

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 4 December 2014

Public Authority: Animal and Plant Health Agency
Address: Weybourne Building
Woodham Lane
Addlestone
Surrey
KT15 3NB

Decision (including any steps ordered)

1. The complainant has requested from the Animal and Plant Health Agency (the "APHA") information relating to the cattle data for the Badger Vaccination Deployment Project (BVDP) in Gloucestershire.
2. The Commissioner's decision is that APHA has correctly applied regulation 12(4)(b) to the request.
3. The Commissioner requires APHA to take no steps.

Request and response

4. On 18 May 2014, the complainant wrote to APHA and requested information in the following terms:
"Please send me cattle data for the Badger Vaccination Deployment Project (BVDP) project in Gloucestershire referred to in Ref 1 during the 46 months (3 years 10 months) since 1st May 2010 when the data has been available".
5. APHA responded on 20 May 2014. It provided the complainant with a link which it stated would provide the requested information. .
6. The complainant replied later the same day and explained that he could not locate the BVDP data within the link that had been provided. He subsequently asked APHA to confirm whether the cattle data for the

BVDP area was included in the spreadsheet that he had been provided with.

7. The complainant wrote a further email to APHA on 29 May 2014. He explained that the cattle data for the BVDP area was absent from the spreadsheet. He therefore asked APHA to provide him with the information he had requested.
8. APHA responded on 16 June 2014. In its response APHA explained:
"The information you request would have to be created. We are withholding this under regulation 12(4)(b) 'the request for information is manifestly unreasonable'. We consider the cost and diversion of staff resource to create the information would be too great and therefore we are unable to provide this information".
9. The complainant subsequently asked for an internal review. The outcome was sent to him on 30 June 2014. APHA provided the complainant with a more detailed response and provided an explanation detailing the amount of time it would take to create the requested information. It subsequently upheld its previous decision.

Scope of the case

10. The complainant contacted the Commissioner on 13 August 2014 to complain about the way his request for information had been handled.
11. The Commissioner has had to consider whether APHA was correct to apply regulation 12(4)(b) to the request.

Reasons for decision

12. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
13. In the Commissioner's view, "manifestly" means that there must be an obvious or tangible quality to the unreasonableness.
14. Unlike FOIA and, specifically, section 12, the EIR does not contain a provision that exclusively covers the time and cost implications of compliance. The considerations associated with the application of regulations 12(4)(b) of the EIR are, instead, broader than section 12 of FOIA. Specifically there is a requirement under regulation 12(1) of the EIR to consider the public interest test and the EIR has an express

presumption in favour of disclosure. These factors will be taken into account when determining whether the request is manifestly unreasonable.

15. In this case, APHA has explained that it considers the request to be manifestly unreasonable on the grounds of costs.
16. APHA explained that the BVDP area is a difficult area to define. APHA explained:

"Although we could provide an outline of an area that includes all of the badger vaccination, within that area, badger vaccination has not taken place uniformly. APHA does not hold data specifically relating to the area affected by badger vaccination because this cannot be accurately defined. To explain further, some landowners refused access, other had their land surveyed and no evidence of badger activity was found, whereas others had several badgers vaccinated on their land. There has been some variation in participation between the four years of the project, with a small number of landowners withdrawing and other being signed up over its course".

17. It further explained that although a landowner within the project area may have refused access, this does not mean that they will not be influenced by badger vaccination.
18. APHA explained that to determine an appropriate 'area vaccinated' around badgers trapped and vaccinated within the BVDP area is a *"complicated process which would only be achieved through consensus with relevant scientific experts, and possibly exploratory data analysis"*.
19. To support its application of regulation 12(4)(b), APHA explained that in order to comply with the request it would first have to identify the relevant contained holdings. A contained holding is a private farm within the symbolic outline of the BVDP area, not all holdings in the area were part of the project. APHA emphasised that this would be a very difficult and complex task.
20. Firstly it stated that there would need to be an agreement made on the scientific consensus on which farms were affected by vaccinations, given the location of badgers vaccinated. It explained:

"We estimate that the literature search would take at least six working days to decide on rules around the farms affected by vaccination. This would include a one-day workshop with four experts".

21. APHA then explained that if it was able to determine the relevant contained holdings, the data systems group experts would then construct a Structured Query Language query to extract the breakdown

histories from SAM (farm holding data retained). APHA estimated this to take 2 hours. It would then need to extract the relevant County Parish Holdings via Geographic Information system which would take a further 2 hours. It explained that it would then need to repeat this process.

