

30 June 2020

Our ref: RFI 5075



Mr Robert Foster

Email: request-668112-2ef27f8f@whatdotheyknow.com

Mail Hub,
Worcester County Hall,
Spetchley Road,
Worcester, WR5 2NP

Dear Mr Foster

Access to information request – Response - Request No RFI 5075

Thank you for your request for all correspondence i.e. email or any other documents regarding Wildfowling at Alkborough and Whitton North Lincolnshire between yourselves to the Environment Agency, Association of British Ports and North Lincolnshire Council between the dates 01/11/2019 to 01/06/2020. which we received on 01 June 2020.

Your request has been considered under the Environmental Information Regulations 2004 (EIRs).

Please find attached to this email all the information with hold in scope of your request.

For your information and irrespective of the nature of the person making the request and their appreciation of the sensitivity of the subject, any disclosures made under the Regulations is in effect a disclosure into the public domain, as any other requester would be entitled to the same information on request. As such we take this into consideration when making any decisions as to whether it is in the public interest to disclose or withhold requested information.

As such some of the information you have requested is being withheld as it falls under the following exceptions:

- Regulation 12(3) – Personal Information and
- Regulation 12(5)(f) – Protecting the interests of the person providing the information (Volunteered Information)

Our reasoning for this is detailed below.

Regulation 12(3) – Personal Information

The names, signatures, and contact details of private individuals are considered by Natural England to be personal information as defined by the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

The First Data Protection Principle says that personal data shall be processed lawfully, fairly and in a transparent manner. Guidance published by the Information Commissioner, states that when considering fairness in relation to disclosing personal information under FOIA [and EIR] it will usually mean considering:

- whether the information is sensitive personal data;
- the possible consequences of disclosure on the individual;
- the reasonable expectations of the individual, taking into account: their expectations both at the time the information was collected and at the time of the request; the nature of the information itself; the circumstances in which the information was obtained; whether the information has been or remains in the public domain; and the FOIA [and EIR] principles of transparency and accountability; and

- any legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the individuals who are the data subjects.

When names and contact details are collected from individuals by Natural England we do not inform them that the information will remain confidential or that it may be released, however, we believe that there is an expectation of confidentiality.

The release of names or contact details and any subsequent contact may cause unnecessary or unjustified distress or damage to the individuals if released, and they have a reasonable expectation of confidence.

Natural England is therefore satisfied that the information requested fits the definition of personal data and that its release would be 'unfair' under the meaning of the first Data Protection Principle and should not be released.

Regulation 12(5)(f) – protecting the interests of the person providing the information

Natural England is relying on the exception in regulation 12(5)(f) to withhold one communication in scope of your request. This regulation states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the interests of the person who provided the information where that person

- (a) was not under, and could not have been under, any legal obligation to supply it to that or any other public authority, and
- (b) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it, and
- (c) has not consented to its disclosure.

Section 7.5.7.3 of the DEFRA guidance which refers to this exception states , “...It [the exception] recognises that making such information available to the public could inhibit open and constructive discussions between public authorities and third parties. It is recognised therefore that the supply of volunteered information could diminish if information is later published in response to EIR requests.”

In this case:

- the provider was not under any legal obligation to provide this information;
- NE is not obliged to release this information apart from these Regulations; and
- it would betray confidences requested by the provider to provide this information,

Natural England believes that releasing the communication that was provided to us voluntarily would betray the expectation of confidence that it would not be shared further. We are therefore satisfied that this exception is engaged.

In applying this exception, we have had to balance the public interest in withholding the information against the public interest in disclosure. Generally speaking there is a public interest in the disclosure of information. However, it is not in the public interest for information provided with an expectation of confidence to be placed into the public domain, or to have the concept of confidentiality breached by the release of this information. Whilst Natural England strives to be an open and transparent organisation, in this case we believe that public interest test supports the withholding of this information.

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 and the information is not covered by the [Open Government Licence](#) 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.

If you are dissatisfied with the service you have received in relation to your request you are legally entitled to complain or to seek a review of our decision. Under Regulation 11(2) this must be done within 40 days of receipt of this refusal letter. If you wish to complain, request a review, or have any other queries relating to this letter, please email me at foi@naturalengland.org.uk.

If you are not content with the outcome of that complaint, or the review of our decision, 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 by telephone on: 0303 123 1113 (local rate) or via their website www.ico.org.uk

Yours sincerely

Sarah Waterfield
Lead Adviser – Access to Information
Legal Services