

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 13 March 2014

Public Authority: Department for Environment, Food and Rural Affairs (Defra)

Address: Area 4D, Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested information relating to a pilot badger cull. Defra provided the complainant with some of the requested information but redacted some information under regulation 12(5)(a) and 12(5)(g) of the Environmental Information Regulations 2004 (EIR).
2. The Commissioner's decision is that Defra correctly applied regulation 12(5)(a) EIR to redact the names of the companies involved in the pilot badger cull however it was incorrect to apply regulation 12(5)(a) and 12(5)(g) EIR to make the other redactions.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Defra should now disclose the redacted information apart from the names of the companies involved in the badger cull.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 8 September 2013 the complainant requested information of the following description:

"Please provide me with information as requested below, regarding the current pilot badger cull programme.

1. Please confirm the anticipated cost to the public purse of the current pilot cull programmes.

2. Please confirm whether a cost benefit analysis been carried out in respect of the badger cull pilot. If so, please provide me with a copy.

3. If such a cost benefit analysis was undertaken, please confirm what nominal value was placed on the life of a badger and the rationale for arriving at any such figure.

4. Please confirm which other wild and domestic species carry bovine TB.

5. Please confirm which of these vectors, apart from badgers, contribute to the incidence of bovine TB in cattle. Please outline the relative significance of these vectors in terms of contributing to the spread of the disease to cattle, i.e. species x accounts for x% of cattle bTB infections.

6. Please outline your plans to address the incidence of bTB in another species apart from badgers.

7. Please explain how you will ensure that the UK remains within its obligations under Article 9 of the Bern Convention in respect of the impact of culling a minimum of 2856 badgers in the Gloucestershire cull zone from a population estimated with an 80% confidence level at 2657-4079 animals, given that estimates of badger populations calculated at 15 October 2012, also with an 80% confidence level, subsequently proved incorrect.

8. Your policy on badger culling, as posted on the Defra website, states that, "The scientific evidence shows conclusively that badgers contribute significantly to bovine TB in cattle. This evidence comes from the randomised badger culling trial." The covering letter from Professor John Bourne accompanying the final report of the independent scientific group on Bovine TB contradicts this, and states, "First, while badgers are clearly a source of cattle TB, careful evaluation of our own and others' data indicates that badger culling can make no meaningful contribution to cattle TB control in Britain." Please explain this contradiction.

9. Please define the criteria by which you will determine whether the pilot cull has been effective.
10. Please confirm what proportion of badger carcasses will be examined to determine whether these have been humanely killed.
11. Please confirm who selects the carcasses submitted for these examinations.
12. Please define the criteria which constitute a humane killing.
13. Please define the criteria by which you will determine whether any subsequent national or regional culling programme has been effective."
6. On 27 October 2013, Defra responded. It provided the complainant with some information in response to the requests, or explained where it was already publicly available. It redacted some information from a protocol which was provided to the complainant under regulation 12(5)(a) and 12(5)(g) EIR.
7. The complainant requested an internal review and at the time of complaint he was still awaiting the outcome of this review.
8. Defra provided the internal review on 21 January 2014. It explained that the information that had been redacted in this case was the same as that redacted in case reference FER0483676 in relation to which the Commissioner issued a Decision Notice which is now the subject of an appeal to the First Tier Tribunal. However it explained that there is a firm intention to release the protocol as part of a package with the official report, the Independent Panel report and the auditors' report. It said that the release date will be early this year (in February or March 2014), so it expected to be able to release this information within the next few weeks.

Scope of the case

9. The complainant contacted the Commissioner on 2 December 2013 to complain about the way his request for information had been handled.
10. The Commissioner has considered whether Defra was correct to make redactions to the report under regulations 12(5)(a) and 12(5)(g) EIR. He has also considered whether Defra responded within the relevant time limits set by the EIR.

Reasons for decision

Regulation 12(5)(a) and 12(5)(g) EIR

11. Regulation 12(5) of EIR states that, for the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – (a) international relations, defence, national security or public safety and (g) the protection of the environment to which the information relates.
12. Defra has explained that the information withheld in this case is the same as that which was withheld under case reference FER0483676. It confirmed that the situation surrounding this information had changed. It confirmed that it expects the Humaneness Protocols document, which includes the information the complainant requested, to be published in February or March 2014.
13. Due to the reasons given under case reference FER0483676¹, the Commissioner considers that Defra was incorrect to make the redactions to the information under regulation 12(5)(a) and 12(5)(g) EIR. He does not consider Defra has added any further arguments in this case to change his view that disclosure would not have the adverse affect claimed.
14. However in case reference FER0483676 the Commissioner did not consider whether or not the redactions had been correctly made to the identities of the companies who select the carcasses submitted for examination (point 11 of the request).
15. In case reference FER0483676 Defra has argued that disclosure of the way in which carcasses will be selected could risk disclosing the numbers of shooters involved, and could lead to the identification of sites and the shooters themselves.
16. In that case the complainant accepted that the identity of the organisations involved in the pilot badger cull could not be disclosed under EIR. The redacted identities contained in the report were not therefore considered. As stated above the Commissioner rejected Defra's arguments in relation to the other redacted information which contains more detail about how carcasses will be selected and the information relating to humaneness.

¹ http://ico.org.uk/~media/documents/decisionnotices/2013/fer_0483676.ashx

17. The Commissioner does however consider that disclosure of the names of the organisations involved in this process, whilst the badger cull was live, would adversely affect public safety.
18. The Commissioner interprets the wording of 'would adversely affect' in regulation 12(5) to set a relatively high threshold in terms of likelihood which has to be met in order for any of the 12(5) exceptions to be engaged. In other words it is not sufficient that disclosure may or could have some level of adverse effect, but rather that disclosure 'would' have an adverse effect. In the ICO's opinion this means that the likelihood of an adverse effect must be more substantial than remote.
19. Due to the strong opinions and debate surrounding this sensitive issue, the Commissioner considers that disclosure of the names of the companies involved whilst the cull was ongoing would have had an adverse effect on public safety, in that those companies and therefore individuals working for those companies would have become targeted directly by campaign groups and protesters.
20. As the Commissioner considers that regulation 12(5)(a) EIR was applied correctly to the identity of the organisations involved, he has gone on to consider the public interest test.

Public interest in favour of disclosure

21. There is a public interest in disclosure of information, including the identity of companies involved in the badger cull, as there is strong public opinion and significant public debate surrounding this issue. Due to the sensitive nature of the information requested the Commissioner considers that there is greater importance of openness, transparency and accountability.

Public interest in favour of maintaining the exception

22. The Commissioner considers that there is a strong public interest in not disclosing information which would have an adverse effect upon public safety, in this case the individuals employed by the companies involved in the badger cull. This is particularly so whilst the badger cull was ongoing.

Balance of the public interest

23. At the time of the request the badger cull was ongoing and therefore there was a very strong public interest in protecting public safety and in

particular the individuals working for the companies involved in this process. Whilst the nature of the information requested is very sensitive and therefore openness and accountability are acutely important, as the culls were ongoing, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.

Regulation 5(2)

24. Regulation 5(2) states that, "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
25. In this case Defra has not provided the information requested within 20 working days of the request being made. It therefore breached regulation 5(2) EIR in relation to all of the redacted information apart from the identities of the companies involved in the cull.

Regulation 11(4)

26. Regulation 11(4) sets out that when a complainant requests an internal review, this must be provided within 40 working days of that request.
27. In this case the complainant requested an internal review on 13 November 2013. As the internal review was not provided until 21 January 2014, Defra breached regulation 11(4) EIR.

Right of appeal

28. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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