

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 17 November 2022

**Public Authority:** Natural England

**Address:** Foss House  
Kings Pool  
1-2 Peasholme Green  
York  
YO1 7PX

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the crossover between badger vaccination zones and badger culling zones.
2. Natural England ('NE') refused to confirm or deny that it held the requested information, citing regulation 12(6), by virtue of regulation 12(5)(a) (public safety).
3. The Commissioner's decision is that NE is entitled to rely upon regulation 12(6) to neither confirm nor deny that it holds the requested information.
4. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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5. On 17 October 2021 the complainant wrote to NE and requested the following information:

“Please send me:

Information request – 1. Re. The current badger cull in Berkshire and Oxfordshire.

In the counties of Berkshire and Oxfordshire, is any land formally covered by a badger vaccination programme now part of a cull zone?

Information request – 2. Re. The current badger cull in Berkshire and Oxfordshire.

What criteria has been used in selecting which areas badger culling would take place in Berkshire and Oxfordshire? Kindly provide written evidence to support this.”

6. NE responded on 16 November 2021. It refused to confirm or deny that it held information in relation to part 1 of the request. It directed the complainant to published information in relation to part 2 of the request.
7. The complainant requested an internal review on 18 December 2021. They disputed NE’s application of regulation 12(6).

### **Reasons for decision**

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8. Regulation 12(5)(a) of the EIR states that information is exempt if its disclosure would adversely affect public safety.
9. Regulation 12(6) states that a public authority may refuse to confirm or deny whether it holds information (whether it holds it or not) if providing that confirmation or denial would, in itself, adversely affect public safety.
10. The complainant is requesting confirmation, or denial, if any land formally covered by a badger vaccination programme is now part of a badger cull zone. Both of these programmes form part of the government’s wider strategy in relation to bovine tuberculosis.
11. The government’s Badger Edge Vaccination Scheme (‘BEVS 2’)<sup>1</sup> (running between 2019-2023) provides funding towards the cost of vaccinating badgers in the ‘edge’ area of England. The ‘edge’ area refers to counties

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<sup>1</sup> [BEVS 2 scheme outline - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/badger-edge-vaccination-scheme-2019-2023)

that sit between areas of high and low risk to bovine tuberculosis and includes both Berkshire and Oxfordshire. The criteria for BEVS 2 applications are in the public domain<sup>2</sup> and includes the desired size of vaccination areas.

12. In its internal review outcome to the complainant, NE explained that, to provide the information they have requested, 'this would essentially require a "yes" or "no" response based on relevant recorded information.' In other words, in order to answer the complainant's request NE has to either confirm or deny that it holds the requested information.
13. The NE explained to the complainant that, to either confirm or deny that this information is held, would 'put information in the public domain that would allow protesters to identify sites of live operations. This would have an adverse effect on public safety.'
14. Public safety is not defined with the EIR. However, the Commissioner accepts that information that would undermine the security of particular operations, or identify individuals or locations involved in controversial projects, are relevant when considering public safety. He is satisfied that badger culling would fall into both of these categories.
15. Information about badger vaccination in Berkshire and Oxfordshire is already in the public domain. Therefore, if NE confirms or denies that it holds the requested information, it is essentially confirming whether or not badger culling is also occurring in these counties.
16. If a public authority is likely to receive numerous similar requests, it needs to make sure that it is consistently refusing to confirm or deny whether the information is held. If, for example, NE was inconsistent in its handling of requests relating to the crossover between badger vaccination zones and badger culling zones, a pattern would develop which effectively signposts where badger culling is taking place. NE has explained to the complainant that 'For all such requests, Natural England will therefore refuse to confirm or deny whether or not we hold the relevant information'.
17. Under the EIR, the exception from the duty to confirm or deny is subject to the public interest test. NE has explained to the complainant that 'providing a "yes" or "no" response would add to the transparency around Natural England's operations in a controversial area of government policy.' The Commissioner notes that the EIR contains

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<sup>2</sup> [BEVS 2 scheme outline - GOV.UK \(www.gov.uk\)](http://www.gov.uk),

within it an inherent presumption in favour of disclosure, or in this case, confirmation or denial.

18. However, NE is concerned that providing this confirmation or denial, in itself, would 'allow a more accurate judgment of where the operations are, or are not, taking place. Putting the safety of operators at risk would not be in the public interest.'
19. The complainant has expressed concern that NE has provided no evidence to support its concern that operators would be placed at risk. However, the Commissioner notes that badger culling is an extremely emotive and controversial topic. There is sufficient information in the public domain to convince the Commissioner that regulation 12(6) is engaged.
20. The complainant is also concerned that, in refusing to confirm or deny whether the information is held, 'it can be reasonably inferred that NE are seeking to ban in the UK any lawful and peaceful protest.' It's not the Commissioner's role to comment on this concern but he would stress that disclosure under the EIR is disclosure to the world at large. Whilst the complainant may wish to exercise their right to protest peacefully, others may wish to use the requested information to pursue more dangerous activities.
21. The complainant's request specifically relates to areas that are **now**, at the time that the request was made, part of a badger culling zone. Confirmation or denial that this information is held would allow protestors to piece together the location of 'live' culls at the time that the request was made. Culling licenses can last for years and having considered the matter, the Commissioner agrees with NE that the public interest lies in refusing to confirm or deny whether the requested information is held.

## **Right of appeal**

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22. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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**

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**