

22 January 2021



Mr R Mileto

request-717104-5d3aef3b@whatdotheyknow.com

Legal Services
County Hall
Spetchley Road
Worcester
WR5 2NP

Dear Mr Mileto

Access to information request – Request No RFI 5387

Thank you for your request for information set out below, which we received on 10 January 2021. Your request has been carefully considered under the Environmental Information Regulations 2004 (“the EIRs”).

You asked for:-

- 1. Can you please confirm if an application for a bat mitigation licence and/or a site registration under a bat class licence (CL39 and CL40) has been made for Jones' Hill Wood, Buckinghamshire or any location within 2km of it - NGR SP887044 (nearest postcode HP22 6PX).**

Natural England can confirm that an application has been submitted for this area on 18 December 2020. We are currently determining the application. No sites within 2km of Jones' Hill Wood have been registered under Bat Class Licence CL39 or CL40.

- 2. If such an application (or applications) has/have been made, can you please supply all the submitted licence application documents, including Figures.**

Following careful consideration, I have to inform you that we have decided not to disclose this information.

The information you requested is being withheld as it falls under the exception in regulation 12(5)(d) of the EIRs which relates to the confidentiality of proceeding where such confidentiality is provided by law. In reaching a conclusion that we should withhold the information we also considered the public interest test and determined that it would not be in the public interest to release this information. I have set out below our reasons for this conclusion.

Regulation 12(5)(d) – confidentiality of proceedings

The licence application form and supporting information is being withheld as it engages Regulation 12(5)(d) of the EIRs.

Regulation 12(5)(d) states that:

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

(d) the request involves the disclosure of information which relates to confidential proceedings of a public authority where such confidentiality is provided by law.”

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. 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.

The Information Commissioner uses the Oxford English Dictionary definition to define proceedings as including, but not being limited to:

- Doings/actions;
- A legal action or process; and
- A record or account of the activities of a society or of papers submitted to it.

The Commissioner goes on to state that these proceedings must have a level of formality, and includes the following as examples of this level of formality (though does not limit proceedings to the below):

- Formal meetings to consider matters that are within the authority's jurisdiction;
- Situations where an authority is exercising its statutory decision making powers; and
- Legal proceedings.

The Information Commissioner in his decision notices FER0479985, FS50559004 and FER0543199 and the Information Tribunals decision notice for EA/2015/0026 & 0059 agreed with Natural England that its licensing process should be considered a proceeding for the purpose of EIR Regulation 12(5)(d). Therefore, the exception is engaged.

Harm Test

This information relates to the discussions leading up to the submission of a wildlife licence and the licence application itself. The discussions are confidential up until the point the licence application has been determined. Once this has happened then details of the licence are available to the public. To have early disclosure could result in unwelcome distractions or result in undue pressure being brought to bear on officials by third parties. This disruption would prejudice the process of determining the licence application and potentially the quality of that licence. Early disclosure would also breach the duty of confidence between Natural England and the applicant.

Although Natural England believes that the information has the necessary quality of confidence, there still has to be an adverse effect (harm) to be caused by the disclosure of the information prior to the licence being determined. In this instance we believe that disclosure would breach the duty of confidence between Natural England and the applicants and the harm the ability of Natural England to assess the licence fairly.

Public Interest

Under the EIR not only must an exception apply but the public body must also apply a public interest test in 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 public servants to formulate and debate issues away from public scrutiny; and
- the inhibition of frankness and candour in debate and decision making.

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

If you have any queries about this letter, please contact me. As you may be aware, under the legislation should you have any concerns with the service you have received in relation to your requests and wish to make complaint or request a review of our decision, please contact me and I'll arrange for a colleague to conduct an internal review. 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 that complaint or the internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the internal review procedure provided by Natural England.

The Information Commissioner can be contacted at: <https://ico.org.uk/global/contact-us/> or call on 0303 123 1113 (local rate), www.ico.org.uk

Yours sincerely

Darren Green
Senior Adviser – Access to Information

0208 026 0936
darren.green@naturalengland.org.uk