

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

**Decision notice**

**Date:** 29 May 2014

**Public Authority:** Natural England  
**Address:** Government Buildings  
Whittington Road  
Worcester  
WR5 2LQ

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the implementation of the Badger Control Policy in the pilot cull areas of West Gloucestershire and West Somerset and the reserve pilot cull area in Dorset. Natural England released some information but confirmed other information was exempt from disclosure under regulations 12(5)(a) and 12(5)(g) of the EIR. In relation to some of the questions the complainant asked, Natural England confirmed that the information was not held and applied regulation 12(4)(a) of the EIR.
2. The Commissioner's decision is that Natural England correctly relied on regulation 12(4)(a) of the EIR. He is satisfied that on the balance of probabilities no recorded information was held at the time of the request. For these elements of the request, the Commissioner does not require any further action to be taken.
3. In relation to the application of regulation 12(5)(a) and 12(5)(g) of the EIR to the withheld information, it is the Commissioner's decision that Natural England was incorrect to rely on these exceptions for the non-disclosure of this information.
4. The Commissioner requires Natural England to take the following steps to ensure compliance with the legislation:

- to disclose all remaining withheld information to the complainant in relation to questions 1 and 3 of her request (as listed in paragraph 11 of this notice). Any third party personal data and names of business should be redacted.
5. Natural England 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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6. On 2 May 2013, the complainant wrote to Natural England and requested information in the following terms:
- "I should like to see the Badger Control Plans submitted by all applicants for a licence to cull badgers using the method of controlled shooting in the pilot cull areas of West Gloucestershire and West Somerset and the reserve pilot cull area of Dorset. I am not asking for the applicants to be identified.
  - I should like to know what 'other measures' (for e.g. vaccination) each licensee has specified in their Badger Control Plan to mitigate the potential for disease spread in areas within or surrounding the control areas, where culling is not taking place. I am not asking for the licensees to be identified. I am only asking for the 'other measures' to be communicated.
  - I should like to know how many applications have been made to vaccinate badgers in the pilot areas of West Gloucestershire and West Somerset and in the 2km rings surrounding these areas. I should also like to know when vaccinating began or will begin.
  - As soon as monitoring details are finalised, I should like to know how many Natural England monitors will be monitoring compliance with licence conditions and agreements in place for culling and vaccination in the period four weeks before the pilot culls in West Gloucestershire and West Somerset and the period during the pilot culls in these areas.
  - As soon as monitoring details are finalised, I should like to know the number of Natural England monitors who will be monitoring on a single night in each of the cull areas. I should also like to know if the same number of Natural England monitors will be performing

monitoring duties every night during the six-week culling period. I should like to know full details, please.

- As soon as monitoring details are finalised, I should like to know how many monitors – other than Natural England monitors – will be monitoring each of the pilot culls. I should like to know what their exact roles will be and how often they will be monitoring during the six-week period.”
7. Natural England responded on 5 June 2013. It released a blank copy of a Badger Control Plan in response to bullet point one advising the complainant that all other information is exempt from disclosure under regulation 12(5)(a) of the EIR. It provided the complainant with some information to address bullet points two and three. In respect of bullet points four, five and six, Natural England confirmed that it does not hold any recorded information addressing these elements of the request and therefore cited regulation 12(4)(a) of the EIR.
  8. The complainant requested an internal review on 12 June 2013.
  9. Natural England completed its internal review on 19 August 2013. It continued to withhold information under regulation 12(5)(a) and maintained its position that it does not hold the exact information the complainant requires to address her concerns about monitoring and therefore regulation 12(4)(a) applied to parts of her request.

## **Scope of the case**

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10. The complainant first contacted the Commissioner on 15 August 2013 to complain about the way her request for information had been handled. The complainant's case was not however formally accepted for consideration until 29 August 2013 and until the Commissioner had received all necessary documentation from her.
11. Following the specific elements of the request the complainant challenged at the internal review and Natural England's labelling of these outstanding issues, the Commissioner's investigation has focused on the following:
  - Question 1 – a request for copies of the Badger Control Plans submitted by all applicants in the pilot areas of West Gloucestershire and West Somerset and the reserve pilot area of Dorset.

- Question 2 – what 'other measures' each licensee had specified on their Badger Control Plans to mitigate the potential for disease spread in the areas concerned.
  - Question 3 – the number of applications that have been made to vaccinate badgers in the pilot areas and in the 2km rings surrounding these areas.
  - Question 4, 5 and 6 – all relating to the monitoring arrangements in place at Natural England for monitoring the compliance of licence conditions and agreements.
12. Natural England applied regulation 12(5)(a) and during the Commissioner's investigation 12(5)(g) of the EIR to questions 1 and 3.
  13. In respect of question 1, Natural England confirmed that it holds a Badger Control Plan for West Gloucestershire, West Somerset and Dorset. Further information was disclosed to the complainant during the Commissioner's investigation.
  14. The complainant confirmed that she was happy for any personal data relating to third parties to be scoped out of this investigation. She also stated that she was not interested in the names of any businesses mentioned in the plans either, as she appreciated such businesses or third parties could potentially be targeted by those opposed to badger culling if their identities were revealed or information was disclosed from which their identities could be worked out.
  15. In terms of the Badger Control Plans, the Commissioner will consider all remaining withheld information (any information released during the Commissioner's investigation and any information from which applicants or named businesses could be identified has been excluded) and the application of regulations 12(5)(a) and 12(5)(g) of the EIR.
  16. In relation to question 2, the complainant stated that she received a generic list of 'other measures' but this was not the information she asked for. The complainant confirmed that she wanted to know what 'other measures' had been specified by *each* licensee on their Badger Control Plans. In terms of scope, the Commissioner can only consider what information was held at the time of the complainant's request and determine whether, on the balance of probabilities, further recorded information was held at this time which could have addressed this question in more detail.
  17. Concerning question 3, Natural England released some information. The complainant appealed and stated that she required a more detailed breakdown of the applications Natural England had received. Natural

England then applied regulations 12(5)(a) and 12(5)(g) of the EIR to the more detailed breakdown she required.

18. Regarding questions 4, 5 and 6, Natural England applied regulation 12(4)(a) of the EIR, as it did not hold the requested information at the time of the request.
19. Natural England did release further information to the complainant in respect of questions 4, 5, and 6 during the Commissioner's investigation, as new information had either come to light or had come into its possession since the request was made. The complainant has been informed that any new questions or requests she may have in light of this new information could not be considered within the scope of this investigation. Any new requests or questions would have to be directed to Natural England in the first instance to give it an opportunity to address them.
20. In relation to questions 4, 5, and 6 and what the Commissioner can consider, this notice is limited to the consideration of regulation 12(4)(a) of the EIR and whether, on the balance of probabilities, any recorded information was held at the time of the complainant's request.

## **Reasons for decision**

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21. The Commissioner will first consider questions 1 and 3 as outlined in paragraph 11 above. In relation to these questions, Natural England has withheld information and the Commissioner will now consider the exceptions it has applied under the EIR.

### *Question 1 – copies of the three Badger Control Plans*

22. The following information has been withheld from the Badger Control Plan for West Gloucestershire:
  - Area statistics – for example total application area, total area of participating and non-participating land (tab one of plan).
  - Total perimeter of boundary (tab one of plan).
  - Participating farmers and biosecurity – individual 'P' numbers given to each participant and then for each, details of the total participating land, farm enterprise, details of biosecurity awareness and measures and details of control method for which permission is granted (tab two of plan).

- The date two large biosecurity workshops were held (tab three of plan - the names of businesses were also redacted, but these are outside the scope of this case for the reasons explained in paragraph 14 above).
- The total area in hectares where culling for each controller/vaccinator (tab four of plan).
- A note added relating to two non-participating boundary landowners/vaccinators (tab 8 of plan).

23. The following information has been withheld from the Badger Control Plan for North and West Dorset:

- Area statistics – total application area and the total participating area in km (tab one of plan).
- Participating farmers and biosecurity – individual 'P' numbers given to each participant and then for each, details of the total participating land, livestock information, some supplementary information for cattle owners, details of biosecurity awareness and measures and details of control method for which permission is granted (tab two of plan).

24. The information withheld from the Badger Control Plan for West Somerset is as follows:

- Area statistics, details relating to the boundaries and buffers for this plan and total perimeter (tab one of plan).
- Participating farmers and biosecurity – individual 'P' numbers given to each participant and then for each, details of the total participating land, farm enterprise, details of biosecurity awareness and measures and details of control method for which permission is granted (tab two of plan).
- The total area in hectares where culling for each controller/vaccinator (tab four of plan).
- Three redactions made to non-participating landowners/occupiers (within the main area), which do not constitute the personal data of third parties (tab 5).
- A note added to this plan relating to non-participating landowners/occupiers (tab 6).

- Two 'P' reference numbers redacted from the part of the plan headed 'Non-participating Boundary Landowners/Occupiers with 2km of Control Area' (tab 7).
  - Redaction to boundary area notes (tab 8).
25. It is noted that between the three plans not all of the same fields are completed – there is information on one that is not on another and the Commissioner understands that this is because some fields were not filled in and therefore provided by the licensee to Natural England.
26. Dealing with the application of regulation 12(5)(a) of the EIR first, this exception states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.
27. The Commissioner considers the wording of 'would adversely affect' in regulation 12(5) of the EIR sets a high threshold in terms of likelihood which has to be met in order for any of the exceptions listed in regulation 12(5) to be engaged. In other words, it is not sufficient that disclosure may or could have some level of adverse effect, but rather that disclosure 'would' have an adverse effect. Therefore the likelihood of an adverse effect must be more probable than not.
28. Natural England has argued that the disclosure of the redacted information from each of the three Badger Control Plans could lead to the identification of participants or contractors or the location of their property and operational activities. This would then in turn increase the risk to public safety and potentially undermine the security of the operations and the data collected.
29. It believes disclosure of this information would impact adversely upon the protection of private property and public buildings and the health and safety of staff and other individuals. Natural England stated that it was with regret that some protestors can and will use any means available to them to disrupt the cull – including the intimidation of those believed to be participating. Natural England stated that if this information was released it could be coupled with other information available from other sources or information already known to locals and protestors which could then lead to protests being more refined and targeted on specific areas or landowners believed to be involved.
30. Natural England referred the Commissioner to a High Court injunction that had been granted to the NFU that restricts people protesting against the Badger Control Policy. It stated this injunction clearly highlights the level of harassment and intimidation some have already suffered and if this information is disclosed this could motivate those



activists to step up their campaign prejudicing the safety of participants and locals in the areas believed to be involved in the cull.

31. Natural England referred to some (but not all) of the redactions listed above to highlight its point. It stated that if the area statistics for each plan were disclosed it may be possible for those interested in the cull to work out more clearly where the cull areas are and the specific boundaries thereby identifying those individuals participating more precisely.
32. It then referred to the individual 'P' numbers given to each participant on the plans and the corresponding information against each 'P' reference relating to the total participating land, biosecurity details, the farm enterprise and so on. In relation to this information, Natural England felt that the reference numbers themselves are not sensitive nor is the corresponding information against each 'P' code. However, disclosure of all 'P' references would reveal the total number of participants for each Badger Control Plan and it is the total number of participants that is sensitive.
33. It stated that it was unable to redact the 'P' codes and then release the corresponding information against each 'P' code (size of holding in hectares, whether it had cattle, other livestock and cropping, details of biosecurity etc) because this would, too, disclose the number of participants on each plan. An individual with access to just the corresponding information could count the number of rows where data is entered and work out from this how many participants there are.
34. Natural England stated that knowing the number of participants would give protestors a definite target – they would know the numbers involved and roughly how many of these would need to be targeted in order to reduce the compliance rate in the cull area and prevent the cull from going ahead or continuing if it had started. Natural England also stated that knowing your target would motivate protestors to step up their campaign and they would be able to monitor the impact of their actions more closely and their effectiveness.
35. Natural England stated that other information redacted from the plans relates to the controllers carrying out the cull. One particular column of data shows the size of area of each controller. Natural England believes if this information is disclosed protestors could work out the largest landowners on the plan, create a specific target list aimed at targeting the larger landowners only, with a view to having the greatest impact in terms of disruption. Protestors would be able to work out that targeting a small number of larger landowners would be more effective in reducing the overall compliance in the suspected cull area. For the licence to be lawful, at least 70% of the total area in which the cull is to



take place must be participating. Targeting the largest landowners would be the most effective way of trying to bring the compliance rate within the area to below the required 70%. If this happened, the licence conditions would not be met and the cull would either not be able to go ahead or would have to stop if it had already commenced.

36. The Commissioner has reviewed the withheld information in detail and considered Natural England's arguments. He accepts that there is a significant amount of public interest in the Badger Control Policy and acknowledges that many are opposed to it. He agrees that the disclosure of *some* information relating to the cull would have the effects Natural England has described, particularly in light of the court injunction granted, which highlights the genuine fear and concerns of those participating or those just living in the area but are not participating. However, the relevant question here is whether the Commissioner accepts the redactions made to all three plans as listed in paragraphs 22 to 24 above would have these effects.
37. The Commissioner considers there must be some link between the withheld information and the ability of protestors to then identify more precisely those involved in the cull.
38. With regards to the area statistics withheld from each plan, the Commissioner cannot see from the arguments supplied by Natural England exactly how someone would be able to work out the cull area from this information. He appreciates that this information provides a total figure for the application area in km, a total figure for participating and non-participating land, a total figure for the perimeter area and details of different types of boundaries on one plan. However, Natural England has not explained how and the Commissioner cannot see how this information could be used by someone wishing to identify the exact cull area and how effective this would be.
39. Natural England states that this information could be coupled with other information which is available by other means. However, in the absence of further explanation or clarification these arguments appear to be based on an assumption that someone who gains access to the withheld information, and may have some local knowledge will then couple this with other information already available. The Commissioner does not consider this demonstrates that the higher threshold of 'would' required by the EIR is met.
40. Similarly the total participants in a cull area may provide protestors with a more definitive target to work against but disclosure of the total number of participants still does not allow those opposed to the cull to identify more precisely those that are involved. Protestors still do not know the boundaries of the cull and precisely who is participating and

who is not. He cannot therefore agree that the disclosure of this particular information would adversely affect the public safety of those participating or those thought to be participating.

41. He understands Natural England's concerns that releasing a definite target could motivate activists to step up their campaign and incentivise them to continue. He also understands that a target would give those protestors something to monitor their action against. However, given the level of opposition to the cull and the public interest in this policy, the Commissioner considers protestors are already sufficiently motivated to take this sort of action, which is also highlighted by the fact that a court injunction was granted to the NFU in the past. He also considers such arguments are more relevant to the application of regulation 12(5)(g) of the EIR.
42. On tab four of two of the plans, the total area in hectares where culling will take place against each controller/vaccinator has been redacted. Natural England confirmed that this information has been redacted because its disclosure would enable protestors to possibly identify and then target the largest land holdings with a view to having the most impact from their actions.
43. The Commissioner questioned whether a member of the public could gain access to this information from another source and construct such a target list anyway and without the information in question here. Natural England confirmed that they could, by making further information requests. However, the Commissioner is conscious that any such requests would need to be dealt with individually and on their own merits and Natural England could take into account any information already in the public domain when considering any further information requests.
44. As the information, according to Natural England, could potentially be obtained by making further information requests the Commissioner does not accept that the disclosure of this information in response to this request could cause the claimed adverse effect to public safety.
45. In two plans some notes have been made. No specific arguments have been made by Natural England to explain why the disclosure of these notes would adversely affect public safety. The Commissioner has reviewed the notes and cannot see how disclosure of their contents could possibly cause any adverse effects.
46. The Commissioner does not consider any tangible link can be made between this information and the potential identification of the participants involved. He cannot therefore accept that disclosure would

adversely affect the public safety of those involved and has therefore concluded that regulation 12(5)(a) of the EIR is not engaged.

