

18 July 2013

Our ref: RFI 1996

Jeff Knott  
Species Policy Officer  
RSPB

By email: [Jeff.Knott@rspb.org.uk](mailto:Jeff.Knott@rspb.org.uk)



Mail Hub Block B,  
Whittington Road,  
Worcester  
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Dear Mr Knott

**Access to information request – Partial Release– Request No RFI 1996**

Thank you for your request to provide the information detailed below, which was received on 20 May 2013 and we extended on 17 June 2013.

To supply copies of all correspondence and records of all meetings (including minutes if taken) pertinent to the licences covered in response (RFI 1936)

- WLM/2013/0571
- WLM/2013/0577
- WLM/2011/1801

Specifically for copies of all correspondence between;

- Natural England
- DEFRA
- Other Government Departments
- Ministerial Offices
- Prime Minister's Office
- The applicants
- Any third parties (eg. National Gamekeepers Organisation)

On 24 May 2013 we asked you to consider narrowing down your request. You replied on the same day and you would be happy to limit the request to cover only communication between Defra, Natural England and the applicant for Licence B and for licence A for all correspondence as set out in the original request.

We have considered your request under the Environmental Information Regulations 2004.

Please find attached to this letter a Zip folder containing all the information we hold in scope of your request.

Some documents and information within some documents has been withheld under the exceptions in

- Regulation 12(3)) which relates to personal information
- Regulation 12(5)(a) which relates to public safety
- Regulation 12(4)(e) which relates to internal communications
- Regulation 12(4)(d) which relates to material in the course of completion

## **Regulation 12 (3) – Personal Information**

The names, contact details and signatures of private individuals and employees of Natural England and Defra are considered by Natural England, to be personal information as defined by the Data Protection Act 1998.

The First Data Protection Principle says that personal data ‘shall be processed fairly and lawfully’. Guidance published by the Information Commissioner, ‘Freedom of Information Act 2000, Awareness Guidance No 1’, states that when considering fairness the following questions should be taken into account:

- Would the disclosure cause unnecessary or unjustified distress or damage to the person who the information is about?
- Would the third party expect that his or her information might be disclosed to others?
- Had the person been led to believe that his or her information would be kept secret?
- Has the third party expressly refused consent to disclosure of the information?

Under the Data Protection Act 1998, the presumption is in favour of protecting the privacy of the individual, and so the release of personal data will only be found to be fair if there is a genuine reason for disclosure. This involves a three-stage test:

- there is a legitimate interest in disclosure;
- the legitimate interest can only be met, or fully met, by the disclosure of information which identifies individuals (i.e. the disclosure is necessary to that purpose); and
- the disclosure would not involve unwarranted detriment to the individual’s privacy or other rights and legitimate interests.

We believe that the applicants and those named on the licences/within the application have a reasonable expectation that their names and contact details should not be disclosed. This is particularly so given the sensitivity surrounding the control of raptors. In our opinion the release of this information would cause unnecessary and unjustified harm or distress to the person who the information is about, and a risk to the individuals’ personal safety.

As a public sector organisation, employees of Natural England have a reasonable expectation that their names and work contact details should be disclosed upon request, and there is a legitimate public interest in accountability. However, the sensitivity surrounding these licence applications means that Natural England believes disclosure of the names and work contact details of the staff processing these applications would cause unnecessary and unjustified harm or distress to the person who the information is about, and a risk to the individuals’ personal safety. As a result, staff involved in handling these licence applications have collectively taken the decision to refuse consent to disclosure, and Natural England supports this position as it has a duty of care towards its staff and this position is consistent with that duty. The members of staff within this team are mostly junior staff within the organisation, and do not make decisions at a strategic level.

Considering all the factors above, Natural England does not believe that the release of names, contact details and work contact details is, in this case, necessary in order to satisfy the legitimate public interest in the accountability of public sector employees.

## **Regulation 12(5)(a) – Public Safety**

The site location and details that could identify the site has been withheld in accordance with the exemption set out in Regulation 12(5)(a) which states:

*“...a public authority may refuse to disclose information to the extent that its disclosure would adversely affect...*

*(a) international relations, defence, national security or public safety;”*

Any disclosure made under the Regulations is in effect a disclosure to the world at large, as any other applicant would be entitled to the same information on request. To release and subsequently place into the public domain the location subject to the application for a licence would adversely affect public safety. We believe that the release of the site location would

impact adversely upon the protection of the individuals, public buildings, and the health and safety of the individuals at the site.

Media coverage, as well as comments posted on websites and correspondence we received, has clearly demonstrated that the management of problems caused by raptors, even the use of non-lethal options, is an emotive and sensitive issue. We believe that the release of this information, therefore, could impact adversely upon people who have applied for the license to control these species.

In applying this exception, we have had to balance the public interest in withholding the information against the public interest in disclosure. The following issues were considered in deciding where the public interest lay.

