

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

Date: 8 August 2018

Public Authority: Welsh Government

Address: Freedom.ofinformation@gov.wales

Decision (including any steps ordered)

1. The complainant requested information about licenses for badger trapping/testing/culling. The Welsh Government provided some information but withheld other information under section 22 of the FOIA. The Commissioner's decision is that the request should have been handled under the EIR as opposed to the FOIA. During the course of the Commissioner's investigation the Welsh Government disclosed the withheld information. In failing to treat the request under the appropriate access regime the Commissioner has determined that the Welsh Government breached regulation 5(2) of the EIR. The Commissioner does not require any steps to be taken.

Request and response

2. On 17 November 2017, the complainant wrote to the Welsh Government and requested information in the following terms:
 1. *"In your previous response (attached), you told me that each farm application requires all 3 appropriate licenses for badger trapping/testing/culling Can you tell me
 - How many (sets of) licenses have been issued, up to the date of your response to this request?
 - How many applications for these licenses have been received (up to date of response)?*

2. *Have any licenses been issued that cover the period beginning on, or after, 30th April 2018? If so, how many? Are they all in high risk areas?*
 3. *Are any badger operations under license still underway either*
 - *on the three farms you referred to in your response, or*
 - *on any other farm?*
 4. *In the farms where badger trap/test/cull operations under license have been taking place, and whether or not the operations are still underway, please tell me:*
 - *How many badgers were/have been trapped and tested on each farm?*
 - *How many badgers have tested positive?*
 - *How many have tested negative, and were all of these released?*
 - *How many negative test badgers were microchipped before release?*
 - *How many later proved to be positive after their blood samples were tested in the lab?*
 - *How many were recaptured and euthanised?*
 - *Did any trapped badgers require veterinary attention, and if so, for what?*
 - *Who is required to keep records of all the above?*
 5. *The WG have stated in a response, dated 20/10/17 ,to an earlier FOI request, that "It is the WG's intention to publish license information on our website shortly"*
 - *Has this been done, and where can it be accessed?*
 - *If not, when will this information be published?*
 - *What information relating to the licenses do you intend to make public?"*
3. The Welsh Government responded on 14 December 2017 and provided information relating to parts 1, 2, 3 and 5 of the request and withheld information relating to part 4 of the request under section 22 of the FOIA.
 4. On 16 January 2018 the complainant wrote to the Welsh Government and requested an internal review of its decision to withhold information under section 22 of the FOIA.
 5. The Welsh Government provided the outcome of its internal review on 5 February 2018. It upheld its decision that information relevant to part 4 of the request was exempt under section 22 of the FOIA. The Welsh Government also stated that it was satisfied that the request was responded to promptly and explained that due to the technical nature of

it, only a very small number of officers had the knowledge to respond and any perceived delay was solely down to the suitability and availability of staff to respond.

Scope of the case

6. The complainant contacted the Commissioner on 21 March 2018 to complain about the way her request for information had been handled. She asked the Commissioner to investigate whether the Welsh Government should disclose the information it had withheld under section 22 of the FOIA.
 7. In her initial investigation letter, the Commissioner advised the Welsh Government that, in the absence of sight of the withheld information, her preliminary view - based on the nature of the request - was that the requested information was environmental information, as defined by regulation 2(1) of the EIR. The Commissioner asked the Welsh Government if it agreed with this assessment, and if so, to reconsider the request under the EIR and either disclose the information or confirm which exception(s) it considered applicable. The Welsh Government responded and confirmed that the withheld information had been published and provided a copy to the complainant.
 8. The Commissioner wrote to the complainant to advise that, as the information had been disclosed, she did not intend to issue a decision notice as there were no practical steps she could require the Welsh Government to take. The complainant asked the Commissioner to issue a decision notice relating to her complaint to remind the Welsh Government staff of their duty to ensure that requests are handled under the correct access regime at the outset of its handling of a request.
 9. The scope of the Commissioner's analysis below is to consider the Welsh Government's handling of the request, and more specifically, the correct access regime for the request, and whether the Welsh Government complied with its obligations under the EIR. As the information has been disclosed and the Commissioner has determined that the correct access regime is the EIR, this notice does not include any analysis of whether or not the requested information was correctly withheld under the exemption under section 22(1) of the FOIA.
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Reasons for decision

Is the information environmental?

10. The Welsh Government dealt with this request under the terms of the FOIA. However, the Commissioner's view is that the request ought to have been considered under the terms of the EIR. This is because the request in this case relates to licences issued for the trapping, testing and culling of badgers. The information which the Welsh Government initially withheld under section 22 of the FOIA comprises a report that was produced by the Animal and Plant Health Agency ('APHA') who were commissioned by the Welsh Government to develop a programme of work to assist with its TB Eradication Programme Delivery Plan ('the APHA report'). The AHPA report is specifically focussed on the delivery of badger 'trap and test' operations on chronic TB breakdown farms in Wales in 2017.

Environmental information is defined by regulation 2 of the EIR. Regulation 2(1)(c) of the EIR provides that environmental information is any information on (relating to) measures, plans, activities etc. affecting or likely to affect the matters listed in regulation 2. Regulation 2(1)(a) lists the land and biological diversity. The Commissioner considers that the trapping, testing and potential culling of badgers is clearly a measure which will have an impact on biological diversity. The Commissioner is therefore satisfied that the requested information constitutes environmental information, as defined by Regulation 2(1)(c).

Regulation 5 - Duty to make environmental information available

11. Regulation 5(1) provides a general duty to make environmental information available. This should generally happen within 20 working days in accordance with regulation 5(2) unless a valid exception applies
12. In view of the fact that the Commissioner has concluded that the Welsh Government wrongly handled the request under the FOIA it therefore breached regulation 5(2) of the EIR in failing to provide the requested information within 20 working days of receipt of the request.

13. For future reference, the Commissioner draws the Welsh Government's attention to her general guidance on the Environmental Information Regulations¹ and more specifically 'What is environmental information?'²

¹ <https://ico.org.uk/media/for-organisations/guide-to-the-environmental-information-regulations-2-5.pdf>

² https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

Right of appeal

14. 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

15. 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.
16. 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

David Teague
Regional Manager - Wales
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Wilmslow
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SK9 5AF