47. Natural England argued that it is not necessarily the public safety of those involved which is of relevance here. Locals in the area could be targeted just because they live in the area and those that are not actively taking part in the cull. The Commissioner agrees. However, he remains dissatisfied that disclosure of *this* information would have any further adverse effect to that already evidenced.
48. Turning now to regulation 12(5)(g), Natural England confirmed for essentially the same reasons outlined above that disclosure would adversely affect the implementation of the Badger Control Policy which would then adversely affect the protection of the environment.
49. More focussed protests on those believed to participating (which Natural England believes could happen if the information in question is disclosed) could possibly lead to participants pulling out, reducing the compliance rate in the cull area to below the required 70% and the cull being stopped. If the compliance rate was to drop below 70% new participants would have to be found and a new licence issued. The issuing of a new licence would reopen the 'window of opportunity' for a judicial review, as it would effectively be a new decision introducing new scope for protestors to frustrate the implementation of the Badger Control Policy.
50. Delays would adversely affect the implementation of the Badger Control Policy. Natural England explained that the pilot areas are intended to inform the decision on whether or not to roll out the Badger Control Policy across the country. Robust evidence is necessary to enable Ministers to make an informed decision on whether the policy should be rolled out more widely following the completion of the pilots. Any adverse effects on monitoring and data gathering would adversely affect the decision making process and any implementation of the government's policy for controlling the spread of TB in the wildlife reservoir and consequently would adversely affect the protection of the environment.
51. Again the Commissioner is not convinced that disclosure of this information *would* have the effects described for similar reasons he has explained above. Some of Natural England's arguments appear to be based on an assumption that protestors who gain access to the withheld information have certain knowledge and could then possibly match this with information available from other sources. The Commissioner is therefore of the view that there is insufficient evidence in this case to demonstrate that disclosure 'would' have the effects described.

52. The Commissioner has therefore concluded that regulation 12(5)(g) of the EIR is not engaged.
53. As the Commissioner has decided that regulations 12(5)(a) and 12(5)(g) of the EIR do not apply, there is no need for him to go on to consider the public interest test.

*Question 3 – details relating to the number of vaccination applications*

54. Natural England initially responded to this element of the request stating that there had been six applications to vaccinate badgers in West Gloucestershire and five in West Somerset. All had licences issued and all except one were still live at the time of the complainant's request.
55. The complainant appealed against this response, stating that she required the information breaking down more specifically to detail the number of applications in the pilot cull areas *and* the number of applications in the 2km rings surrounding these areas for both West Gloucestershire and West Somerset.
56. Natural England responded by advising the complainant that the more specific details she required were exempt from disclosure under sections 12(5)(a) and 12(5)(g) of the EIR.
57. Dealing with regulation 12(5)(a) first, Natural England provided the Commissioner with a breakdown of the vaccination applications made in both areas – for each application it stated whether that application was in the pilot area, the buffer or the countryside. It explained to the Commissioner that it considered this more detailed breakdown could lead to the identification of participants or contractors or the location of their property or operational activities increasing the risk to public safety.
58. Natural England confirmed that many of those with vaccination licences are quite open about their activities. So, if it was to release information from which the locations of these licences could be identified inside and outside of the pilot areas, protestors could then take an educated guess on the specific boundaries of the pilot cull areas. Natural England stated that if the boundaries could be more easily identified protestors would step up their campaign and would be in a position to target more specifically those individuals they believe to be involved in the cull. Such consequences would adversely affect the safety of those individuals.
59. It is the Commissioner's view that the relevant consideration here is whether the specific locations of those carrying out vaccinations could be identified from the withheld information and if it can whether this would then lead to the identification of the specific boundaries and other participants and ultimately result in an issue of public safety.

60. The Commissioner has reviewed the withheld information. He cannot see how the locations of the vaccination licences could possibly be identified from the breakdown the complainant requires. The breakdown does not provide any indication of the location of the vaccination applications in question here. The Commissioner cannot therefore see how the boundaries of the actual cull areas could be more accurately determined from the disclosure of this information or those participating being more precisely identified. As he cannot see any link between the requested information and the adverse effects described and Natural England has not provided any further arguments to demonstrate its position, the Commissioner can only conclude that he cannot agree disclosure would adversely affect the public safety of those believed to be involved in the cull.
61. As a result the Commissioner has decided that regulation 12(5)(a) of the EIR is not engaged.
62. Turning now to the application of regulation 12(5)(g) of the EIR, Natural England advised that participants and contractors have already been exposed to harassment and intimidation and threats have been made against their families. Therefore it considers security is of paramount importance. Natural England believes the disclosure of this information would enhance the ability of activists to disrupt the operation of the Badger Control Policy. It argued that the pilot areas are intended to inform the decision on whether or not to roll out the Badger Control Policy across the country. Robust evidence is necessary to enable Ministers to make an informed decision on whether the policy should be rolled out more widely following completion of the pilots. Any adverse effect on monitoring and data gathering would adversely affect the decision making process and any implementation of the government's policy for controlling the spread of TB in the wildlife reservoir, and consequently would adversely affect the protection of the environment.
63. The Commissioner has considered Natural England's arguments. As he cannot see from a review of the withheld information itself or from the submissions he has received from Natural England exactly how disclosure of this information could possibly lead to the identification of the specific boundaries or those taking part in the cull, the Commissioner cannot envisage how disclosure of this specific information could assist activists in making their campaign more effective. He therefore cannot see how disclosure of *this* specific information would adversely affect the implementation of the Badger Control Policy and therefore the protection of the environment.
64. The Commissioner does accept that there is substance to Natural England's arguments and concerns that the disclosure of the exact boundaries or the locations of those participating or information from

which the boundaries and participants could be identified would adversely affect the implementation of the Badger Control Policy. However, he does not consider this is the sort of information in question here.

65. For the above reasons, the Commissioner does not agree that this information is exempt from disclosure under regulation 12(5)(g) of the EIR.
66. As the Commissioner does not agree that regulations 12(5)(a) and 12(5)(g) of the EIR apply, there is no need for him to go on to consider the public interest test.
67. For questions 2, 4, 5 and 6 of the request, as outlined in paragraph 11 above, Natural England has applied regulation 12(4)(a) of the EIR as it did not hold the requested information at the time the request was made. The Commissioner will now consider these questions and Natural England's application of regulation 12(4)(a).

*Question 2 – what 'other measures' each licensee had specified on their Badger Control Plans to mitigate the potential for disease spread in the areas concerned.*

68. Natural England first responded to this element of the complainant's request by providing a generic list of other measures that may apply. The complainant appealed and stated that this was not the information she had asked for. She stated that she wanted to know what 'other measures' each licensee had specified on the Badger Control Plan they had submitted and referred to a section of the blank Badger Control Plan she had been provided where this information is requested by the applicant.
69. Natural England reviewed this element of the request further and stated that it now understood why the complainant believed this information must be held. It referred to section four of the licence application form and noted that this version of the form did request the applicant to submit these details.
70. However, it explained that the process evolved between the drafting of this form and the actual completion of those forms it did receive from applicants. In this time it was decided that this information was no longer required and the forms were redrafted.
71. Natural England confirmed that participants were not required to provide specific details to it of the measures they have taken to mitigate the risk of spread of TB to non-participants. Natural England advised that participants were responsible for ensuring biosecurity of their own land that is practical and proportionate. It added that the licensees hold a



copy of the specific measures that participants have taken but it is not privy to this information.

72. The Commissioner relayed this further explanation to the complainant. She again disputed Natural England's findings and provided the following comments which she believes contradicts its arguments and suggests the requested information is in fact held:
- 1) The complainant referred to DEFRA's guidance to Natural England. She stated that section 9g of this guidance confirms that applicants must put into place measures to prevent the spread of disease. She advised that Natural England would have to have access to or requested this information from the applicants in order to make sure this requirement is met.
  - 2) The complainant referred to a licence application form (version 22) which she believes is a more recent draft to the licence application Natural England referred to in the above arguments. She stated that section 5 of this application asks for the exact same information she requested in this request.
  - 3) The complainant referred to a document called 'expression of interest for a licence to control badgers'. She stated again that section 4 of this document asks the applicant what measures will be taken to prevent the spread of disease - the same information she requested here.
  - 4) She also stated that she believed the licences were granted in 2012 and that prior to a licence being granted an applicant must submit a Badger Control Plan to Natural England for consideration. The complainant believes there may be other Badger Control Plans, applications or other information Natural England holds that was submitted in 2012 which will contain the requested information. The complainant explained that these Badger Control Plans would have used the older version of the document, which requested that 'other measures' be submitted to Natural England.
73. The Commissioner put the complainant's views to Natural England and asked it to provide its comments and to check again whether the requested information was held at the time of the request.
74. Natural England responded addressing each of the four points. With regards to point one, it advised that it was for Natural England to decide what information it needs to satisfy this point and confirmed that it was satisfied that participants put in enough measures to mitigate the risk to non-participating farmers and landowners. It explained that participants completed individual risk assessments on their land that were designed



to highlight areas individuals could address to improve their on-farm biosecurity. Although Natural England initially requested copies of these documents, it was subsequently agreed to not receive them so none were in fact received.