Whilst Natural England believes in openness and transparency, as a public body, we also have a duty to safe-guard people who apply for licenses to undertake otherwise illegal activities. We do believe that the public do have the right to know that licenses have been applied for and issued or refused but we feel that this should not extend to providing the precise location of the sites the licenses have been issued for, given the possible threat to those locations and those involved if that information is released.

We feel there is little additional public interest in knowing the locations and which organisation/individuals are involved aside from the opportunity to target the sites, organisations or persons for the purposes of objection.

This topic has already attracted close public scrutiny and releasing this information may result in unwanted contact or interference from persons wishing to express their objections and harass/harm the individuals concerned. This could include an increased risk of demonstrations at the site or attempts by people to interfere with legitimate activities at the site which could lead to acts of damage and/or trespass. It is not in the public interest that individuals or the site should be subjected to unnecessary harassment or put at risk.

As such, while it is a public right to object and make their views known, that right has to be balanced against issues of security and safety of the personnel involved. We believe that these are legitimate concerns sufficient to allow Natural England to engage this exception and withhold the information.

#### **Regulation 12(4)(e) – Internal Communications**

We have relied on the exception in regulation 12(4)(e) to withhold some communications between Natural England and Defra.

Regulation 12(4)(e) of the EIR states that:

*“...a public authority may refuse to disclose information to the extent that*

*(e) the request involves the disclosure of internal communications.”*

The information between government departments and their arms length bodies is accepted as internal communications for the purposes of the access to information (that is both the Freedom of Information Act 2000 and the EIR) legislation.

Under the EIR not only must an exception apply but the public body must apply the public interest test when deciding whether to release information or not. Natural England believes in the openness and transparency of public body decision making to assist furthering the understanding and involvement of the public in issues of the day, and promoting accountability and transparency in the spending of public money.

We considered this need for openness and transparency which weighs in favour of disclosure when determining whether to release this information. We also considered the following factors which point against release:

- the sensitivity of the information
- the need for a safe space for government and public servants to formulate and debate issues away from public scrutiny; and
- the inhibition of frankness and candour in debate and decision making.

These particular internal communications concern government policy making where discussions and options are being discussed and a settled view had not yet been reached.

The Information Commissioner's Office guidance makes it clear that this exception is intended to allow public bodies to 'think in private', it states:

*"...the general intention appears to provide an exception from disclosure for information which may not yet represent the settled view of the authority. The effect is therefore both to provide some protection for the "private thinking space" of senior officials or elected members and also to guard against the risk of disclosure of advice or other information provided by more junior officials which might, wrongly, be taken to represent an official view."*

Whilst there is a presumption in favour of disclosure of information, having weighed all the factors pointing towards release or withholding the information, we have concluded that in this case the public interest in maintaining the exception outweighs the public interest in disclosing the information. Natural England considers that the public interest will be served in this case by withholding this information.

#### **Regulation 12(4)(d) – Course of Completion**

Natural England is withholding some of the information requested under the EIR exception Regulation 12(4)(d). Regulation 12(4)(d) states:

*" a public authority may refuse to disclose information to the extent that –*

*(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data;"*

The information withheld relate to a draft document, which if released may be misleading, cause unwarranted confusion and misunderstanding.

In applying this exception, we have had to balance the public interest in withholding the information against the public interest in disclosure. Whilst Natural England believes in openness and transparency, it has a duty to prevent harm from the publication of documents which could be misleading, cause unwarranted confusion and misunderstanding this is especially so when final versions are publically available. Natural England also has to protect it and Defra's resources from having to spend time dealing with enquires about this potential confusion which would not be an effective use of public resource.

Therefore, we believe in this case that the public interest in withholding this information outweighs the public interest in disclosure.

Please note that the information we have supplied to you is subject to copyright protection under the Copyright Designs and Patents Act 1988. You may re-use this information (not including logos) free of charge in any format or medium, for the purposes of research for non-commercial purposes, private study, criticism, review and news reporting. You must re-use it accurately and not in a misleading context. The material must be acknowledged as Natural England copyright and you must give the title of the source document/publication. However, if you wish to re-use all or part of this information for commercial purposes, including publishing you will need to apply for a licence. Applications can be sent to Enquiry Service, Natural England, Block B, Government Buildings, Whittington Road, WORCESTER, WR5 2LQ.

As you may be aware, under the legislation should you have any concerns with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, please contact:

Mr Jeremy Pyne, Team Manager, Regulation Delivery, Natural England, Level 9 and 10,  
Renslade House, Bonhay Road, Exeter, EX4 3AW  
Email: [jeremy.pyne@naturalengland.org.uk](mailto:jeremy.pyne@naturalengland.org.uk)

Under Regulation 11(2) this needs to be done no later than 40 working days after the date of this letter.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by Natural England. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Telephone: 01625 545 700, [www.ico.gov.uk](http://www.ico.gov.uk).

Yours sincerely

Matt Heydon,  
Principal Specialist  
Regulation Team