

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

**Date:** 24 March 2022

**Public Authority:** Department of Agriculture, Environment and Rural Affairs

**Address:** Ballykelly House  
Ballykelly  
Derry / Londonderry  
BT49 9HP

**Decision (including any steps ordered)**

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1. The complainant requested information about badgers. The Department of Agriculture, Environment and Rural Affairs ("DAERA") initially withheld the information before later disclosing it.
2. The Commissioner's decision is that DAERA failed to respond to the request within 20 working days. DAERA has therefore breached Regulation 5(2) of the EIR.
3. The Commissioner does not require further steps to be taken.

**Request and response**

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4. On 14 April 2020, the complainant wrote to DAERA and requested information of the following description:
  1. "I ask that you give me all of the following information/raw data on the badger TVR project in NI between 2013 and 2018. Please supply for each year of the project separately, the data obtained under the following headings/categories:
    - Individual badger identity; and in relation to each:

- date and capture event number;
  - location of (field) tests (eg anonymised farm reference) ;
  - test results for all tests used both in field and in laboratory and including spoligotype and PM testing and culture;
  - confirmation of euthanasia where testing positive at trapside;
  - microchipping/blood samples/release where negative at trapside; vaccination status (and date of vaccination if predating current trapping event)
2. I understand that captured badgers which tested negative at trapside were vaccinated with either badger or human vaccine (depending on availability) before release. Please tell me, and provide data to show whether
- a) previously vaccinated badgers were retested at trapside at subsequent capture events, and if so,
  - b) How many of those tested positive at trapside and were euthanized
  - c) how many tested negative at trapside and were re-released
  - d) did badgers testing negative on second capture have blood samples taken again for lab analysis before re-release?
3. Of the badgers (if any) which had been previously vaccinated, were negative also on lab tests but then tested positive at trapside DPP on recapture, please tell me
- a) How many tested positive on all post mortem testing in the lab?
  - b) How many tested negative on all post mortem testing in the lab?
  - c) How many tested positive or negative to some tests only– and please specify which test
4. Did you use the DPP trapside test as a DIVA test for some or all of the lifetime of the project? If so, what was the overall accuracy of the DPP trapside test as a DIVA test? What was the overall assessment of the accuracy of the DPP trapside test in establishing TB infection at all in the badgers tested when measured against all post-mortem testing of euthanized badgers?
5. Did you make any changes in the protocol/tests used in relation to the badger interventions over the lifetime of the project? If yes, please explain the changes and give your reasons.
6. Please also tell me: **during the lifetime of the project**

- a) How many of the farms using badger TVR became Officially TB Free (OTF)?
  - b) How many were OTF but have since had a further breakdown?
  - c) How many of the long term herd breakdown farms which did **not** use badger intervention are now OTF?
  - d) How many of c) were OTF but have since had a further breakdown?"
5. On 10 June 2020, DAERA responded. It provided the information within the scope of elements 5 and 6 of the request and some information falling within the remaining elements. However, it withheld the bulk of the information falling within the scope of the remaining elements and relied variously on Regulation 12(4)(d) – material in the course of completion; Regulation 12(5)(c) – intellectual property rights; and Regulation 12(5)(g) – protection of the environment; in order to do so.
  6. The complainant requested an internal review on 15 June 2020. DAERA sent the outcome of its internal review on 13 August 2020. DAERA revised its position, withdrew its reliance on all three exceptions and stated that it would disclose the data that it held.
  7. Once DAERA had made its disclosure, the complainant contacted it again on 21 December 2020 because she did not consider that all the information she requested had been provided. Further exchanges of correspondence were unable to bring the matter to a satisfactory conclusion.

