

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

**Decision notice**

**Date:** 15 July 2024

**Public Authority:** Forestry Commission England  
**Address:** 620 Bristol Business Park  
Coldharbour Lane  
Bristol  
BS16 1EJ

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to access agreement for licensed badger control activities. The Forestry Commission refused the request under regulation 12(5)(a) EIR – public safety. During the course of the Commissioner’s investigation it became apparent that the public authority was seeking to neither confirm nor deny if information was held under regulation 12(6).
2. The Commissioner’s decision is that the public authority is not entitled to rely on regulation 12(6) to neither confirm nor deny holding the requested information with respect to regulation 12(5)(a).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Confirm or deny whether it holds information as described in parts 1 and 2 of the request and either disclose that information or issue a fresh refusal notice compliant with regulation 14 EIR.
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

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5. On 20 October 2023, the complainant wrote to Forestry England (an executive agency of Forestry Commission England ("FC")) and requested information in the following terms:
  1. a) "Was there an agreement or access agreements between Forestry England and the badger control company HNV Associates Ltd which allowed access to Forestry Commission land?"  
  
b) Please disclose this access agreement. If there was more than one agreement, please disclose each agreement. I am content for the names of individuals to be redacted.
  2. What was the total area (in hectares or km<sup>2</sup>) of Forestry Commission land that the badger control company HNV Associates Ltd was allowed access to?"
6. FC responded on 15 November 2023 and considered the request fell under EIR. FC cited regulation 12(5)(a) – public safety – as its basis for refusing to provide the requested information.
7. The complainant requested an internal review of this decision on 22 November 2023. FC conducted an internal review and responded on 11 January 2024 upholding its position.

## Scope of the case

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8. The complainant contacted the Commissioner on 19 February 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine if FC has correctly withheld the requested information under regulation 12(5)(a) EIR.

## Reasons for decision

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10. Regulation 12(5)(a) allows a public authority to refuse to disclose information if its disclosure would adversely affect –  
  
“(a) international relations, defence, national security, or public safety.”
11. To demonstrate that disclosing the information would harm one of the interests in 12(5)(a), FC needs to:

- a) identify a negative consequence (adverse effect) of the disclosure that is significant (more than trivial) and is relevant to the exception claimed;
  - b) show a link between the disclosure and the negative consequence, explaining how one thing would cause the other;
  - c) show that the harm is more likely than not to happen.
12. When considering whether an exception is engaged the Commissioner's approach is to consider what harm would occur if the information were placed in the public domain and freely accessible to all. The question, therefore, is whether making the information freely accessible to anyone and everyone would cause that harm.
  13. FC has emphasised that the government's policy of culling badgers as part of its Bovine Tuberculosis control measures has been and continues to be controversial. As such it appreciates that there is a need to be open where it can be and it only applies exceptions to withhold information where it considers it absolutely necessary.
  14. FC does not routinely confirm which companies have been granted access agreements as to put this information into the public domain would put at risk the safety and wellbeing of employees of the companies, particularly those at Director level whose details may be accessible online. FC has provided the Commissioner with multiple examples of those named in public being subject to harassment.
  15. FC has not applied regulation 12(6) to the request. Regulation 12(6) exempts a public authority from confirming or denying if information is held if that confirmation or denial would adversely affect public safety. FC's position is that unless a company has specifically been confirmed as being associated with licensed badger control it would not confirm or deny this.
  16. The Commissioner has considered whether regulation 12(6) should have been applied by the FC. The FC's response to the Commissioner was unclear, at times referring to being unable to confirm or deny but not explicitly citing regulation 12(6). The Commissioner, as a responsible regulator has a duty to consider this as he wouldn't want to accidentally put people at risk. He has therefore proactively decided to look at whether regulation 12(6) is engaged.
  17. The Commissioner considers there may be an adverse affect on public safety if it were to confirm or deny if companies have been involved in badger control if there was no previous confirmation of this anywhere publicly. The Commissioner is aware that there articles online identifying

HNV Associates Ltd in conjunction with badger control both in national press<sup>1</sup> and local media<sup>2</sup>.

18. The Guardian article refers to a police investigation report which the Commissioner isn't aware of being in the public domain. However, the Police's official statement refers to "cull representatives" rather than simply referring to the National Farmer's Union (NFU). The NFU's statement, in turn, refers to both their representatives and representatives of the culling company. The Commissioner's view is that if this company didn't have representative present it seems highly likely that both organisations would have specifically stated this.

The Commissioner recognises that this is not categorical evidence but even if HNV's presence has not been officially confirmed, the Commissioner has seen evidence to suggest that anti-cull activists are targeting the company anyway. Therefore confirmation would not carry a substantial risk compared to what is already taking place and denial might actually reduce the risk.

19. As such the Commissioner can't see how the FC answering the question asked at part 1 of the request would adversely affect public safety given it's already apparent HNV has been linked with badger control. Answering part 1 of the request would simply confirm or deny if the FC has allowed HNV access to FC land and this alone would not have an adverse effect on public safety.
20. Turning to the other parts of the request for copies of the access agreement(s) if held and the total area of land access was permitted to, if it was. The Commissioner does not consider the issue any different here – a simple confirmation or denial can be issued without affecting public safety.
21. The Commissioner cannot consider if regulation 12(5)(a) has been appropriately applied to withhold access agreements until it is clear whether there is any information to withhold.
22. Template access agreements and redacted access agreements are already available to the complainant and publicly<sup>3</sup>. These usually have names and addresses of the company redacted along with information showing the control area boundaries. The FC's position is that disclosing access agreements in full, should they exist, would put into the public

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<sup>1</sup> [Badger cull company used Somerset's constabulary 'as private police force' | Badgers | The Guardian](#)  
[Avon and Somerset Police back decisions made during in badger cull | Somerset County Gazette](#)

<sup>3</sup> [area2-somerset-licence-2017.pdf \(publishing.service.gov.uk\)](#)

domain further detail including the schedule of land, maps and names of locations where access is permitted, as well as any landlord details.

23. FC states that this might highlight neighbouring farms involved in badger control and subject landlords to potential harassment. FC also argue that its staff are often lone working in isolated locations and are vulnerable to harassment and intimidation. FC believes the threat of online intimidation is still real at any site whether the involvement is past or current as protestors do not know which sites are or were involved. It argues the release of maps in any agreement whether still current or not, would impact on the wellbeing of staff.
24. The Commissioner is aware that there have been protests and harassment surrounding the badger control measures. The FC has provided evidence of this and the Commissioner accepts that disclosing information that could identify cull zone boundaries or to identify specific farms or estates where activity might take place or have taken place is more likely than not to have an adverse affect on public safety.
25. However, at this stage the Commissioner does not consider that simply confirming or denying the existence of an access agreement and the amount of area it covers, should it exist, would have the argued consequences. Confirmation or denial would not provide any more precision about culling activity than is already know.
26. If a mere confirmation or denial that information is held cannot be used to identify cull zone boundaries more precisely, or to identify specific estates or farms where activity was likely to take place or had taken place, the Commissioner cannot consider that issuing a confirmation or a denial is more likely than not to adversely affect public safety.
27. FC has explained that it has provided the complainant with details of areas, broken down by county. The Commissioner has viewed this and notes that this information showed the total FC areas and then a breakdown by year for each county of areas where access was allowed.
28. The Commissioner can infer from this that the FC has no issue with revealing how much of its land it has allowed access to for the purposes of badger control generally. It is linking this access to a specific company or individual it argues would adversely affect public safety.
29. The FC has again not specifically cited regulation 12(6) to neither confirm nor deny if it holds the information requested here but it's arguments are that to confirm or deny the total area of FC land HNV was allowed access to is essentially confirming or denying if HNV was involved in badger control.

30. The Commissioner refers back to his arguments relating to part 1a of the request – HNV has been linked with badger control measures in national newspaper reports so this information can't be said to be unknown. As the FC seems to have no issue with disclosing the total areas of FC land access has been granted to there does not seem to be an obvious reason to link disclosing the information to a direct effect on public safety.
31. In conclusion, the Commissioner is not persuaded that confirming or denying that the requested information is held would adversely affect public safety. He therefore considers that the threshold of "would adversely affect" has not been met and the regulation 12(6) exception is not engaged.

## Right of appeal

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32. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jill Hulley**  
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