75. Participants are required to ensure biosecurity on their own land is practical and proportionate. Regarding the protection for non-participants within and outside the boundary, particularly in the absence of 'hard' boundaries, or suitable buffers, the licence applicants undertook a biosecurity awareness campaign which was targeted at those potentially at risk and included letters containing advice and links to government websites, 1:1 advice and group meetings. Natural England confirmed that it was satisfied that West Gloucestershire and West Somerset pilot areas were carried out with sufficient coverage to mitigate as far as practically possible the spread of disease.
76. In respect of point two, Natural England confirmed that the licence application (version 22) the complainant refers to was a form completed specifically for the proposed Dorset reserve area. It referred to sections E and F of this form, which states:  
  
"...you will be expected to provide further details of all measures undertaken if your application is accepted, but at this stage a brief outline is required."
77. At this time the application form had been changed to not refer to the Badger Control Plan but still included a reference to 'details'. But as previously stated it was then later decided that these 'details' were no longer required.
78. Natural England confirmed that the Dorset application did not result in a licence being considered and so no further information was ever requested or indeed received.
79. Regarding point three, for the pilot areas and the one proposed reserve area no expression of interest forms were completed or indeed required. The requested information is therefore not held here.
80. Concerning point four, Natural England explained that it received a number of updates to the Badger Control Plans for West Gloucestershire and West Somerset pilot areas from 2012 until August 2013 but they were always in the same format as the spreadsheet supplied to the Commissioner and to the complainant in redacted form. All updates therefore contained the same columns and headings to the spreadsheet the Commissioner and complainant received and therefore the same level of detail. Natural England confirmed that the Badger Control Plan slightly changed for the Dorset application due to the changes made to

the process and the complainant has already received a redacted version of this plan.

81. The Commissioner has reviewed Natural England responses to this element of the complainant's request and he is satisfied that on the balance of probabilities the requested information was not held at the time of the request and therefore Natural England was correct to rely on regulation 12(4)(a) of the EIR. Natural England has explained in detail why the requested information is not held and provided reasonable explanations to address the complainant's concerns that other information available seemed to suggest that this was not in fact the case. Natural England confirmed that its processes changed several times as did the paperwork that was required. Initially it was decided to request this information from applicants but then this was later changed, as it was decided that it was no longer required.

*Questions 4, 5 and 6 – relating to Natural England's plans for monitoring compliance of licence conditions and agreements*

82. The complainant requested to know the level of monitoring that would be undertaken in each of the areas in the four week period prior to the cull and requested details of the planned monitoring that would take place during the six-week cull period in each of the areas, together with details of any non – Natural England monitoring that it was aware of.
83. Natural England informed the complainant that it did not hold the requested information at the time of the request and cited regulation 12(4)(a) of the EIR. The only information it could and did provide to the complainant was that it would probably have one monitoring team operating on any one night and this team would consist of two people.
84. The complainant remained dissatisfied with this response and stated that she wanted to know Natural England's definite plans for monitoring not 'probable' plans. She also felt that it was unlikely that Natural England held no information at all because the cull was imminent and she would expect Natural England, as the overseeing authority responsible for the issuing of such licences, to have had more definite plans in place by this time detailing how it intended to monitor compliance with licence conditions and agreements.
85. The Commissioner has made enquires to Natural England to establish what recorded information, if any, it held at the time of the request. Natural England confirmed that it was still recruiting people at the time of the request and had no plans in place at this time concerning the monitoring of the cull. It also confirmed that it did not and would not hold any information relating to the monitoring that may or may not be undertaken by other authorities. The only recorded information it did

hold was that it would 'probably' have one monitoring team consisting of two people operating on any one night and it communicated this information to the complainant.

86. The Commissioner is satisfied in this case that on the balance of probabilities Natural England did not hold the more specific information the complainant required at the time of the request and so regulation 12(4)(a) of the EIR applies.
87. Regulation 12(4)(a) of the EIR is technically subject to the public interest test. However, the Commissioner is of the view that such considerations are superficial when the requested information was not held at the time of the request. So he has decided not to go on to consider it here.

## Right of appeal

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88. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

89. 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.
90. 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 .....**

**Gerrard Tracey**  
**Principal Policy Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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