### Scope of the case

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8. The complainant contacted the Commissioner on 1 February 2021 to complain about the way her request for information had been handled.
9. The complainant was unhappy that DAERA had provided some of the information ("the disputed data") in a PDF format and was not convinced that the information provided, as a whole, satisfied her request – although it was not clear to the Commissioner whether this was because additional information existed but had not been provided or whether the provision of a sub-set of the information in a non-machine readable format had prevented the complainant from manipulating the raw data to extract the answers she was seeking.
10. The Commissioner wrote to DAERA on 10 February 2022 to commence his investigation. He suggested that DAERA either provide the disputed data in a machine-readable format or explain why it was not reasonable in the circumstances to do so. He also asked questions to establish whether DAERA had provided all the information it held.

11. DAERA provided the disputed data to the complainant in a spreadsheet on 25 February 2022. It noted that it had spent a considerable amount of time attempting to resolve the request and had no more data that it could provide. The Commissioner then wrote to the complainant on 28 February 2022, noting that the disputed data had been provided and inviting her to withdraw her complaint.
12. The complainant responded to the Commissioner on 4 March 2022. She noted that, due to the volume of information, she needed additional time to check that everything had been provided. She also had a query about the information that had been provided and asked that the complaint be kept open until DAERA had answered this query – as well as any others that might emerge as she reviewed the information.
13. The Commissioner replied to the complainant on 7 March 2022. He noted that the query fell outside the scope of the complainant's original request and therefore the scope of the complaint. The Commissioner agreed to allow the complainant a further week to identify any additional queries, which he would – in the spirit of the EIR and the interests of resolving the complaint amicably – put to DAERA, however he was clear that he would not allow the complaint to be used as ongoing leverage to extract further information from DAERA which fell outside the scope of the original request.
14. The complainant was unhappy with that approach and was also unhappy at the length of time it had taken to acquire the information she had requested in a format that was useful to her. However, she did not indicate that DAERA held any further information falling within the scope of her request. Nevertheless, the Commissioner did put her query to DAERA and DAERA provided a response to the Commissioner that was passed on to the complainant.
15. As the Commissioner is satisfied that the complainant's query falls outside the scope of her original request and that she has not identified any further information DAERA holds in recorded form, he considers that a decision notice, focussing only on the procedural handling of the request is necessary in order to bring the complaint to a conclusion.

## Reasons for decision

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16. 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); and*
- (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);*

17. The request relates to the trapping and testing of badgers for bovine tuberculosis, therefore the Commissioner considers that it is for information "on" a "measure" affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

18. Regulation 5(1) states that: "a public authority that holds environmental information shall make it available on request."

19. Regulation 5(2) states that such information shall be made available "as soon as possible and no later than 20 working days after the date of receipt of the request."

20. The Commissioner notes that the request was made in April 2020 which was at the peak of national lockdown imposed to deal with the Covid-19 pandemic and when the most restrictive measures were in place. Whilst he acknowledges the considerable difficulties shared by all public authorities at that time, Parliament did not alter the statutory deadlines for compliance with the EIR and he is therefore required to assess compliance against the wording of the legislation.
21. DAERA's response was provided well outside the 20 working day limit.
22. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, DAERA has breached Regulation 5(2) of the EIR.

### **Other Matters**

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23. The complainant argued that DAERA had failed to comply with its duty under section 11 of FOIA because it did not provide the requested information in a machine-readable format. She specifically cited the dataset provisions within FOIA which require certain information to be provided in a machine-readable format.
24. Whilst the EIR do not contain any explicit, specific, provisions for datasets, the Commissioner considers that, if a requestor were to ask for data in a machine-readable format, the public authority's obligations under Regulation 6 of the EIR would apply. The public authority would have to either provide the data in that format or explain why it was not reasonable to do so.
25. However, in this case, the issue does not arise as, not only is the issue now moot anyway, but the Commissioner does not consider that the complainant did in fact "express a preference" for the information to be provided in any particular form or format. Where no preference is expressed, the Regulation 6 obligations do not apply.

## Right of appeal

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26. 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)

27. 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.
28. 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 .....**

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