

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 September 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 culling. Natural England provided a response to the complainant's request, however, the complainant is not satisfied with the response, as they consider that Natural England did not provide the correct figures.
2. The Commissioner's decision is that, on the balance of probabilities, Natural England has provided all the information it holds in relation to the request.
3. The Commissioner does not require Natural England to take any steps as a result of this decision notice.

Request and response

4. On 7 September 2021, the complainant wrote to Natural England and requested information in the following terms:

"1. Please disclose the counties covered by each of the badger disease control licences issued for 2021 (Areas 55-61) . For each licence, please list the main county covered and the adjacent counties.

2. Please disclose the perimeter in km of each cull area licensed in 2021 (Areas 55-61).
3. Please disclose the number of participants for each cull area licensed in 2021 (Areas 55-61).
4. a) Please disclose the percentage of land within each licensed cull area, licensed in 2021, that is either accessible for culling badgers or within 200 metres of accessible land. b) Please disclose the percentage of land within each licensed cull area, licensed in 2021, that is accessible for culling badgers.
5. Please disclose the number of applications that Natural England received for a Badger Disease Control Licence. (I am referring to applications for areas that have not previously been licensed prior to 2021.) I made the same information request on 21 June 2021. In response (in relation to RFI 5636) NE disclosed that it was 'currently working with 7 application areas seeking a Badger Disease Control Licence for 2021'. However, that was not the precise information that was requested. Please disclose the requested information."
5. Natural England responded on 5 October 2021. It provided information for all the questions asked in the request.
6. On 21 October 2021, the complainant requested an internal review as they were not satisfied with the response to question number 5 of their request. They advised that they wanted Natural England to provide the number of applications it had received, not just "full applications".
7. Following an internal review Natural England wrote to the complainant on 16 November 2021. It explained that the use of the word "full" should not be taken to mean that other license applications were received that weren't "full". It confirmed that it had received seven applications in total.

Scope of the case

8. The complainant contacted the Commissioner on 25 January 2022, to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of the complaint is to determine, on the balance of probabilities, if Natural England holds further information in relation to point 5 of the request.

10. The Commissioner has determined that he has sufficient evidence to make a decision, without having to contact Natural England for further representations.

Reasons for decision

Regulation 12(4)(a) – information not held

11. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information “to the extent that it does not hold that information when an applicant’s request is received”.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
13. In this case, the complainant has stated that they believe that Natural England did not provide the correct number of applications made in relation to point 5 of their request.
14. Natural England explained in the internal review response that the term “full” should not have been taken to mean any other license applications were received that weren’t “full”.
15. Natural England also confirmed that it had only received seven applications for the year 2021.
16. Whilst the Commissioner understands why the complainant would consider that there may be other partially made applications due to the wording used by Natural England in its response, he is satisfied that Natural England sufficiently explained what it meant when using the term “full”.
17. The Commissioner is satisfied in this case that, on the balance of probabilities, Natural England has provided the appropriate information to the complainant and no further information is held in relation to the request in accordance with regulation 12(4)(a) of the EIR.

18. The Commissioner does, however, remind Natural England that it should have cited regulation 12(4)(a) in its refusal notice, rather than regulation 5 of the EIR¹.

Other matters

19. The Commissioner notes that the complainant has provided other information in relation to several requests that they have made. However, he is only able to make a determination on the individual requests for information and if the public authority handled them correctly, in accordance with the relevant legislation (either the EIR or Freedom of Information Act 2000). Any other concerns that the complainant has will need to be addressed with the relevant bodies.

¹ [Determining whether we hold environmental information | ICO](#)

Right of appeal

20. 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

21. 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.
22. 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
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF