

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 June 2020

Public Authority: Natural England
Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Decision (including any steps ordered)

1. The complainant has requested information from Natural England ("NE") concerning whether corvid or other bird or mammal species control licences had been granted by the public authority for certain named geographical locations. Natural England provided copies of all lethal individual licences (including supporting documentation) issued to these areas during 2019 but refused to provide identifying location information, citing regulation 12(5)(a) (public safety) and regulation 12(3) personal information.
2. The Commissioner's decision is that NE has correctly applied the exception at regulation 12(5)(a) and that the public interest favours maintaining the exception and withholding the requested information. She has also decided that Natural England has disclosed all the relevant information it holds and complied with regulation 5(1) but some of it was provided outside the time frame and therefore it breached regulation 5(2).
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 12 June 2019 the complainant made the following request for information under the EIR:

"In light of recent changes to the General Licences associated with the Wildlife and Countryside Act I would like to clarify if individual licences for control (including lethal control/killing using traps or guns) of corvids or other bird or mammal species have been granted at the following grouse shooting estates in the Peak District, which I have identified by Agri Environment scheme numbers:

Hurst & Chunal - Agreement ref AG00396772

Moscar - Agreement ref AG00409466

Fitzwilliam (Wentworth - Bradfield Moor on Magic) - Agreement ref AG00414069

Broomhead - Agreement ref AG00395575

Midhope (Wakefield Farms - Midhope Moor on Magic) - Agreement ref - AG00444068

Lady Cross - Agreement ref AG00439442

If any licenses have been granted please give full details of the license."

5. NE responded on 10 July 2019 and provided redacted copies of all lethal individual licences (including supporting documentation) issued to these areas during 2019 but refused to provide identifying site details, applying the following for the information it had withheld – regulation 12(5)(a) – (public safety) and regulation 12(3) (personal information).
6. On 17 July 2019 the complainant requested an internal review. The complainant accepted the withholding of personal information but not the citing of regulation 12(5)(a) regarding the location details.
7. NE provided an internal review on 9 September 2019 in which it maintained its original position regarding the withholding of information under regulation 12(5)(a), though the complainant did not receive it. The review was resent on 25 September 2019 attached to the original emailed response.

Scope of the case

8. The complainant contacted the Commissioner on 18 October 2019 to complain about the way his request for information had been handled. He was not content with the redactions for specific location and questioned whether Natural England had provided what it held, in any case.
9. The Commissioner subsequently wrote to Natural England concerning its citing of regulation 12(5)(a) and asked what searches it had carried out to determine that it held nothing further that would fall within the scope of the request.
10. The Commissioner considers the scope of this case to be Natural England's citing of regulation 12(5)(a) and also to determine whether any further information is held in relation to the request.

Reasons for decision

Regulation 5 – Duty to make environmental information available on request

11. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. The Commissioner asked a series of questions to try and establish what searches had been carried out and whether there was any information held that had not been provided to the complainant.
14. NE explained that when a request comes in asking for information relating to either specific sites and/or whether licences have been issued it routinely searches all the systems that would identify what it holds. These systems include RM8 (its licencing record management system), the spreadsheet trackers, CWM (its casework management system) and TRIM (NE's corporate records management system). In addition to these methods NE also search, if appropriate, its Magic

Mapping website to locate any licences. The searches were undertaken for licences issued to the estates/areas identified by the complainant using the agri-reference number where it was applicable, utilising the Magic Mapping site as a reference.

15. These searches were carried out at the time and again later in June 2020, after the Commissioner sent her investigation letter. They were undertaken by the licensing team. They searched their tracking and licensing systems in order to identify any licences issued at the named sites. The records are held electronically and any paper licences are scanned onto the electronic filing system. No information relating to the request had been deleted or destroyed and the licence information is held for seven years from its expiry date in line with NE's retention schedule. There is a business purpose for holding this information as it is held to ensure NE's statutory duty regarding the monitoring of the current licences and for any future licences for both the site and the licensee.
16. During the course of conducting a second search, an additional licence was located. This general licence is different from the others provided to the complainant which are class licences and it had not been put on the system at the time the initial searches were made. A redacted version was immediately provided to the requester.
17. On the balance of probability, the Commissioner is satisfied that NE has now carried out thorough searches and located all the relevant information.

Regulation 12(5)(a) – international relations, defence, national security or public safety

18. Regulation 12(5) states:

'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'.

