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Our ref: RFI 6138
Date: 21 January 2014

Dear ██████████,

REQUEST FOR INFORMATION: Badger cull numbers and shots taken

Thank you for your request for information about numbers and shots taken during last year's badger cull, which we received on 3 January 2014. We have handled your request under the Environmental Information Regulations 2004 (EIRs).

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

Your questions are below:

1. An update to your RFI 5835 of 18 October 2013, providing the numbers of badgers culled each day of, respectively, the 6 weeks pilot in Somerset, the 3 weeks extension in Somerset, and the 5 weeks extension in the W. Gloucestershire cull area, with breakdowns showing the methods used (controlled shooting; cage trapping)

I note that your RFI of 18 October declined to provide the numbers culled each day on the sole ground that "Defra does not hold information on the specific locations where badgers have been shot on a daily basis". I am not requesting the specific locations. For the 6 weeks pilot in W Gloucestershire daily cull numbers with breakdowns by methods used are already in the public domain, and I am requesting equivalent data for the other three periods of culling noted above. I believe this data is currently held by Defra, therefore request that it is provided without undue delay.

2. The total number of shots discharged which did not result in a badger kill during the pilot culls and extensions in Somerset and W Gloucestershire.

3. The subtotals for numbers of shots discharged which did not result in a badger kill in, respectively, the 6 weeks pilot in Somerset, the 3 weeks extension in Somerset, the 6 weeks pilot in the W. Gloucestershire cull area, and the 5 weeks extension in W. Gloucestershire, and numbers by date and location within each area if this detail is held by Defra.

With reference to requests 2 and 3 above, your RFI 5835 of 18 October 2013 refused to supply information on "the numbers of shots discharged but which have not resulted in a badger kill by location and date" on the ground that culling companies were still collating this data, therefore there was "no public interest in disclosing incomplete or incorrect data". Since culling ceased on 30 November 2013, I now request information on the numbers of shots discharged but not resulting in a kill, as specified in 2 and 3 above.

I have to advise you that the information you have requested is being withheld under Regulation 12(5)(c), intellectual property.

Regulation 12(5)(c) relates to an adverse effect upon intellectual property rights. Data accumulated by Defra and its agencies is protected under the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032). A database is defined as being a collection of independent works, data or other materials which are arranged in a systematic or methodical way, and are individually accessible by electronic or other means. A property right exists where there has been a 'substantial investment in obtaining, verifying or presenting the costs of the database'. In this instance the data held by Defra and its agencies comprises a database and therefore they hold the property rights to this material. These rights will be adversely affected were this information to be disclosed.

The Public Interest Test

Regulation 12(5)(c): Defra and its agencies holds the property rights to the wide range of data collected during the pilots as a substantial investment in time, effort and cost has been incurred in gathering the information. A partial release of data collected during the cull could lead to inaccurate conclusions being reached which in turn would mislead anyone who views them. Data should be released in context rather than in isolation. Release of the data could also lead to potential exploitation of the protected material and any infringements could go undetected or may not be preventable. Again this would lead to confusion which is counter to the principles of freedom of information.

Defra has publicly and repeatedly committed¹ on numerous occasions to announcing that the report on the culls will be published in early 2014. This report will include the suite of data from the culls. A report prepared by the Independent Expert Panel (IEP) reviewing

¹ <http://transparency.number10.gov.uk/business-plan/10/35>

the results from the cull will be published at the same time as the intention is that the two reports should be read together. The IEP report will be submitted to Ministers to inform their decision on whether or not to roll-out culling across the country. A publication date cannot be provided at this stage as the IEP are still reviewing the cull report and they are working to their own deadlines.

As mentioned above, Defra recognises the very strong feelings and views around the badger control policy - both for and against. However, in light of the arguments above, Defra has concluded that, at this stage, when the information is still subject to review, the public interest in withholding the information sought outweighs the public interest in its disclosure. Therefore, we have concluded that in all the circumstances of the case, the information should be withheld.

I attach an annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact me.

Yours sincerely,

Defra TB Programme

Email: ccu.correspondence@defra.gsi.gov.uk

Annex

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF