

29 November 2013

The Directors
Spatial Fusion Limited
12 Three Mile Bush Road
Kamo
Whangarei 0112

And by email: fyi-request-1228-e6f9c509@requests.fyi.org.nz

Dear Derryn and Nicholas Williamson

OFFICIAL INFORMATION ACT REQUEST – APIARY REGISTRY

1. We act for the National Beekeepers' Association of New Zealand Incorporated in its capacity as management agency for the National American Foulbrood Pest Management Plan ("the Association").
2. We write pursuant to your Company's official information request dated 19 October 2013, which was transferred by the Ministry for Primary Industries ("MPI") to the Association on 12 November 2013. We **enclose** copies of your Company's request and correspondence between MPI and the Association for your reference.
3. The Association refuses your Company's request under Sections 5, 9, 15 and 18 of the Official Information Act 1982 ("the OIA").
4. The reasons for the Association's refusal are that, in the Association's view:
 - a. It is necessary to withhold the information to protect the commercial, confidential and privacy interests recorded in Section 9(2)(b), (ba) and (a) respectively; and
 - b. Those interests are not outweighed by other considerations which render it desirable, in the public interest, to make the information available (Section 9(1)).
5. We elaborate on these reasons as recorded below.

Trade Secrets and Commercial Information

6. Section 9(2)(b) applies if the withholding of information is necessary to:

"Protect information where the making available of the information–

 - (i) would disclose a trade secret; or
 - (ii) would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information".

7. The Association considers that the location of registered apiaries is a trade secret. Normally, the beekeeper to whom an apiary belongs and the owner or occupier of the land where the apiary is situated will be the only people who have knowledge of the apiary's location.
8. The Association also considers that revealing the location of registered apiaries will unreasonably prejudice the commercial position of the beekeepers who own those apiaries. Beekeepers conduct commercial enterprises with a motive towards profit. The location of apiaries is commercially sensitive information, as it is directly linked with the availability of floral resources and the opportunity to make such profit. Revealing the location of apiaries to the public at large would make it possible for anyone and everyone to compete against beekeepers for those resources and profits. This will cause a serious, real, substantial and unreasonable risk to beekeepers' interests.

Confidentiality and Freezing Effect

9. Section 9(2)(ba) applies if the withholding of information is necessary to:

“Protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information–

 - (i) would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied”.
10. “Enactment”, for the purposes of the above provision, is collectively defined by Section 2 of the OIA and Section 4 of the Legislation Act 2012 to include legislative instruments made by Order in Council such as the Biosecurity (National American Foulbrood Pest Management Plan) Order 1998 (“the Plan”).
11. Under clauses 15, 17, 23 and 27 of the Plan, all beekeepers must notify the Association of their apiaries and the locations of the same, which details are recorded by the Association in the Register of Apiaries.
12. Although the Plan imposes legal obligations on beekeepers, in practical terms the Association relies on beekeepers to voluntarily supply the required information.
13. In view of the commercial sensitivity of the location of apiaries as recorded at paragraphs 7 and 8 above, the Association considers there is a serious, real, substantial and unreasonable risk that disclosure of the location of apiaries would prejudice the supply of information from beekeepers in the future. In other words, beekeepers are likely to ignore their obligations under the Plan in order to maintain their commercial position.
14. The Association considers it is in the public interest for information relating to apiaries to continue to be supplied by beekeepers. The ultimate objective of the Association under the Plan is to eliminate American foulbrood disease in New Zealand. It is in the public interest that this objective be attained. American foulbrood disease is harmful to the bee population. The bee population is responsible for, or indirectly associated with, the creation of many primary products. The bee population also plays a fundamental role in the overall ecosystem.
15. Cooperation and continued supply of information from beekeepers is paramount to enable the Authority to discharge its functions effectively (namely, to regularly inspect all registered apiaries throughout New Zealand in order to identify, manage and eliminate cases of American foulbrood disease amongst bees).