19. NE cited public safety as its reason for withholding the requested information setting out in its refusal notice that the release of these details would impact adversely upon the protection of the individuals, public buildings, and the health and safety of the individuals at the site.
20. The Commissioner has had sight of the information that was withheld from the complainant.

21. The complainant argues that all wild birds are protected by the Wildlife and Countryside Act 1981. In order to control "pest" species NE issues general licences for lethal control (killing) of listed species. Following a legal challenge by Wild Justice, NE revoked general licences for killing wild birds on 25 April 2019 because, he states, it was shown that the licences were unlawful, particularly on European Conservation sites designated as Special Protected Areas for birds and Special Areas of Conservation for habitat. Wild birds can still be killed in these protected areas but only if an individual licence has been issued and these individual licences must themselves be lawful.
22. He wrote to NE requesting details of individual licences for lethal control of corvids (crow family) and other species, covering six grouse shooting estates in the Peak District including a particular named estate. He explained that these estates mainly consist of special protected areas for birds and therefore require an individual licence under current legislation. The complainant required this information because crows and other corvids have been routinely killed on these estates over the years, under general licence, but this would now be illegal and an individual licence is needed.
23. The complainant explained that NE had replied with details of "all" individual licences issued – this was just one licence for lethal control of 15 gulls at an undisclosed estate. NE's response meant that no licences had been issued for the lethal control of corvids. He then read an EIR response which mentioned a licence issued in May 2019 to the named estate for the lethal control of corvids.
24. He contacted NE to give them the opportunity to correct their mistake and send him details of this and any other corvid control licences. The complainant states that NE has refused to acknowledge that any corvid control licences have been issued or supply any details. He believes that this is a deliberate act and an attempt at a cover up because the corvid control licences they issued may well be unlawful. He argues that this would be the case if the licence allowed unrestricted numbers of birds to be killed and/or species such as jay to be killed, given that there is no scientific evidence that jays are harmful on grouse moors.
25. The complainant put forward the view that NE may have deliberately hidden information because it might be embarrassing or illegal and that he expected the Commissioner to look into this matter. At the time he argued that the licence would expire on 31 December 2019 so if details are made public after this date there could be no concerns about public safety.
26. His primary aim was to know if illegal activity was taking place on a grouse moor. NE agreed that it did not want to see unlicensed activity

and told the complainant that he could ring up to find out if a licence was in force. He was subsequently unable to elicit a phone response and received no response to his email. He is discontented with what he sees as NE's refusal to abide by its own procedures and a failure to provide the public with information in accordance with the EIR legislation. His view is that NE should have a system in place in order that members of the public can find out if the killing of wild birds is being carried out lawfully.

27. The public authority argues that if this information was released it would pose a risk to public safety. NE stated that it is the regulator responsible for granting licences allowing activities that would otherwise be illegal. NE explained that the issuing of lethal control or 'take from the wild' licences is a highly sensitive and controversial issue and it provokes considerable public interest and debate, much of it online and on social media.
28. NE further explained that when details of these licences enter into the public domain there is usually a strong reaction to them from both sides, those in favour of lethal control licences and those against. These same details are subsequently blogged about which frequently triggers online comments and emails to NE. Examples of such blogs were included to provide the Commissioner with an indication of the strength of feeling that the subject creates. These blogs gather their information from requests made to NE under the EIR. The management of problems caused by wild birds, even non-lethal options, reported in the media is an emotive and sensitive issue which has resulted in comments and/or communications that are verbally aggressive and could be viewed as threatening to both the staff who handle or process the licences and the individuals who are issued with them and this has been consistently so for the last seven years.
29. More specifically, NE gave an example of the responses it had received for just one lethal control licence it had issued relating to buzzards that was placed in the public domain. The comments NE were sent were aimed at the applicant and also NE's licensing staff. NE states that there were also comments of a more aggressive nature posted on social media which makes it clear that to name applicants would put them at direct threat of verbal and/or physical abuse.
30. The reason NE withholds site details when a licence is issued is that it will almost always identify the person who has been issued with the licence as it is nearly always on their land. An individual only needs to check the land registry to identify who owns that land. NE contends that it would also provide the opportunity to name the site publicly on the internet and encourage activists to protest in the area. NE says that this has happened where there is just an assumption that land licences have been issued for example during the cull on badgers. As

such, NE argues that there is a high likelihood that, should a site be named, both the landowner and the site will experience protests whether that is via communications or physical protests.

31. The Commissioner accepts that the exception is engaged regarding the licence holder. Although nearly all the examples of communications that NE provided from members of the public to NE were strongly expressed they did not contain overt threats. Nonetheless there are individuals or groups who pose a risk that cannot be quantified. She considers that there would be a risk of hurt or injury to the licence holder whose identity would be relatively easy to find, and potentially to other individuals at the site. The adverse effect with regard to the licence holder is sufficient to engage the exception.

Public interest test

32. Although the exception is engaged, the Commissioner must consider whether the public interest lies in withholding or disclosing the requested information.

Public interest in disclosing the information

33. The complainant's view is that he has the right to know whether illegal activity is being conducted on land and whether individual licences have been issued. He does not believe that NE has a system in place so that members of the public can find out if the killing of wild birds is being carried out lawfully.
34. His view is that the police do not have the resources to investigate illegal wildlife activity and that they will only do so if given evidence.
35. NE maintained that it believes in openness and transparency and that the public does have the right to know that licences have been applied for, issued or refused. This does not extend to providing the location of the sites, given the possible threat to those locations and those involved if that information is released.

Public interest in maintaining the exception

36. NE considered the complainant's view that without site information he would be unable to 'police' activity relating to lethal control licences. NE disagree with his reasons for releasing the requested information on public safety grounds. Release under the EIR is release to the world at large. NE has no reason to think that the complainant would go to these sites and object but it cannot assume that any other individual/s who had knowledge of the specific sites where the activity

was taking place, would not. NE cannot control the information once it is in the public domain and it argues that it is not in the public interest nor in the interests of the licensees to provide information that puts individuals at risk of harassment.

37. NE strongly believes that from experience based on the reaction that has ensued from lethal control licences being issued, the release of this information into the public domain could impact adversely upon the people who have applied for the licence. NE does not believe that it is in the public interest as a public body not to fulfil its duty to safeguard people who have legitimately applied for, fully met the criteria, and subsequently received licences. Moreover, NE considers that there is little additional public interest in knowing the locations, aside from giving individuals/groups the opportunity to target the sites or persons for the purposes of objection. Though there is a public right to object, that right has to be balanced against issues of security and safety of the personnel involved.
38. NE also expressed the view that the complainant's right to know if a crime has been committed at a given location where it is in the public interest to stop unlicensed illegal activity taking place, should be referred to the police. An individual can report an offence to the local Wildlife Crime Officer. Crimes against species (e.g. killing or taking from the wild) is an offence under the Wildlife and Countryside Act 1981 and this is enforced by the police, not NE. The individual responsibilities of each body and how they assist each other is made clear in the memorandum of understanding NE has with the police.
39. NE strongly believes it is not in the public interest for any individual to decide to police any crime especially when there is a clear procedure in place to report a suspected offence. All that is required is to provide evidence of what has been witnessed and to report this to the police. It is then the responsibility of the police force and their wildlife crime officers to contact NE to identify if what was seen was undertaken legally under licence. NE suggests that the fact that the complainant does not feel that his local police are responding appropriately is an issue that should be taken up with the police and is not a reason to jeopardise the safety of individuals who have legitimately acquired licences.

Balance of the public interest

40. The Commissioner has considered the blogs and emails she was provided with by NE. The majority of these views are keenly felt, and often critical both of NE staff and licence holders. The subject matter is emotive and individuals feel strongly about birds and wildlife in general and are entitled to express their views in the media and to

NE. There is an argument that there should be transparency over the issuing of these licences in order that they can be challenged but the Commissioner agrees with NE that disclosing the location is unlikely to be in the public interest because of the adverse risk. This is not, in any case, the complainant's argument. He stated in his review request that he did not want to make an objection but wished to identify where a crime may have been committed.

41. The Commissioner has no reason to doubt that the complainant wishes to know where the licence holders are located so that he can unofficially check if illegal activity is being carried out. However, although the police may be unable to devote sufficient resources to detecting wildlife crime, they are the body tasked to do so. The release of this information could also place it into the hands of individuals who might then use it to object forcibly, causing physical harm or harassment. Despite the fact that the majority of people would exercise their rights peacefully, the Commissioner agrees with the public authority that releasing the information could identify individuals who might then be targeted which is not in the public interest. Therefore her decision is that the requested information has been appropriately withheld.

Regulation 5(2) of the EIR – Time to respond

42. 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."

43. In this case, some information was located 12 months after the original request which is clearly in breach of the 20 working day time limit set out in the EIR.

Right of appeal

44. 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: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

45. 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.
46. 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

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