

Environment Information Regulations 2004 (EIR)

Decision notice

Date: 20 December 2022

Public Authority: Natural England
Address: Foss House
Kings Pool
1-2 Peasholme Green
York
YO1 7PX

Decision (including any steps ordered)

1. The complainant has requested information from Natural England in relation to badger disease control licences for 2021. Natural England provided some information in relation to the request, but explained the remaining information was withheld under section 12(5)(a) of the EIR – public safety.
2. The Commissioner's decision is that Natural England has correctly applied regulation 12(5)(a) of the EIR to withhold the information.
3. The Commissioner does not require Natural England to take any steps as a result of this decision notice.

Request and response

4. On 29 September 2021, the complainant wrote to Natural England and requested information in the following terms:

"1. a) In relation to Cull Areas 55 – 61 inclusive, please disclose the number of participants in each Cull Area which had their farms or holdings visited by Natural England staff, before 27 August 2021, for the purpose of assessing compliance with biosecurity requirements.

b) Please provide the date of each biosecurity monitoring visit for each Cull Area.

2. a) Please disclose Natural England's guidance to applicants for a badger disease control licence in 2021, which explained the process for making a licence application and the relevant timelines from application to the granting of the licence. Please provide the relevant document or documents.

b) Please disclose whether, according to this guidance, an application would not be permitted to progress to the next stage if the requisite information was not provided by a deadline, and would be treated as withdrawn.

c) Please disclose all of the versions of this guidance for the years 2018 to 2021 inclusive.

3. In relation to applications for a badger disease control licence in 2021, Natural England has disclosed that it received cost estimates for a four-year licence and evidence of sufficient funds to meet the costs of a four-year licence.

For each of the Cull Areas 55 – 61 inclusive, please disclose whether the a) cost estimate for a four-year licence, or b) evidence of sufficient funds to meet the costs of a four-year licence fell within the following parameters:

i) Below £100,000

ii) Between £100,000 and £150,000

iii) Above £150,000 Thank you for your assistance in this matter."

5. Natural England responded on 24 November 2021. It provided some information within the scope of the request, but refused to provide the remainder, citing regulation 12(5)(a) of the EIR – public safety. Natural England provided the complainant with some documents; however, some information was redacted. It also withheld an entire document, advising both this and the redactions made on the other documents are withheld under regulation 12(5)(a).

6. Following an internal review Natural England wrote to the complainant 18 February 2022. It provided some amended information in relation to part 1 of the request, as there had been a typing error in the original response, which meant an incorrect figure had originally been provided. In part 2 of the request, it maintained its original response but provided a more detailed explanation as to why regulation 12(5)(a) applied. For part 3 of the request, Natural England explained that it had originally

interpreted the request incorrectly and that upon further review, some more information could be provided.

Scope of the case

7. The complainant contacted the Commissioner on 20 February 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of the investigation to be to establish whether Natural England is entitled to withhold the outstanding information under regulation 12(5)(a) of the EIR.

Reasons for decision

Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are

or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)

10. The requested information relates to badger disease and culling. This is clearly an environmental measure that will affect the state of the elements of the environment referred to in (a) and therefore falls under regulation 2(1)(c) of the EIR.

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

11. Regulation 12(5)(a) allows a public authority to refuse to disclose information if its disclosure would adversely affect –
 - (a) international relations, defence, national security, or public safety’.
12. Natural England argues that disclosing the withheld information would adversely affect public safety.
13. To demonstrate that disclosing the information would harm one of the interests in 12(5)(a), Natural England needs to:
 - a) identify a negative consequence (adverse effect) of the disclosure that is significant (more than trivial) and is relevant to the exception claimed;
 - b) show a link between the disclosure and the negative consequence, explaining how one thing would cause the other;
 - c) show that the harm is more likely than not to happen.
14. When considering whether an exception is engaged the Commissioner's approach is to consider what harm would occur if the information were placed in the public domain and freely accessible to all. The question, therefore, is whether making the information freely accessible to anyone and everyone would cause that harm.
15. To support its arguments, Natural England has provided the Commissioner with the withheld information. This included all the documents unredacted and a copy of the document that has been withheld in its entirety.

The complainant’s arguments

16. The complainant has provided several arguments to the Commissioner, all of which have been considered, however, due to the length of the supporting arguments, the Commissioner has briefly summarised these points.

17. The complainant has argued that the exception is not engaged as Natural England did not explain how the adverse effects would (more likely than not) occur by disclosing the redacted information..
18. The complainant explained that they do not believe that Natural England applied a presumption in favour of disclosure in engaging the exception, as it did not point to any clear evidence that disclosure would have an adverse effect.
19. The complainant has also argued that other similar information has been previously provided to them under different requests for information and that it has not demonstrated that there has been an adverse effect on public safety in relation to the disclosure of this information.
20. The complainant has explained that there is evidence which suggests that since the early years of the badger culls, Natural England has made it easier for applicants to apply for badger disease control licenses and have them authorised.
21. The complainant has also advised that the badger culls are a matter of considerable public interest and are of national environmental significance.

Natural England's arguments

22. Natural England has argued that if the information were put into the public domain, it would have an adverse effect on public safety. It explained that this would not only be in response of the personal details of participants , but for others associated with the badger culling process, some of whom may not be aware that they are associated with it.
23. Natural England advised that IT systems are vulnerable to hacking attacks and to name the systems and storage platforms used would leave them vulnerable to such attacks.
24. Natural England provided unredacted copies of the withheld information to the Commissioner to support its arguments.
25. Natural England has provided examples to the Commissioner of incidents that have taken place as a result of security breaches in relation to badger culling.
26. Natural England has also provided arguments for withholding the entire document titled "Signing up National Nature Reserve guidance". It has explained that there would be an adverse effect on public safety by releasing the guidance.

27. Natural England has advised that the withheld information could be used by individuals in an attempt to target both internal staff members/teams and external organisations that manage National Nature Reserves but do not have any direct involvement in licensed badger control. They could be targeted for the purpose of protest/objection. It went on to argue that for the guidance to be released, it had the potential to endanger private property, public buildings and the health and safety of individuals.
28. Natural England has explained that National Nature Reserves are a very public part of their operations and that the release of the document could increase the risk factor to its staff members and also its property. It has also advised that other processes may take place, which could be confused with the culling and could be disrupted by protestors unnecessarily.
29. Natural England has also explained that the boundaries of cull areas are roughly known by protestors and the National Nature Reserve sites inside the areas can be easily identified. As such, this puts staff, volunteers and members of the public at risk when working at or visiting the sites.

Public interest test

Public interest in disclosure

30. Natural England has explained that the Badger Control Policy is a highly sensitive issue and has provoked considerable public interest and debate.
31. Natural England has explained that it believes in openness and transparency as a public body, however, it also has a responsibility to protect the safety of people and companies involved in the badger control policy.

Public interest in maintaining the exception

32. Natural England has explained that it believes that if the details were to be released, it would allow protestors to better locate companies, individuals and staff members and target them for the purposes of objection and put them at risk of harassment or harm.
33. Natural England has explained that it is not in the public interest that individuals or companies involved are subjected to reprisals for undertaking legitimate work.
34. Natural England acknowledges the public right to object, but that right has to be balanced against issues of security and safety. It considers

that there are legitimate concerns which are sufficient enough to allow regulation 12(5)(a) to be engaged and the information withheld.

35. Natural England has provided the Commissioner with evidence to demonstrate its legitimate concerns.

The Commissioner's conclusion

36. In this case, the Commissioner has considered both the complainant's and the public authority's arguments and evidence.
37. Whilst the Commissioner acknowledges the complainant's arguments and why this is such an important topic, he has to consider all the factors involved. He also notes that Natural England did not provide much detail in response to why the information should be disclosed. However, Natural England has provided strong evidence to demonstrate why it considers that the information should not be disclosed to the world at large.
38. In this case, the Commissioner's view is that to release the remaining information could put individuals at risk and, as such, the public interest in maintaining the exception at 12(5)(a) outweighs that in the information being disclosed.
39. The public interest in the information being disclosed, and therefore creating greater transparency over the event is outweighed by the additional risks associated with disclosing detailed information about the topic to the whole world.
40. The Commissioner accepts the danger to public safety is real and significant and, ultimately, believes that the public interest lies in maintaining the exception

Right of appeal

41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

42. 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.
43. 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

Michael Lea
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