

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

**Date:** 6 November 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 on access agreements for badger control between a named company and Forestry Commission England (FC). FC refused to provide the access agreements under regulation 12(5)(a) EIR – public safety.
2. The Commissioner's decision is that the information in the agreements, chiefly in the schedule, that provides maps, names of woodlands and specific details of boundaries of cull zones does engage regulation 12(5)(a) and the public interest favours maintaining the exception and withholding the information. For the remaining parts of the agreement the Commissioner does not find the information engages regulation 12(5)(a).
3. The Commissioner requires FC to take the following step to ensure compliance with the legislation:
  - Disclose the parts of the agreement that do not relate to locations, removing the address of the company as the complainant has agreed this is not needed.
4. The public authority must take these steps within 30 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 an contempt of court.

## Request and response

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5. On 20 October 2023 the complainant made the following request for information to Forestry Commission England:

"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. The FC relied on regulation 12(6) to neither confirm nor deny holding the information and the Commissioner issued a [decision notice](#)<sup>1</sup> requiring the FC to confirm or deny if the information was held.
7. On 6 August 2023 the FC wrote to the complainant and confirmed that there was an access agreement with HNV Associates Ltd ("HNV") and confirmed the total land area HNV had access to. With regard to part 1b of the request which asked for a copy of the access agreement, FC confirmed this was held but considered it was excepted from disclosure under regulation 12(5)(a) EIR.
8. FC provided the complainant with details of the appeal process, the complainant expressed dissatisfaction with the response. The FC advised the Commissioner it was standing by its original arguments for not providing the information and its original response, internal review and arguments.

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<sup>1</sup> [ic-289489-y5p2.pdf](#)

## Scope of the case

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9. The complainant contacted the Commissioner to express continued dissatisfaction with the refusal of FC to provide the access agreement. The complainant has made it clear they are content for names of individuals and HNV's address to be withheld.
10. The Commissioner considers the scope of his investigation is to determine if FC has correctly relied on regulation 12(5)(a) EIR to withhold the access agreement.

## Reasons for decision

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### Regulation 12(5)(a) – public safety

11. Regulation 12(5)(a) of 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. 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.

### The complainant's position

14. The complainant has provided several arguments to the Commissioner, all of which have been considered, however, due to the length of the supporting arguments, the Commissioner has briefly summarised these points.
15. Firstly, the complainant has made it clear that if the access agreements between FC and HNV have the names of individuals removed then this would be acceptable. Similarly, the complainant was content for

information that revealed specific locations of land accessible to HNV to be withheld.

16. The complainant considers that the general area that HNV has been the badger control company in is already publicly known. Natural England confirmed HNV was the badger control company for the West Somerset pilot cull area (Area 2 – Somerset). The complainant has provided a link showing that HNV was named in 2015<sup>2</sup>
17. The complainant does not consider FC can withhold access agreements in full under regulation 12(5)(a). FC provided the complainant with a template licence with one redaction and advised it was the information in the schedules that meant the access agreements engaged regulation 12(5)(a). FC had stated the licences were not materially different from the template licence already provided, besides the schedules. The complainant considers that there is evidence not all access agreements are identical and there may be variances in wording or terms and conditions. When asking Forestry England about this previously the complainant was informed that blank or template copies of licences could not be provided, complete copies (including schedules) would have to be considered, and these would be excepted under regulation 12(5)(a) EIR.
18. The complainant contends that the whole access agreement does not need to be withheld when template licences have already been provided. It is already known that HNV have an access agreement for culling in Area 2 and the land area has now been provided.

### **The public authority's position**

19. FC explained it considers the actual access agreement should be withheld on the grounds of public safety as all agreements contain names of woods and maps of land managed by Forestry England. It considers that disclosing this information could result in Forestry England employees and contractors working in these areas to be directly targeted by those opposed to the cull, even where the Natural England consent for culling activities in the area has expired.
20. As an employer FC considers it has a responsibility to protect its staff who are often lone working in isolated locations and vulnerable to harassment and intimidation despite lone working safety systems being in place.

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<sup>2</sup> [Bovine TB: authorisation for badger culling in 2015 - GOV.UK](https://www.gov.uk/government/news/bovine-tb-authorisation-for-badger-culling-in-2015)

21. FC has provided the Commissioner with a number of examples of incitement to take direct action against cull participants and the FC believes this does not exclude areas where consent for culling has expired. FC considers the risk of harm to FC and Forestry England employees through disclosing the actual agreements, which include maps of woodlands, is real and tangible.
22. Staff are aware of how colleagues have previously been followed and intimidated by animal rights activists and protestors whilst carrying out their lawful activities and the FC considers it must protect, so far as possible, against this. Disclosing FC and Forestry England areas will also highlight neighbouring farms as likely to be involved in badger control, exposing those to similar risks of direct action.
23. The Commissioner has considered the arguments from both parties. In his earlier decision notice he argued:

“... 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 effect on public safety.”
24. He stands by this reasoning here. The information in the schedules ie the maps, names of specific woodland and cull zone boundaries, would have an adverse effect on public safety if it were disclosed.
25. However, the complainant’s argument that the whole access agreement cannot be withheld is valid. The FC’s arguments are focussed on the impact of disclosing the detail of the cull zone area but the access agreements also contain other details. Some of this detail will be standard wording and likely will be the same as the template licence the complainant has already seen. However, this does not preclude it from being disclosed here. The access agreements may also contain other details such as dates the licence is valid from and to and details of access charges. This is information the complainant has expressed interest in and there doesn’t appear to be any compelling reason put forward by FC as to why this more anodyne information would have an adverse effect on public safety given it is already known HNV had an agreement.
26. The Commissioner therefore finds the exception is only engaged in relation to the information in the access agreement in the schedule that provides specific locations such as names of woodlands and maps. For the remaining parts of the access agreement the Commissioner does not

find the exception is engaged and FC should now disclose this to the complainant.

27. In doing so the Commissioner stresses that this extends to *all* access agreements between HNV and FC if more than one has existed. FC has not been clear on this point and if more than one access agreement has existed then each one is in scope of the request. Whilst the wording may be identical in each one bar the dates it is still FC's obligation to provide this information to comply with the request.
28. As the Commissioner has found the exception engaged in relation to the information in the schedule(s) he has gone on to consider the public interest in this information.

### **Public interest arguments for disclosure**

29. FC recognises the public interest in the information and the presumption in favour of disclosure. It argues the disclosures it has made meet much of the public interest in the information.
30. 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.
31. The complainant also echoes this point noting that the badger culls remain highly controversial, topical, a matter of substantial debate and concern and a matter of significant public interest.
32. Further they argue FC land is publicly owned so there is a public interest in transparency and accountability in relation to the activities that are taking place on it. This public interest is particularly strong when FC allows access for high-risk activities such as the use of firearms to kill badgers and other activities associated with the killing of badgers.
33. The pilot culls involved HNV Associates Ltd culling badgers in the second pilot cull area, Area 2-Somerset. If the land access requirements for these 2 pilot cull areas had not been reached and the pilot culls had not gone ahead, badger culling could not have been rolled out. Scrutiny of these pilot culls remains a significant public interest.

### **Public interest arguments for withholding**

34. FC states they have only applied regulation 12(5)(a) where the level of detail being requested would put its own staff and others at real risk of harm. The FC does not believe it is in the public interest for civil

servants working for a government agency undertaking legal activities to be subject to threats and intimidation

35. Furthermore, the FC states it has had previous experience of staff being followed and filmed when undertaking wild boar culling, a legitimate and legal activity to manage populations in the Forest of Dean<sup>3</sup>. Knowing the impact this had on its staff at the time the FC argues it would be irresponsible, and negligent of its duty of care to unnecessarily put its staff and others at increased risk of additional harm over the Natural England licenced badger control activities. It is very hard to see how this would be in the public interest as the costs of this harm would, in addition to the individual suffering, come at significant financial and operations cost to the public through the FC and Forestry England.

### **Balance of the public interest arguments**

36. Under the EIR there is a presumption in favour of disclosure. To outweigh this there should be significant and weighty arguments as to why the information should not be disclosed.
37. The Commissioner accepts there is a significant public interest in ensuring public safety and not disclosing information that might affect this. In accepting the exception is engaged there is an inherent weight added to the public interest in withholding this information.
38. The Commissioner acknowledges that badger culling is a controversial issue and still sparks debate and strong views. Disclosing any information that provides more detail about the culls will be in the public interest as it will provide greater transparency about what has taken place, will take place, where and how.
39. That being said, the specific information that engages this exception that reveals cull zones will, as has been established, have an adverse effect on public safety. It will impact on FC staff and farms/farmers within the boundaries, potentially placing them at harm and the FC has provided examples of such activities to demonstrate this is more than just speculative.
40. The Commissioner considers that the public interest in ensuring public safety in this case does outweigh the public interest in disclosure. Whilst there are clearly interested parties who would want to know the specific boundaries of cull areas for a variety of reasons the Commissioner does

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<sup>3</sup> [Animal activists vow to stop planned wild boar cull in Forest of Dean | Wildlife | The Guardian](#)

not consider that knowing this will give a significantly greater insight on the cull than knowing the broad areas. Any interest in this is not enough to justify the effect on public safety in this case.

41. The Commissioner therefore finds that, in relation the information in the access agreements detailing specific locations, the regulation 12(5)(a) exception does provide a basis for withholding the information.



## Right of appeal

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42. 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)

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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