

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

Decision notice

Date: 25 January 2023

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 relating to badger culling licenses.
2. Natural England withheld some information under regulation 12(5)(a) (public safety) of the EIR.
3. The Commissioner has decided that Natural England is entitled to withhold the information it has done under regulation 12(5)(a).
4. The Commissioner does not require Natural England to take any steps.

Request and response

5. On 11 February 2022, the complainant wrote to Natural England ('NE') and made a request for information. Due to the length of this request, it is outlined in an annex to this notice.
6. NE responded to the request on 11 March 2022. It disclosed information in response to the request. It also confirmed that certain information was not held or withheld information under regulation 12(5)(d) (confidentiality of proceedings).
7. The complainant requested an internal review on 23 March 2022. They noted that certain information, that they believed fell within the scope of

the request, had not been provided and disputed NE's application of regulation 12(5)(d).

8. On 16 May 2022 NE provided the outcome to its internal review. It explained that it did not disclose information that had been provided to the complainant previously, in response to a separate request for information, because no material changes had been made to that information. However, to satisfy the complainant NE disclosed this information again and explained to the complainant that redactions had been made under regulation 12(5)(a). It also clarified that it was withholding specific guidance under regulation 12(5)(a). It upheld its reliance upon regulation 12(5)(d).

Scope of the case

9. During the course of this investigation, NE wrote to the complainant and confirmed that 'some of the information withheld under environmental Information Regulation 12(5)(d) can now be released to you as the "proceedings" that we referenced previously have now concluded.' NE then disclosed further information to the complainant.
10. NE also provided the Commissioner with a copy of all withheld information. This includes a document titled 'Applying for a Badger Disease Control Licence in 2022 – Timeline for Areas entering their first year.' NE explained that the information highlighted in yellow 'indicate areas where Regulation 12(5)(d) applied at the point of request' and 'Red boxes indicate areas that Regulation 12(5)(a) still applies and needs to be redacted if released.'
11. NE explained to the Commissioner that, in relation to the aforementioned document, some 'redactions relate to dates that were considered sensitive during the licence application assessment period but as this period for 2022 has now elapsed these dates would no longer be considered sensitive.' NE then disclosed this information.
12. Therefore, the remaining scope of this investigation is to determine whether NE is entitled to withhold all remaining information regulation 12(5)(a).

Reasons for decision

13. The request and any information within scope relates to badger culling. This is clearly an environmental issue and therefore falls to be dealt with under the EIR.
14. 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.”
15. The Commissioner has recently dealt with a similar case,¹ involving the same complainant, under the reference IC-156871-X5P9. Whilst the scope of these two cases is not identical, the information being withheld under regulation 12(5)(a) is substantially the same.
16. In IC-156871-X5P9 the Commissioner considered whether NE is entitled to withhold the same information but for 2021, instead of 2022. IC-156871-X5P9 considered whether NE could withhold information contained within the document ‘Applying for a Badger Disease Control Licence in 2021 – Timeline for Areas entering their first year’ and secondly, the ‘Signing up National Nature Reserve (2021)’ guidance in its entirety.
17. The Commissioner’s detailed analysis of regulation 12(5)(a) can be found from paragraph 16 onwards of IC-156871-X5P9. The Commissioner doesn’t consider it necessary to replicate this detailed analysis here.
18. However, he notes that disclosing details of the IT systems that NE uses to manage its licensing information would make it more vulnerable to hacking. NE has provided evidence of previous incidences of hacking and the adverse effect that this had on the safety of individuals whose details were stored on the system.
19. NE also provided evidence of the impact that disclosure of the guidance, and other information, would have on the safety of certain groups, private property, public buildings and individuals involved in badger culling.
20. In IC-156871-X5P9 the Commissioner found that the exception was engaged in relation to all of the information in question and that the

¹ [ic-156871-x5p9.pdf \(ico.org.uk\)](https://ico.org.uk/our-work/cases/156871-x5p9)

public interest lay in maintaining the exception. Therefore, the Commissioner doesn't deem it necessary to conduct a second, identical investigation. He is satisfied that the information can be withheld.

Right of appeal

21. 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

22. 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.
23. 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

Annex

1. "Please disclose all of the versions of Natural England's guidance to applicants for a Badger Disease Control Licence in 2022, which explain the process for making a Licence application and the relevant timeline from application to the granting of a licence.

2. Has Natural England produced additional guidance for applicants, which is relevant to licence applications for a Badger Disease Control Licence in 2022? Please disclose all additional guidance, including updated versions of guidance.

I am defining 'additional guidance for applicants' as guidance such as Completing the 'TB Management Agreement', Completing the 'Landlord's Undertaking', Adding short-term tenanted land and Signing up National Nature Reserves.

(Please note that Natural England has already disclosed:

- Completing the 'TB Management Agreement' version number 2-1, release date: 3 May 2018;

- Completing the 'Landlord's Undertaking' version number 2-1, release date: 3 May 2018; and

- Adding short-term tenanted land version number 2-0, release date: 11 December 2018.)

On 7 February 2022, an Opportunity to Comment on Badger Disease Control Licence applications or expressions of interest was launched here:

<https://consult.defra.gov.uk/natural-england/873a74b4/>

Under the heading 'Reporting and disclosure of information', in paragraph 45 of Defra's Guidance to Natural England: Licences to kill or take badgers for the purpose of preventing the spread of bovine TB under section 10(2)(a) of the Protection of Badgers Act 1992 (May 2021) (here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989623/tb-licensing-guidance-ne.pdf) it is stated:

'Natural England should disclose as much information as practically possible. Each year, or more frequently if appropriate, Natural England should, as a minimum, publish on its website the numbers of applications received ...'

3. How many applications has Natural England received for a Badger Disease Control Licence in 2022?

4. How many expressions of interest has Natural England received for a Badger Disease Control Licence in 2022?

5. a) Please disclose a copy of the document or copies of the documents that an applicant is required to fill out in order to make an application for a Badger Disease Control Licence in 2022.

b) Please disclose a copy of the document or copies of the documents that an interested party is required to fill out in order to make an expression of interest for a Badger Disease Control Licence in 2022.

6. a) Please disclose the date that Natural England received each application for a Badger Disease Control Licence in 2022.

b) Please disclose the date that Natural England received each expression of interest for a Badger Disease Control Licence in 2022. On 7 February 2022, an Opportunity to Comment on Badger Disease Control Licence applications or expressions of interests was launched here:

<https://consult.defra.gov.uk/natural-england/873a74b4/> in which it was stated that:

'Natural England has received applications or expressions of interest for a Badger Disease Control Licence within the counties of Buckinghamshire, Cheshire, Cornwall, Derbyshire, Devon and Northamptonshire.'

7. a) Please disclose which is the main county in each application for a Badger Disease Control Licence in 2022.

b) If there is another county or other counties covered by each application for a Badger Disease Control Licence in 2022, please disclose this county or counties.

8. a) Please disclose which is the main county in each expression of interest for a Badger Disease Control Licence in 2022.

b) If there is another county or other counties covered by each expression of interest for a Badger Disease Control Licence in 2022, please disclose this county or counties. For example, for the application area that became Cull Area 57, the main county is Berkshire and the other county covered by the application is Hampshire."