

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

Date: 14 June 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 the crossover of badger culling and natural nature reserves. Natural England ('NE') refused to provide the information, citing regulation 12(5)(a) (public safety).
2. The Commissioner's decision is that the withheld information doesn't engage regulation 12(5)(a) and therefore can't be withheld.
3. The Commissioner requires NE to take the following steps to ensure compliance with the legislation:
 - Disclose the requested information.
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 September 2022 the complainant made the following request for information:
 - “1. What is the total number of National Nature Reserves (NNRs), in whole or in part, that fall within the boundaries of the licensed badger control areas?
 2. Of the NNRs, in whole or in part, that fall within the boundaries of the licensed badger control areas, how many NNRs contain land that is accessible for culling badgers?”
6. NE responded on 2 November 2022 and refused to confirm or deny that the requested information was held – citing regulation 12(6). Regulation 12(6) allows a public authority to neither confirm nor deny that information is held in response to a request if doing so would adversely affect public safety.
7. The complainant requested an internal review and NE provided its response on 19 January 2023. It upheld its original position.
8. The complainant referred this matter to the Commissioner who wrote to NE on 26 April 2023; he explained to NE that it was his preliminary view that regulation 12(6) wouldn't apply.
9. Having reconsidered the matter, NE wrote to the complainant on 11 May 2023 and, in response to part 1 of the request, confirmed that 53 NNRs either wholly or partly fall within the boundaries of the licensed badger control areas. It also confirmed that information was held in response to part 2 but was exempt under regulation 12(5)(a) (public safety).
10. The scope of this investigation is to consider whether NE can withhold the information requested in part 2 under regulation 12(5)(a).

Reasons for decision

Regulation 12(5)(a) – public safety

11. Regulation 12(5)(a) of the EIR states that information is exempt if its disclosure would adversely affect public safety.
12. To engage regulation 12(5)(a), a public authority must demonstrate that disclosing the requested information **would** have an adverse effect on public safety. This sets a high threshold; it has to be more probable than not that public safety would be affected if the information was released.

13. NE has cited a previous decision¹ that the Commissioner produced, which found it was entitled to rely upon regulation 12(5)(a). However, the Commissioner notes that this request related to a specific culling area, Cull Areas 55 – 61, and this doesn't.
14. The Commissioner understands that there are there are 229 NNRs in England, covering an area of 939 square kilometres² and NE has now confirmed that 53 either wholly or partly fall within licensed badger control areas. However, NE hasn't identified the 53 NNRs and the complainant has not asked NE to do so.
15. Furthermore, part 2 of the request is not asking which of these 53 NNRs contain land that is accessible for culling badgers. It is asking, of these 53 NNRs, how many are accessible for badger culling.
16. The Commissioner must decide whether NE has demonstrated that disclosing the requested figure would, more probably than not, affect public safety. If he does not accept NE's contention , the information must be disclosed.
17. The term public safety is not defined in the EIR but in broad terms a public authority can withhold information if its disclosure would result in hurt or injury to a member of the public. This can relate to either physical or mental health.
18. NE has explained:

“By releasing the number of NNRs where access is permitted for culling badgers, it will confirm whether or not culling is permitted on these publicly accessible sites...By highlighting that badger culling takes places on some of these sites would clearly raise the risk factor for our staff and property.”
19. It has gone on to explain:

“Even though some guidance has been released which refers to signing up NNRs, which implies Natural England could potentially permit access onto NNRs for culling, releasing the actual number of sites where this occurs will bring to the forefront of the minds of protestors that these sites are likely to be within areas where badger culls take place enabling them to focus their attention on these small areas within licensed cull boundaries.”

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

² [National Nature Reserves in England - GOV.UK \(www.gov.uk\)](#)

20. NE has directed the Commissioner to examples of individuals posting cull activity locations online, urging others to come forward to block culling activity. The Commissioner accepts that, where protestors meet NE staff or those carrying out monitoring or culling activity, emotions run high and clashes can occur. He also accepts that such protestors can be motivated individuals who might cross reference publicly available information about licensed badger cull areas and NNRs.
21. NE has discussed the fear and mental anxiety that its staff 'who are aware of the repeated requests and reviews for the release of information relating to NNR land' suffer, 'wondering if their places of work will be targeted.'
22. The Commissioner acknowledges the anxiety in question will have stemmed from direct, or indirect, experience with those who oppose badger culling. NE has provided the Commissioner with examples of such experiences before – they do occur.
23. However, whilst NE is dedicated to protecting the physical and mental wellbeing of its staff; it must be careful not to blanketly refuse all information relating to badger culling under the public safety exception; there must be a causal link between disclosure and public safety.
24. NE is indicating that, by disclosing the information requested in part 2, it would somehow identify which NNRs contain land that is accessible for culling badgers. However, it's not explained how the locations of these NNRs would come to be known just from disclosure of a figure. NE's arguments are generic.
25. NE is concerned that:

"Once Protestors have certain information, they are known to indiscriminately target individuals regardless of facts and given these odds it is highly likely that any one of these NNR sites would be targeted, putting Natural England staff at significant risk despite not being involved in the licensing policy or culling activities...The boundaries of cull areas are roughly known by protestors and NNR sites inside these areas can easily be identified. They present a small number of isolated sites that can be easily identified and easily accessible to members of the public"
26. The Commissioner accepts that, in disclosing the number of NNRs that fall within the licensed control areas, and which contain land accessible for badger culling, it might bring it to the forefront of the minds of protestors. However, the question is would protestors be able to pinpoint which NNRs, and which licensed cull areas, are included in the disclosed figure to allow them to target their efforts on a specific location. NE's arguments have failed to convince the Commissioner that this is the case.

27. To reiterate, in order for regulation 12(5)(a) to be engaged NE must demonstrate a link between disclosure and public safety, explaining how one thing would cause the other and show that the harm is more likely than not to happen. In this case, NE has failed to do so and therefore the information must be disclosed.

Right of appeal

28. 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

29. 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.
30. 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
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