22. APHA stated that to comply with the request it would require it to carry out very costly analytical work that it would not otherwise need to do.

23. APHA explained:

"The first part of the data needed, that is defining the cattle herds associated with badger vaccination, is not held and not required or necessary for the BVDP Project. This data would have to be created to meet this request and would involve careful consideration and hours of specialist resources being diverted from their normal work areas (and, possibly, input of external experts). We take the view that required the diversion of resources to meet this burdensome request, the outcome of which would have no benefit to the project, is manifestly unreasonable".

24. To support its view, APHA stressed that the project was designed to be a practical deployment exercise, to learn lessons on how to practically deploy the Badger BCG vaccinations and to allow lay persons to be trained to trap and vaccinate badgers, rather than to see the effect vaccinating badgers had on cattle.

25. It concluded by stating that the request was clearly too great and the information request was not necessary for the BVDP. For these reasons APHA explained that the request would put a disproportionate and unreasonable burden on APHA resources and disrupt its ability to carry out its daily roles.

The Commissioner's view

26. The Commissioner understands that to agree on an area in which the BVDP has been carried out, is a difficult, complex process which would require specialised resources and experts. He considers that the time required to determine the area, based on APHA's arguments would be burdensome, especially in relation to the resources that would be required to fulfil the request.

27. The Commissioner has also acknowledged that the purpose behind the BVDP was to allow lay persons to trap and vaccinate badgers themselves, not to see the effect of vaccinating badgers on cattle.

28. The Commissioner considers that taking into account the time and diversion of resources that would be needed to comply with the request, it would not only be unreasonable to expect the APHA to comply with the request, it is manifestly unreasonable on the grounds of costs.

The public interest test

29. The EIR explicitly requires a public authority to apply a public interest test, in accordance with regulation 12(1)(b), before deciding whether an exception should be maintained. The Commissioner accepts that public interest factors such as proportionality and the value of the request will have already been considered by a public authority in deciding whether to engage the exception, and that these arguments will still be relevant considerations in the public interest test.
30. The complainant explained that there should be three years of data available and a meaningful picture should now start to be emerging to show what impact badger vaccination is having on cattle TB. He further explained that comparing data in BVDP area with areas that are untreated will significantly help towards satisfying the need for further evidence. He concluded that it would therefore be in the public interest to disclose the requested information.
31. APHA argued that the request would cause it to divert resources to carry out very costly analytical work that it would not otherwise need to do. It further argued that there was a lack of resources across departments to complete the work necessary to comply with the request.
32. APHA also argued that it would not be in the public interest to divert resources to determine a defined area of the BVDP. It explained that if APHA was able to agree on a defined area; the next step of data extraction would involve removing specialised teams from their normal duties. It considered that it was not in the public interest to do this.

The balance of public interest

33. The Commissioner has recognised the importance of accountability and transparency in decision-making by public authorities. He further recognises that there is an express presumption of disclosure within the EIR and the public authorities should aim to provide requested environmental information where possible and practical.
34. The Commissioner further recognises that a public authority will always be expected to bear some costs when complying with a request. For the sake of the public interest test, however, the key issue is whether in all the circumstances this cost is disproportionate to the importance of the requested information. In the Commissioner's view, in this case, it is.
35. The Commissioner considers there is a strong public interest in APHA being able to carry out its core functions without the disruption that would be caused by complying with requests that would impose a significant burden in terms of both time and resources. The Commissioner is of the view that there is a very strong public interest in

public authorities being able to carry out their wider obligations fully and effectively, so that the needs of the individuals they serve are met. The Commissioner is also mindful of the fact that APHA's ability to comply with other more focused requests for information would be undermined if it had to routinely deal with wide ranging requests requiring significant resources.

36. Although the Commissioner appreciates the public interest arguments raised by the complainant, he recognises that the purpose behind the BVDP was not to see the effect of the vaccinations on cattle. The Commissioner considers that if this was the case, there may be a stronger public interest in the information requested.
37. On this basis the Commissioner considers that it would be unreasonable to expect APHA to comply with the request because of the substantial demands it would place on its resources and the likelihood that it would significantly distract officials from their key responsibilities within the organisation. Therefore, in all the circumstances, the Commissioner has found that the weight of the public interest arguments favours maintaining the exception.

Right of appeal

38. 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

39. 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.
40. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF