting<sup>3</sup>. It contained a quote from a person who shot a seal under licence, who stated he had: “*... received more than 600 hate e-mails over the past few days and that his office had been inundated with people phoning to complain and abuse him, while one man had spat at him in the street.*”

<sup>2</sup> <https://www.facebook.com/SealScotland/posts/187233768071314>

<sup>3</sup> <http://www.scotsman.com/news/scottish-news/top-stories/hate-mail-after-sammy-the-seal-shot-1-1116758>



The issue on which the Commissioner has focussed in relation to this article is whether it supports the argument that knowing the location of seal shootings is likely to put the safety of person who shot the seal in danger as a consequence. She has not formed a general view of the acceptability or otherwise of the behaviour of those acting in this way.

The article does not in itself give details of direct violent threats to the individual. No evidence from the person involved was sent with the Ministers' submission that demonstrated violent intent. As with the previous example, details were known about the shooting.

The Commissioner appreciates fully that the matter reported on was distressing for the individual. She also accepts that in this case the mail received by the individual was as a result of it becoming known that he shot a seal. The Commissioner does not accept that this is evidence that disclosing number of seals shot by site will lead to repeat events.

It is important to note that locations of farms are already known, which organisations have licences to shoot are already known and the fact that seals are shot, and the total number by farm, is already known. Disclosing retrospective information about locations is unlikely to add a level of detail that provides much more than corroboration for what is known.

#### **Evidence to support 8(ii) above – action taken as a result of threats**

14. No reasoning or supporting evidence was provided in relation to this issue so it is not known whether threats have resulted in a change of practice in relation to security, staff training or guidance to staff.

#### **Evidence to support 8(iii) above – police action**

15. Evidence provided by Ministers, Tayside Police and Grampian Police<sup>4</sup> confirmed that:
- (i) A threat was made by postcard to an individual, but no action was taken and no further threats received.
  - (ii) In May 2012 a 'seal shooter' was challenged and a threat to forcibly remove his rifle made by an individual.

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<sup>4</sup> Both Tayside Police and Grampian Police have been superseded by the Police Service of Scotland.



16. The Commissioner accepts that these two incidents support the claim that seal shooters are challenged because of their jobs and that a risk exists. She notes that in the first example no action was taken even though both parties were known to the police. In the second example, the threatened action was focused on protecting the seal by removing the rifle, not to cause physical harm to the rifleman. While it is entirely possible that the rifleman may have been harmed, this incident occurred irrespective of knowledge of the site of shootings being published and there is no evidence to support it being part of a sustained or systematic approach by anti-seal shooting individuals or groups.

#### **Evidence to support 8(iv) above – examples from similar operations/ other countries**

17. Ministers provided a link to a 2005 posting about a Newfoundland fisherman<sup>5</sup>. It explained that police were investigating death threats received by the fisherman and his family after he was photographed in a confrontation with a seal-hunt. The photo showed the fisherman raising a hakapik – a tool used to kill seals – over a cameraman during the hunt off the shores of the Magdalen Islands, Canada.
18. The Commissioner accepts this was a real threat that was the result of animal rights protesters clashing with a seal fisherman during a hunt. It demonstrates the strength of feeling about such hunts. The Commissioner does not accept that it presents overwhelming evidence that, either in isolation or in conjunction with the other evidence provided (including that relating to the original decision), it demonstrates a clear link between the information in question in this case and threats. While both situations concern seals one is about a seal hunt, culling on a large scale, while the other is in relation to individual seals, in specific locations, shot under licence.

## **Conclusions**

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19. The Commissioner has considered carefully the arguments put forward by the Scottish Ministers that Decision 193/2012 should not be enforced. On balance, her conclusion is that the supporting arguments about public safety, even in addition to the arguments she originally considered in relation to disclosure, do not demonstrate that disclosure of the information would, or would be likely to, prejudice substantially public safety (regulation 10(5)(a) of the EIRs). She has therefore concluded that the decision should be enforced.
20. This conclusion was not reached lightly. The Commissioner recognises there is a risk but the evidence does not provide a compelling argument that the threats are any more likely to occur or be acted upon because of the information being disclosed. Those that made them are aware of the details of shooting of seals and by whom. There is already considerable information in the public domain about the shooting seals and who holds licences.

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<sup>5</sup> <http://www.ign.com/boards/threads/seal-hunt-update-police-investigate-death-threats-against-sealer.250256498/>



Retrospective information is unlikely provide sufficient detail for threats to be the result of targeted action. Withholding it will not stop events such as have already been reported.

21. Therefore the Commissioner has decided that the decision will be enforced and orders the Scottish Ministers to disclose the requested information to GAAIA by **Tuesday 7 May 2013**.

**Rosemary Agnew**  
**Scottish Information Commissioner**  
**23 April 2013**