

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 January 2018

Public Authority: Natural England

Address: Mail Hub
Worcester County Hall
Spetchley Road
Worcester WR5 2NP

Decision (including any steps ordered)

1. The complainant has requested information associated with the licenced control of badgers to prevent the spread of bovine tuberculosis. Having provided a response originally, during the course of the Commissioner's investigation Natural England (NE) provided a fresh response that addressed the complainant's outstanding concerns. NE considers it has now released all the relevant information that it holds and that the information it has redacted is exempt from disclosure under regulation 12(3) of the EIR (personal data), regulation 12(5)(a) (public safety) and regulation 12(5)(d) (confidentiality of proceedings). NE also considers it has complied with regulation 6(1)(form and format).
2. The Commissioner's decision is as follows:
 - NE has made available all the information it holds within the scope of the complainant's requests other than some information which it has redacted ("the withheld information") and has therefore complied with regulation 5(1).
 - NE has not breached regulation 6(1) in respect of the form and format in which it released some of the requested information.
 - Regulation 12(3) can be applied to the *all* the information that NE has withheld because this information can be categorised as the personal data of third parties and it would not be fair to disclose it.

3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 4 March 2016, the complainant wrote to NE and requested information in the following terms:

"Re: Information request on the subject of Natural England monitors conducting visits to look at compliance with biosecurity measures prior to the commencement of licence activity to control badgers to prevent the spread of bovine TB

1. Natural England has previously disclosed that Natural England monitors conducted monitoring visits to look at compliance with biosecurity measures prior to the commencement of licence activity to control badgers to prevent the spread of bovine TB in 2013 in the areas of West Gloucestershire, West Somerset and Dorset.

a) Please confirm whether the areas in which the monitoring visits were conducted were (i) solely in the cull zones of West Gloucestershire, West Somerset and Dorset, or (ii) in the cull zones and in the buffer areas of West Gloucestershire, West Somerset and Dorset.

b) Please confirm whether the farms/holdings visited were (i) solely farms/holdings of participants in the cull, or (ii) farms/holdings of participants and non-participants.

c) Please disclose the dates (months and years) during which the visits, mentioned above, were conducted in (i) West Gloucestershire, (ii) West Somerset, and (iii) Dorset.

d) Please disclose whether there have been previous or further monitoring visits conducted by Natural England monitors to look at compliance with biosecurity measures in (i) West Gloucestershire, (ii) West Somerset, and (iii) Dorset. Please disclose the dates (months and years) on which each set of visits were conducted.

2. In response to information request number RFI 2436 Natural England previously supplied a sample of the completed biosecurity forms. Natural England withheld all the forms saying that "By supplying the actual number of visits, coupled with knowing that Natural England visited over 10% of holdings would allow the approximate number of participants to be calculated."

The number of participants has now been disclosed.

Please supply all copies of the completed biosecurity forms for the areas of (a) West Gloucestershire, (b) West Somerset, and (c) Dorset. Please be clear about the dates (months and years) during which each set of visits was conducted.

3. a) Please disclose whether Natural England monitors will conduct or have conducted monitoring visits to look at compliance with biosecurity measures as part of the assessment process for – or in relation to – the issuing of new licences in 2016 to control badgers to prevent the spread of bovine tuberculosis.

b) If such monitoring visits have been/ will be conducted please disclose (i) in which counties these visits took place or will take place, (ii) when approximately these visits took place or will take place, and (iii) what percentage of farms/holdings in each potential cull zone have been or will be visited.

c) Please confirm if these visits have been or will be in (i) solely the cull zone areas, or (ii) the cull zone areas and the buffer areas.

d) Please confirm whether the farms/holdings that have been or will be visited are (i) solely farms/holdings of participants in the cull, or (ii) farms/holdings of participants and non-participants.

e) Please supply all copies of biosecurity forms which have been completed.

I would be grateful if you could acknowledge receipt of this communication.

I look forward to receiving your response to my request for information.”