Personal Privacy

16. Section 9(2)(a) applies if the withholding of information is necessary to “protect the privacy of natural persons”.
17. The Association has obligations to beekeepers under the Privacy Act 1993. Under principle 11 of the Privacy Act, the Association must not disclose any “personal information” about beekeepers. “Personal information” is defined in the Privacy Act and the OIA as being information about an identifiable person or individual.
18. The Association considers that the location of registered apiaries:
 - a. Can lead to the identification of the beekeepers who own those apiaries;
 - b. Can therefore be considered to be information about identifiable individuals; and
 - c. Will therefore be personal information that is protected by the Privacy Act and that may be withheld under the OIA.
19. Although the location of apiaries would not in itself reveal very much about the beekeepers who own those apiaries, the Association considers it is nonetheless necessary to withhold that information to protect the privacy of beekeepers, given:
 - a. The circumstances in which the information came to be held by the Association (namely obligatory supply by beekeepers under the Plan for the purposes of eliminating American foulbrood disease); and
 - b. The fact that, in the Association’s view, beekeepers would be extremely unlikely to consent to the disclosure of the information.

Public Interest Balancing Test

20. The Association has reflected on whether there are public interest considerations that favour disclosure of the information requested. The Association has not identified any such considerations, aside from the general benefit in government transparency and availability of official information.
21. The Association has therefore concluded that the commercial, confidential and privacy interests recorded at paragraphs 6 to 19 above are not outweighed by other considerations which render it desirable, in the public interest, to make the requested information available.

Investigation by the Ombudsman

22. Your Company has the right under Section 28 of the OIA to seek an investigation and review by the Ombudsman of the Association’s decision to refuse your Company’s request. The Ombudsman’s contact details are as follows:

Office of the Ombudsman
PO Box 10152
Wellington 6143

Fax : 04 471 2254
Telephone : 0800 802 602

Yours faithfully
ARL LAWYERS

BEN SHEEHAN
Partner

Email: ben.sheehan@arl-lawyers.co.nz

MVH:JMP:132631_003

Rex Baynes

From: Anne Wietheger [Anne.Wietheger@mpi.govt.nz]
Sent: Tuesday, 12 November 2013 3:44 p.m.
To:
Cc: Kate Hellstrom
Subject: OIA13-190 transfer
Attachments: OIA13-190 transfer letter Rex Baynes.pdf; OIA13-190 transfer letter Spatial Fusion.pdf; OIA13-190 request.pdf

COPY

Dear Rex Baynes

Please find attached a letter regarding the transfer of an OIA request received by MPI from Spatial Fusion on 19 October.

Regards

Anne Wietheger | Ministerial Coordinator

Ministerial & Business Support | Office of the Director-General

Ministry for Primary Industries - Manatū Ahu Matua | Pastoral House 25 The Terrace | PO Box 2526 | Wellington 6140

Telephone: (04) 894 0012 | Web: www.mpi.govt.nz

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OIA13-190

COPY

Rex Baynes
Strategy Manager
National American Foulbrood Pest Management Strategy
National Beekeepers' Association Ltd

Dear Rex Baynes

TRANSFER OF OFFICIAL INFORMATION REQUEST

I attach the following:

- A request for official information from Spatial Fusion Ltd dated 19 October 2013.
- Our letter to Spatial Fusion Ltd dated 11 November notifying Spatial Fusion Ltd that the request is being transferred to you for response.

This letter serves as a formal transfer of this request under section 14 of the Official Information Act 1982.

Yours sincerely

Karen Adair
Director Biosecurity Food and Animal Welfare

COPY

Samantha Imber

From: Spatial Fusion Ltd [fyi-request-1228-e6f9c509@requests.fyi.org.nz]
Sent: Saturday, 19 October 2013 9:23 a.m.
To: Ministerials
Subject: Official Information Act request - Apiarie Registry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: OIAs

No.	OIA13-190
Date Received in MPI	
19 OCT 2013	
Branch	C + R
Date Due	18 Nov

Dear Ministry for Primary Industries,

Can you please provide a list of all registered apiaries with their geo-locational information (preferably with geospatial coordinates or property address) as required by the National Pest Management Strategy under the Biosecurity Act 1993 in either xls or csv file format.

We don't require any personal, ownership, or other commercially sensitive information.

Yours faithfully,

Spatial Fusion Ltd

This is an OIA request done via the FYI website.

Please do not send progress updates as PDF files.

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