

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

Date: 20 March 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 a copy of specific guidance from Natural England. Natural England ('NE') provided a copy of the guidance, with redactions made under regulation 12(5)(a) (public safety) of the EIR.
2. The Commissioner's decision is that some, but not all, of the redacted information engages regulation 12(5)(a).
3. The Commissioner requires NE to take the following steps:
 - Disclose the information identified in the confidential annex.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 28 January 2022, the complainant wrote to NE and requested the following information:

"1. In Natural England's document: Applying for a Badger Disease Control Licence in 2021: Timeline for areas entering their first year (a redacted version of which Natural England disclosed to me in relation to RFI 5743) it is stated under the heading 'February 2021': 'Natural England provides your 'Operational Readiness Assessment'.

a) Please provide me with the Operational Readiness Assessment that Natural England provided to each applicant.

b) If Natural England provided an Operational Readiness Assessment to areas other than numbers 55 to 61, please disclose to how many other areas Natural England provided an Operational Readiness Assessment.

2. In Natural England's document: Applying for a Badger Disease Control Licence in 2021: Timeline for areas entering their first year (a redacted version of which Natural England disclosed to me in relation to RFI 5743) it is stated under the heading 'May':

'Monday 31 May: Natural England calculates your land access. We confirm whether the TBMA's signed by landholders in your area are enough to meet the land access requirement (the '90% figure') and whether you can proceed with your application to the next stage.'

a) Please disclose the date that Natural England calculated the land access for each application area.

b) Please disclose the land access calculation for each application area.

c) Please disclose the date that each application area was informed that the TBMA's signed by landholders were enough to meet the land access requirement (the '90% figure').

3. In Natural England's document: Applying for a Badger Disease Control Licence in 2021: Timeline for areas entering their first year (a redacted version of which Natural England disclosed to me in relation to RFI 5743) it is stated under the heading 'May':

'Monday 31 May: Finish contractor training. Contractors must complete government-approved training courses to take part in your cull. This is the deadline to finish training your contractors.'

Please disclose the date that each application area had finished training all of its contractors.

4. In Natural England's document: Applying for a Badger Disease Control Licence in 2021: Timeline for areas entering their first year (a redacted version of which Natural England disclosed to me in relation to RFI 5743) it is stated under the heading 'June':

'Monday 14 June: Upload your completed 'Operational Readiness Assessment' ...This is also the deadline to finish inputting records ... of the sett surveys you carried out in your area in the spring. Survey at least 80% of participating land to get an accurate picture of the level of badger activity.'

Please disclose the date that each application area finished entering records of sett surveys on at least 80% of participating land.

5. In Natural England's document: Applying for a Badger Disease Control Licence in 2021: Timeline for areas entering their first year (a redacted version of which Natural England disclosed to me in relation to RFI 5743) it is stated under the heading 'July':

'Late July/early August: Natural England and Defra attend your challenge session. Representatives from both organisations meet with you and your sector leads. The focus of this meeting is to further understand your plans for carrying out the cull.'

Please disclose the date of each application area's challenge session.

6. In paragraph 8 h. 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 it is stated that:

'Applicants must enter into an agreement with Natural England under section 13 of the NERC Act (the "Badger Control Deed of Agreement") requiring them to comply with the requirements contained in this guidance and any additional licence conditions for the purpose of ensuring that – i. an effective cull is carried out each year for a minimum of four years; and ii. the financial deposit (see paragraphs 8k and l) is sufficient and is managed appropriately.'

Please disclose the completed/signed Badger Control Deed of Agreement for each application area."

6. NE responded on 10 March 2022. It disclosed information in response to all parts of the request bar part 3. NE confirmed that it did not hold this information and therefore applied regulation 12(4)(a) (information not held). In response to part 1a of the request, it disclosed a copy of the Operational Readiness Assessment guidance, with redactions made under regulation 12(5)(a).

7. The complainant requested an internal review on 15 March 2022. They confirmed that, in relation to part 1a, they were not looking to receive the names of any reporting systems or storage platforms but that all other information withheld under regulation 12(5)(a) should be disclosed. They also disputed NE's application of regulation 12(4)(a) in relation to part 3.
8. NE provided the outcome to its internal review on 16 May 2022. It upheld its previous position in relation to complainant's concerns.

Scope of the case

9. During this investigation, the complainant accepted NE's explanation as to why it did not hold the information in response to part 3 of the request.
10. Therefore, the scope of this case is to consider the information that NE has withheld from the Operational Readiness Assessment guidance, under regulation 12(5)(a).

Reasons for decision

11. Regulation 12(5)(a) states that information can be withheld if its disclosure would adversely affect public safety. The term public safety is not defined in the EIR but in broad terms this limb of the exception allows you to withhold information if disclosure would result in hurt or injury to a member of the public and this can relate to either physical or mental health.
12. Regulation 12(5)(a) can be used to protect the public as a whole, a specific group, or one individual who would be exposed to some danger as a result of the disclosure. However, as with all exceptions in the EIR the adverse effect must be more than likely to occur in order for the exception to be engaged.
13. Excluding the names of the storage platforms and reporting systems, there are five redactions made to the Operational Readiness Assessment guidance. The Commissioner will consider each piece of information in turn.
14. The start date of the annual licensed badger cull operations has been redacted from the guidance because NE considers 'Release of this date would allow protesters to prepare for, rally their resources and target licensed areas, on a given date with the aim of causing harassment and harm, and to disrupt a lawful activity.' The Commissioner accepts NE's rationale; he is aware of the emotion that badger culling evokes and the

methods which some protestors will use to disrupt the activity. Whilst neither NE or the Commissioner are accusing the complainant of causing harassment or harm – he must be mindful that disclosure under the EIR is disclosure to the world at large and this information might be used by an individual for malicious purposes. He is satisfied the start date can be withheld.

15. The names of two external organisations that are somehow affiliated with badger culling are also being withheld. NE's decision to withhold the name of one of these organisations has already been considered by the Commissioner under the reference numbers IC-156871-X5P9¹ and IC-179051-X7K1.² In the first case, NE provided persuasive evidence to indicate that members of this organisation had been recently targeted due to their involvement in the activity and their details published online. The evidence also showed individuals encouraging others to target the individuals or support others in their attempt to do so. It's not clear how this information came to the individuals' in questions attention, however, the Commissioner is satisfied that this is evidence enough for the exception to be engaged.
16. The complainant has noted that the name of the second external organisation, and its affiliation with badger culling, is already in the public domain. The Commissioner concurs, he also notes that unlike the first organisation, it's been placed into the public domain by an official source, the organisation itself. With this in mind, the Commissioner doesn't see how disclosure would, more probably than not, lead to the adverse effect being described. Therefore, he doesn't consider the exception engaged.
17. In order to preserve NE's right to a fair appeal, the Commissioner has identified the name of the second external organisation in a confidential annex to be served on NE only.
18. Finally, there are two other pieces of information that NE has redacted; however, the Commissioner can't describe what this information is without disclosing the substance of the information. NE has explained that the first piece of information was withheld because it is 'highly likely protestors would use this phrase to incite increased emotive reactions from the protestor community.' However, looking at the information in the context of the guidance as a whole, the Commissioner doesn't consider this to be the case; it's not a particularly controversial or emotive statement. It's also not appropriate for NE to try and predict how the information would be perceived by the world at large or apply

¹ [ic-156871-x5p9.pdf \(ico.org.uk\)](#)

² [ic-179051-x7k1.pdf \(ico.org.uk\)](#)

the exception without any evidence that disclosure would, more probably than not, adversely affect public safety.

19. As such, the Commissioner finds that this information does not engage regulation 12(5)(a). Again, in order to preserve NE's right to a fair appeal, the Commissioner has identified this phrase in a confidential annex to be served on NE only.
20. The second piece of information is more difficult. NE's rationale relates back to an incident which did result in significant public safety concerns which occurred in 2013-2015 and then stopped due to specific circumstances. NE is concerned that disclosure would lead to a repeat of the same adverse effect as ten years ago as disclosure would 'focus/renew protestor attention.'
21. Whether the exception is engaged here is finely balanced, however, the Commissioner has decided that regulation 12(5)(a) is engaged in relation to this information.

Public interest test

22. Where the exception is not engaged the information must be disclosed and the Commissioner has identified this information to NE via a confidential annex. Where the exception is engaged, the Commissioner must consider whether the public interest would be greater served by disclosure or maintaining the exception.
23. NE has explained 'The Badger Control Policy is a highly sensitive issue and has provoked considerable public interest and debate. In applying this exception, we have had to balance the public interest in withholding the information against the public interest in disclosure. Whilst Natural England believes in openness and transparency, as a public body, Natural England also has a responsibility to protect the safety of people involved in the badger control policy.'
24. The Commissioner concurs – since any information that engages the exception does so on the basis that public safety is more likely than not to be affected, he considers the public interest in disclosure does not outweigh NE's need to protect those involved in the activity – especially looking at the disclosure that it has already provided to the complainant in response to their request.

Right of appeal

25. 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

26. 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.
27. 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
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SK9 5AF