5. NE initially responded on 26 May 2016, which the Commissioner notes was outside of the 20 working days required by the EIR. It released information within the scope of some of the requests; confirmed it would not provide information it had previously released to the complainant; withheld some information under regulations 12(3) and 12(5)(d) and said that some of the requested information was in the process of being completed and so excepted from release under regulation 12(4)(d).
6. In its internal review of 13 September 2016, NE acknowledged that it had breached the EIR with regard to the timelines of its response; confirmed that it considered it had complied with its obligation under regulation 6(1)(a)(form and format); released further information it had identified; confirmed it had addressed particular requests and clarified aspects of its response.

7. The complainant submitted a complaint to the Commissioner about NE's handling of her request on 7 April 2017, more than six months after NE's internal review. The Commissioner expects complaints to be brought to her within three months of the last meaningful contact with a public authority. On this occasion, the Commissioner used her discretion and accepted the case for investigation.
8. The long period of time that had elapsed between the request in March 2016 and the Commissioner accepting the case for investigation in June 2017 clearly made the subsequent investigation more difficult for all parties and especially NE: memories fade and staff members, procedures and processes change.
9. To expedite the investigation, in correspondence dated 15 August 2017 the complainant helpfully confirmed that she remained dissatisfied with NE's response to the following elements of her original request:
 - 1d(i) – dates of biosecurity monitoring visits in West Gloucestershire [Area 1]*
 - 1d(ii) – dates of biosecurity monitoring visits in West Somerset [Area 2]*
 - 1d(iii) – dates of biosecurity monitoring visits in Dorset [Area 3]*

 - 2a – All biosecurity monitoring forms in West Gloucestershire [Area 1]*
 - 2b – All biosecurity monitoring forms in West Somerset [Area 2]*
 - 2c – All biosecurity monitoring forms in Dorset [Area 3]*

 - 3b(iii) – percentage of participants that have had biosecurity monitoring visits in Area 6 – Devon*

 - 3e – All biosecurity monitoring forms for 2016, Areas 4 to 10*
10. In an attempt to resolve her complaint informally, NE provided the complainant with a fresh response on 20 October 2017 that sought to address the above concerns. This response supersedes NE's previous response and internal review in 2016 and it is the response on which the Commissioner's investigation has focussed.
11. In the 20 October 2017 response:
 - NE released the information described at paragraph 24 with regard to requests 1d(i) to (iii) and 2a to c. It noted that it had found some small differences to the information on collated spreadsheets it had previously released, and gave other information about the version of the spreadsheets it was now providing.

- NE explained that it was withholding some information under regulation 12(3), regulation 12(5)(a) and regulation 12(5)(d).
- With regard to request 3b(iii) – NE confirmed it had responded to this request in full in its original response and now volunteered a further response as the monitoring visits in question had been completed in the intervening period.
- With regard to request 3e – NE released biosecurity monitoring visit spreadsheets for 2016 and confirmed that it considered it had met its obligation under regulation 6(1)(a). The 2016 spreadsheets also have some information redacted under the above three exceptions.

Scope of the case

12. Earlier in the Commissioner's investigation, the complainant had indicated that she considered NE had committed an offence under section 77 of the FOIA by deliberately altering information with the intent to prevent its disclosure. The Commissioner's Enforcement team considered this concern and determined that no section 77 offence had occurred.
13. The Commissioner is aware that the complainant continues to have concerns about possible inaccuracies and discrepancies between the information that has now been released and information already in the public domain. The Commissioner has explained to the complainant that it is not the Commissioner's role to consider whether information an authority holds, and releases, is accurate.
14. The Commissioner has explained that her investigation must focus on whether NE has provided all the information it holds that falls within the complainant's requests at paragraph 9, whether information it has withheld is excepted from release under regulations 12(3), 12(5)(a) and 12(5)(d), and whether NE has complied with regulation 6(1) with regards to the form and format of some of the released information.

Reasons for decision

Background

15. Having originally been intended to begin in 2012, the Commissioner understands that licenced badger culling – as a means to control bovine tuberculosis (bTB) - took place in West Somerset and West

Gloucestershire from 2013 to 2015. Licensed culling took place in Dorset in 2013, 2015 and 2016 and licensed culling took place in Devon, Cornwall, Gloucestershire and Herefordshire in 2016. Biosecurity visits that were undertaken in West Gloucestershire and West Somerset in 2012 were during an application assessment process, prior to licences being issued.

16. A requirement of the Badger Control Policy, and one of the licence criteria, is that participating farmers implement reasonable biosecurity measures on their land. As the organisation that issues badger cull licences, NE is responsible for assessing the above biosecurity. Trained monitors/Field Officers were sent to monitor biosecurity compliance on participants' farms.
17. NE has explained the administration of this biosecurity monitoring and particular administrative actions it has taken as a result of the complainant's request and the Commissioner's investigation.
18. To assess their biosecurity measures, Field Officers visited participating farms in the above 'Control Zones' and subsequently completed particular biosecurity monitoring forms, which were designed by NE.
19. Back in the office, the information from the Field Officers' original forms was saved onto NE's data servers. From the data servers, other members of staff transferred the information on to spreadsheets and, at that stage, some quality assurance (QA) occurred; such as correcting any of the Field Officers' minor human errors.
20. The spreadsheets then underwent further QA before they were first released to the complainant in 2016 in response to an earlier request. As a result of the complainant's current complaint and the Commissioner's investigation, NE has told the Commissioner that it QA-ed the information again. This time, it went back to the original Field Officers' forms. It checked the forms against the original spreadsheets. Further (minor) corrections NE made were noted in green type on the spreadsheets that it released to the complainant on 20 October 2017.
21. NE also looked again at the information that had been redacted originally. Given the passage of time, as by now more than a year had passed since its original response to the request, NE determined that some of the information it had previously withheld could now be released. This information was noted in blue type on the spreadsheets that were released in October 2017. Some information remained redacted from the re-released spreadsheets.
22. More generally, NE observed to the Commissioner that over the years that it has carried out the biodiversity monitoring, its processes have

become 'smarter'. NE found that it needed less information from farms than it had previously gathered. Consequently, forms and spreadsheets for later years, such as those from 2016, contain less information and have fewer redactions. Also, over the years the forms and spreadsheets have been given different names. However NE has confirmed that all the forms and spreadsheets can be categorised as 'biodiversity monitoring' and that, each year, the forms and spreadsheets have performed the same function.

23. NE has confirmed to the Commissioner that it has now released to the complainant all the information held in the relevant Field Officer forms (with some information redacted) and all the associated spreadsheets (again, with some information redacted).
24. Natural England has provided the Commissioner with copies of the information it disclosed to the complainant on 20 October 2017. It comprises:

FORMS

(i) With regards to West Gloucestershire:

- a series of 'Biosecurity Visit Assessment' forms dated from April/May 2012
- a series of 'Risk Assessment' forms, dated from July 2014 and
- a series of 'Biosecurity Assessment' forms dated from March and May 2015.

(ii) With regards to West Somerset:

- a series of 'Biosecurity Assessment Visit' forms dated from May/June 2012
- a series of 'Biosecurity Assessment' forms from autumn 2014 and a series of 'Biosecurity Assessment' forms dated from July/August 2015.

(iii) With regards to Dorset, a series of 'Risk Assessment' forms from April/May 2015.

SPREADSHEETS

- (iv) Two 'Biosecurity Visit' spreadsheets for West Gloucestershire (Area 1) and West Somerset (Area 2) that cover the periods 2012, 2014 and 2015.

- (v) One 'Biosecurity Visit' spreadsheet for Dorset (Area 3) for 2015.
 - (vi) A series of seven 'Biosecurity Visits 2016' spreadsheets as follows:
 - Cornwall (Area 4) – Jul/Aug
 - Cornwall (Area 5) – Jul/Aug
 - Devon (Area 6) - Aug
 - Devon (Area 7) – Dec 15/Jan/Feb/16 Mar
 - Dorset (Area 8) – Aug
 - Gloucestershire (Area 9) – Jul/Aug
 - Herefordshire (Area 10) – Jan
 - (vii) A blank template named 'Biodiversity TB Risk Assessment 2016'.
25. The released forms and spreadsheets contain a small amount of redacted information.
26. The complainant had originally provided the Commissioner with a submission dated 31 July 2017. Having considered NE's fresh response of 20 October 2017, the complainant provided the Commissioner with a further submission on 19 November 2017. The complainant's concerns detailed in these submissions can be broadly categorised as follows:
- (i) The complainant disputes that the amount of information redacted is, as NE had described to her, "limited" in terms of its amount or its importance.
 - (ii) The complainant has put forward public interest arguments for the release of information concerning biosecurity measures. These can be summarised as concerning whether the farms that are involved in the licenced culling are putting in place adequate biosecurity measures and whether NE is adequately monitoring those measures.
 - (iii) The complainant has put forward public interest arguments for the release of information concerning incidents of bTB. These concern how bTB might be spread to and amongst cattle.
 - (iv) The complainant has put forward public interest arguments for the release of information concerning the size of cattle herds, flocks of sheep and other livestock. Again, these arguments concern how bTB may be spread.

- (v) The complainant has put forward public interest arguments for the release of information concerning the size of farms and holdings. These concern the ability to assess the relationship between size of land, numbers of cattle including bTB-free cattle and numbers of badgers are being culled.
- (vi) The complainant considers that information on participant numbers should be released so that the public can assess whether this information is consistent with other information in the public domain.
- (vii) The complainant considers that information on numbers of badger setts should be released so that the public can assess if biosecurity measures are appropriate.
- (viii) The complainant says that all the forms for the seven new cull areas for 2016 should be released.
- (ix) The complainant considers that farm visits were carried out before June 2016 and before she submitted her request in March 2016.
- (x) The complainant considers that there is more information on the original 2016 Field Officer forms than was subsequently transferred to the 2016 spreadsheets and she wants copies of the associated forms.
- (xi) The complainant considers that electronic versions of the 10 forms for Dorset in 2013 be disclosed to her.
- (xii) The complainant has noted each redaction in particular spreadsheet columns or particular sections of forms – this is information that the complainant considers should be disclosed. Her reasons for this are broadly the same as the public interest arguments and, in addition, so that risks to domestic animals from bTB can be assessed.
- (xiii) The complainant has referred to her earlier submission to the Commissioner of 31 July 2017 in which she disputed that the exceptions NE has cited are engaged and provided public interest arguments specific to each exemption.
- (xiv) The complainant has detailed more general concerns about what she considers is an increasing level of secrecy on the part of NE; that it has redacted information it previously released; that information it disclosed previously has now 'disappeared'; that the information released contains discrepancies and errors and, finally, that the forms that NE has now disclosed are not the original biodiversity monitoring forms and that NE has edited the

information before transferring it on to spreadsheets and disclosing it. As explained in the 'Scope of the Case' section of this notice, the Commissioner has not considered the accuracy of the information NE holds, but has taken account of these concerns in her consideration of NE's compliance with regulation 6(1).

27. With regard to paragraph 26(iv), the Commissioner notes that this type of information may have been redacted from spreadsheets for years other than 2016 that had been released to the complainant and, with regards to the 2016 spreadsheets, for months falling after the date of the complainant's request. For the reasons discussed at paragraph 9, these spreadsheets have not been included in the scope of the Commissioner's investigation. That said, she considers that there is likely to be a strong argument that any unusual or distinguishing features of a farm – such as size of cattle herds or any other livestock present - could be considered to be personal data and excepted from release under regulation 12(3). Regulation 12(3) is discussed elsewhere in this notice.
28. Given its detailed correspondence with the complainant, the Commissioner did not request a submission from NE. During her investigation she relied on that correspondence, the lengthy discussions she had with NE about the case and its response, and on the answers to questions she put to NE as they arose during the investigation.

Regulation 5(1) – duty to make environmental information available on request

29. Regulation 5(1) says that a public authority that holds environmental information shall make it available on request.
30. In its fresh response to the complainant of 20 October 2017, NE advised that, with regards to requests 1d(i) to (iii) and request 2a to c, it was releasing to her all the biosecurity monitoring forms for:
- Area 1 – West Gloucestershire for the years 2012, 2014 and 2015
- Area 2 – West Somerset for the years 2012, 2014 and 2015
- Area 3 – Dorset for year 2015.
31. The Commissioner notes that the complainant already has all the Field Officer forms for these areas for 2013. 2013 forms for West Gloucester and West Somerset were released to the complainant in response to a previous request in 2014; 2013 forms for Dorset were released at internal review in September 2016.

32. The Commissioner has thoroughly reviewed the complainant's submissions but her focus has been on what the complainant had confirmed was the scope of her complaint; namely her concerns regarding NE's response to the requests at paragraph 9. The Commissioner has reviewed these requests.
33. First, the complainant had required the dates when biosecurity monitoring visits had taken place in the West Somerset, West Gloucestershire and Dorset areas. The Commissioner has reviewed the monitoring forms that NE has released to the complainant for these three areas for the periods 2012, 2013, 2014 and 2015. She has noted that these forms include the dates when the monitoring visits took place.
34. The Commissioner notes that no biosecurity visits had taken place in these three areas in 2016, prior to the complainant's request on 4 March 2016. It therefore follows that, at the time of her request, NE held no information on dates of monitoring visits for the period 1 January 2016 to 4 March 2016 for these three areas.
35. NE has released to the complainant spreadsheets that include information relating to dates of visits to these areas subsequent to her request. It has done this voluntarily. The EIR did not oblige NE to release that particular information (which it would not have held at the time of the request).
36. Having taken account of the background to the request, the complainant's submissions, NE's correspondence with the complainant, the released information and her own extensive discussions with NE, the Commissioner is satisfied that NE has released to the complainant all the information it holds that falls within the scope of requests 1d(i), 1d(ii) and 1(iii). The Commissioner is therefore satisfied that NE has complied with regulation 5(1) with regards to these three requests.
37. The complainant's requests 2a, 2b and 2c are for all biosecurity monitoring forms for West Gloucestershire, West Somerset and Dorset. Having reviewed the released material, and approached NE more than once, it appears to the Commissioner that NE has released this information to the complainant. West Gloucestershire appears to be covered by the information described at paragraphs 24(i) and 30; West Somerset appears to be covered by the information described at paragraphs 24(ii) and 30 and Dorset appears to be covered by the information described at paragraphs 24(iii) and 30. The 2013 forms are also discussed further at paragraphs 59-60.
38. With regards to 2016, as explained above, no biosecurity visits took place in these three areas in 2016 in the period before the complainant's

request on 4 March 2016. NE did not therefore hold monitoring forms for these areas at the time of the request. Information that post-dates the complainant's request that has been released in spreadsheets has been released voluntarily and NE was not obliged to release it. The EIR did not oblige NE to release monitoring forms for visits that took place after 4 March 2016. On the basis of the same considerations as above, the Commissioner is satisfied that NE has complied with regulation 5(1) with regards to requests 2a, 2b and 2c.

39. With regard to request 3b(iii), from the complainant's submission of 19 November 2017, it appears that the complainant's concern regarding NE's response to this request is one of accuracy or otherwise. She considers that NE's response to this request was inaccurate and that this therefore invalidates NE's reliance on regulation 12(4)(d) (material in the course of completion). First, NE did initially rely on regulation 12(4)(d) in its original response but subsequently withdrew its reliance on this regulation. Second and as previously explained, the Commissioner will not consider the general accuracy of information NE holds, and releases. The Commissioner is satisfied that, in its response of 20 October 2017, NE released all the information falling within the scope of request 3(b)(iii) that it holds and has complied with regulation 5(1) with regard to this request.
40. Finally, the Commissioner has considered the complainant's concern regarding request 3e. The complainant is dissatisfied that she has not received monitoring *forms* for 2016. The Commissioner has noted the complainant's associated concerns at paragraph 26(viii), (ix) and (x).
41. From her submissions on 31 July 2017 and 19 November 2017, specifically her concerns at paragraph 26, it also appears to the Commissioner that the complainant considers that NE holds further Field Officer forms from 2016, which she has requested and that NE has not released. The complainant is seeking the forms because she considers that additional information is held on the original monitoring forms from 2016 which was not included in the version of the associated spreadsheets that were released to her.
42. The complainant originally submitted her request on 4 March 2016. The complainant is therefore only entitled to receive information that NE held at that time. At 4 March 2016, it appears, and NE has confirmed to the Commissioner, that monitoring visits had only taken place in Devon and Hereford. With regard to Devon and Hereford in 2016, NE has now released a *spreadsheet* for Devon that covers the period December 2015, to 25 February 2016 and that includes one visit on 16 March 2016 ie after the date of the complainant's request. Another Devon sheet covers August 2016, again a period after the complainant's request. NE

has also released a spreadsheet for Hereford in 2016, where visits took place in January.

43. Despite the complainant's assertion to the contrary, NE has confirmed to the Commissioner that no biodiversity monitoring visits had taken place in Cornwall before June 2016. The Commissioner notes that no areas other than Devon and Hereford had had monitoring visits prior to 4 March 2016. In relation to 2016 therefore, NE's position is that it holds no forms or spreadsheets relating to Cornwall prior to July 2016
44. As explained, visits *did* take place in Devon and Hereford before June 2016. As above, the complainant has received spreadsheets that include details of visits that took place in January and February 2016 (and one that took place on 16 March 2016) in Devon and in January 2016 in Hereford. In relation to 2016, NE has confirmed to the Commissioner that the January and February visits to Devon and Hereford were all the visits that had taken place in 2016 prior to the complainant submitting her request on 4 March 2016.
45. With regards to request 3e, and on the basis of the same considerations as above, the Commissioner is satisfied that NE has released to the complainant all the *information* it held at time of the request that falls within the scope of this request, and has complied with regulation 5(1) with regards to this request.
46. Given the passage of time since the original requests, NE has now voluntarily released to the complainant some information that is over and above what she requested in March 2016, and what it held at that time; that is the 2016 spreadsheets for other areas that post-date her request. The EIR did not require NE to do this. NE is only obliged to release to the complainant information it held at the time of her request on 4 March 2016.
47. As referred to above, with regard to request 3e, the Commissioner is aware that the complainant has requested biodiversity monitoring *forms* (such that were held at the time of her request in March 2016), rather than spreadsheets. The Commissioner has considered this in her consideration of NE's compliance with regulation 6(1).

Regulation 6 – form and format of information

48. The complainant's request 3e is for:

"All biosecurity monitoring forms for 2016, Areas 4 to 10"

49. As discussed above, the complainant may (or may not) be entitled to receive any 2016 monitoring forms that NE held at the time of the request; forms associated with the information it has released on

particular spreadsheets. That is, forms that were completed during visits to Devon in January and February 2016, and Hereford in January 2016.

50. Regulation 6(1)(a) of the EIR says that where an applicant requests that the information be made in a particular form or format, a public authority shall make it so available unless it is reasonable for it to make the information available in another form or format.
51. In this case, the complainant has requested monitoring *forms*.
52. In her submission of 19 November 2017, the complainant also says that she wants electronic versions of the 2013 forms, which she says she has only had in paper format.
53. In its response to the complainant of 20 October 2017, with regard to request 3e, NE advised that the 2016 spreadsheets it was releasing were collated versions of the information held on the monitoring forms.
54. NE subsequently explained to the Commissioner, as it had done to the complainant in the above response, that, unlike in other years when information from forms had been manually transferred to spreadsheets, the 2016 forms were transferred by computer through an automated process using the Adobe Acrobat Professional programme. At this time in 2016, Field Officers used a laptop computer to complete pdf forms (by choosing options from 'dropdown' boxes) on site and the Acrobat programme then converted and transferred the information onto Excel spreadsheets. The collated 2016 spreadsheets are therefore an exact copy of the associated forms.
55. The Commissioner notes that in its internal review, NE had explained to the complainant that its usual practice is to respond to requests electronically, irrespective of the format in which it receives the request. It had received the 4 March 2016 request by email and had responded electronically.
56. NE went on to say that it takes account of the requester's preferred format and will supply information in that format if it is practical to do so. But it considered this preference against how it holds the requested information and the resource implications of providing the information in an alternative format. In this case NE had collated the information on to spreadsheets to make analysis of the collected information easier.
57. The Commissioner is aware that the complainant is concerned that there is other information on the 2016 forms that has not been transferred to the spreadsheets. She is also concerned that there are inaccuracies and inconsistencies in the information NE has released in response to this request, previous requests and in information already in the public

domain. As discussed above, the Commissioner has found that NE has not committed an offence under section 77 and she is not concerned with the accuracy of information an authority holds.

58. Given NE's cooperation throughout this complaint, the Commissioner sees no reason to doubt its explanation that the information contained in the 2016 Devon and Hereford spreadsheets is an exact copy of that held in the associated 2016 forms, because the information was transferred from one to the other automatically. Although the complainant has requested copies of the original forms, the Commissioner considers it was reasonable for NE to make the requested information available in the form of spreadsheets. On this occasion, she has decided that NE has not breached regulation 6(1)(a) with regard to request 3e.
59. As mentioned above, the complainant subsequently introduced the concern that she had only received paper copies of the 2013 monitoring forms and she wants electronic versions of these forms. 2013 forms for West Gloucestershire and West Somerset had originally been disclosed to the complainant in 2014 in response to a previous request. NE had provided paper copies as, at that time, it did not have an email address for the complainant.
60. In this investigation, the Commissioner can only consider 2013 forms for Dorset that NE released to the complainant at internal review in September 2016. Since the Commissioner understands that these were released as electronic versions, she has not considered this particular matter further.

Regulation 12(3) and 13(2) – third person personal data

61. NE has explained that it considers that regulation 12(3) could be applied to all the information it has withheld.
62. Regulation 12(3) of the EIR says that personal data of third persons shall not be disclosed otherwise in accordance with regulation 13.
63. Regulation 13(1) says that information is exempt from disclosure if it is the personal data of third persons and a condition under regulation 13(2) or 13(3) is satisfied.
64. With regards to these exceptions, the Commissioner has considered the information withheld from the disclosed forms that were held at the time of the request. She has also considered the information withheld from those 2016 spreadsheets that recorded information from monitoring visits that had been carried out during 2016 up to the time of the request.

Is the information personal data of third persons?

65. The Data Protection Act says that for data to constitute personal data, it must relate to a living individual and that individual must be identifiable from it.
66. In its revised response to the complainant, NE explained that it has redacted from the monitoring forms it has released the names and phone numbers of NE staff and other information relating to participants that it considered was those individuals' personal data. Participant information includes their names, address, role and contact details. Other redacted information includes particular features of a farm, such as information about badger setts present and any incidences of bTB. NE has explained to the Commissioner that it considers that this is unusual or distinguishing information about a farm. When combined with other information that is already in the public domain, NE says that it would be possible to identify particular farms, and so particular individuals.
67. With regard to the two 2016 spreadsheets for Hereford and Devon, NE has confirmed it has also redacted some information from these that it considers can be categorised as personal data; namely the participant identification numbers.
68. Other information in the public domain includes that available on Defra's farm subsidy website¹ and the Animal and Plant Health Agency also publishes bTB breakdown information² that may be able to be combined with the withheld information to identify particular farms. In addition, NE says that those who oppose the licenced badger culling carry out sett surveys. It may be possible to combine information protestors hold with the withheld information to identify certain farms and individuals.
69. The Commissioner is satisfied that names, contact details and other information that NE has withheld under regulation 12(3) can be categorised personal data. It relates to living individuals and she is persuaded that individuals could be identified from it if it was released and combined with other information already in the public domain, including in the forms and spreadsheets that NE has already released.

¹ <http://cap-payments.defra.gov.uk/Default.aspx>

² <http://ahvla.defra.gov.uk/vet-gateway/ifng-testing/index.htm>

Is a condition under regulation 13(2) satisfied?

70. Regulation 13(2)(i) says that personal data is excepted from release if disclosing it would contravene one of the data protection principles.
71. NE considers that disclosing the personal data would contravene the first data protection principle – that information shall be processed fairly and lawfully.
72. In assessing fairness, the Commissioner takes into account whether the personal data relates to an individual's public or private life, whether it is sensitive personal data, whether the individual has consented to the release of the information and their reasonable expectations about what will happen to their personal data.
73. The personal data relating to NE staff is information relating to those individuals' public life; that relating to the participants relates to those individuals' private lives. None of the information is sensitive personal data. NE explained to the complainant that participants in the licenced culling would have a reasonable expectation that identifying information should not be disclosed. It said this was particularly so given the sensitivity surrounding the Badger Control Policy. NE acknowledged that when it collects personal information from individuals it does not always inform them that the information will remain confidential or that it may be released. However it believed that, in this case, there was an expectation of confidentiality. NE is of the view that releasing the information could cause unnecessary or unjustified distress or damage to the individuals concerned if, for example, people opposed to the Badger Control Policy identified those participants.
74. With regards to the names of NE staff, NE acknowledged that, as a public sector organisation, its employees have a reasonable expectation that their names and work contact details should be disclosed upon request and that there is a legitimate public interest in accountability.
75. However, because of the sensitivity surrounding the Badger Control Policy, NE says that it believes that disclosing the names and telephone numbers of those members of its staff working in the 'bTB' team would cause those individuals unnecessary and unjustified harm or distress, and would risk those individuals' personal safety. As a result, the bTB team has collectively taken the decision to refuse consent to disclosure of team members' personal data. NE confirmed it supports this position; it has a duty of care towards its staff and this position is consistent with that duty.
76. In the circumstances of this case the Commissioner considers that the individuals concerned, both NE staff members and participants in the

licenced badger culling (who are private citizens) would have the reasonable expectation that their personal data would not be released into the wider world under the EIR. She is also prepared to accept that those individuals could suffer a degree of damage or distress if their personal data were to be disclosed. The Commissioner therefore considers that disclosing this information would be unfair to those individuals.

77. Despite the factors above, a public authority may still disclose personal information if there is compelling public interest in doing so that would outweigh the legitimate interests of the data subjects; NE staff and culling participants in this case.

Balancing the individuals' rights and freedoms against the legitimate interest in disclosing the information

78. In her submission to the Commissioner of 21 November 2017, and in her earlier submission dated 31 July 2017, the complainant puts forward a number of arguments as to why the redacted information should be disclosed: these are summarised at paragraph 26. The Commissioner has noted these arguments.
79. There is a strong public interest in the licenced badger culling, and the processes associated with the culling, such as the biosecurity monitoring, being carried out correctly. This is so that the effectiveness, or otherwise, of the culling in reducing incidences of bTB, can be robustly assessed. The Commissioner is aware that those who oppose the culling of badgers have concerns about the whole practice, including whether NE's monitoring is appropriate.
80. While acknowledging that the complainant has concerns, the Commissioner notes that she has not brought to her specific or compelling evidence that the biosecurity monitoring of farms that participated in the badger cull has been inadequately carried out. An internet review the Commissioner carried out, while certainly not exhaustive, has also not yielded any evidence of broader concerns about how the monitoring was carried out. Such evidence may have strengthened the public interest argument for releasing the withheld information.
81. As it is, the Commissioner is satisfied that the participants in the badger cull would have the reasonable expectation that their personal data would not be disclosed to the wider world; that, in the circumstances of this case, it would be unfair to do so and that there is not sufficient public interest in disclosing the information such that it would override the participants' rights and freedoms. Consequently, the Commissioner

is satisfied that regulation 13(2)(i) is engaged with respect to the information NE has withheld under regulation 12(3).

82. The Commissioner considers that regulation 12(3) and regulation 13(2)(i) can be applied to all the withheld information. It has therefore not been necessary to consider NE's application of regulation 12(5)(a) or regulation 12(5)(d).

Right of appeal

83. 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@hmcts.gsi.gov.uk

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

84. 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.
85. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF