

15 October 2019

Our ref: RFI 4797



Mr Carroll

request-604948-77a167e8@whatdotheyknow

Mail Hub
Worcester County Hall
Spetchley Road
Worcester
WR5 2NP

Dear Mr Carroll

Access to Information request – Response - Request No RFI 4797

Thank you for your request for information, which we received on 19 September 2019. Your request has been considered under the Environmental Information Regulations 2004 ("EIR's").

You specifically asked for:-

I am writing to make an open government request for all the information to which I am entitled under the Freedom of Information Act and the Environmental Information Regulations.

In order to assist you with this request, I am outlining my query as specifically as possible. If however this request is too wide or too unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.

Please supply me with a spreadsheet that contains details of all the lethal control licences in The West Midlands county that have been issued for bird species from 23 March 2014 to the present day of this request. By lethal control I refer to the following licensable activities: Birds to be shot (to reinforce scaring) Destruction, damage to and removal of nests, egg oiling and pricking, Kill, Kill or take, Kill, injure or take, shooting to kill: close season, Shooting to kill: otherwise protected species, Take or destroy an egg of a wild bird, Take, damage or destroy the nest of any wild bird, Taking of eggs, Trapping.

Please state the geographic location of each licence issued and the number issued and the species of bird and numbers targeted in each licence that Natural England have allowed.

Please find attached a spreadsheet that contains details of the lethal control licences we have issued in the West Midlands from 23 March 2014 which is when our current reporting system became live. We have considered lethal control to be covered in the following licensable activities:

- Birds to be shot (to reinforce scaring)
- Destruction, damage to and removal of nests
- Egg oiling and pricking
- Kill
- Kill or take
- Kill, injure or take
- Shooting to kill: close season
- Shooting to kill: otherwise protected species
- Take or destroy an egg of a wild bird
- Take, damage or destroy the nest of any wild bird

- Taking of eggs
- Trapping (please note that for trapping some do involve lethal control but not all).

Please note that some licences may be displayed on more than one row//line so the amount of rows in the spreadsheet does not mean that we have issued that amount of licences.

The reason for this is due to how our casework system generates reports. The system automatically separates any licence where there are multiple species, purposes and/or methods licensed and it places each additional species/purpose/method onto its own individual row. As such there may be more than one row per licence. It also does this for any amended licences and these can be identified as they have a -1, -2 etc. at the end of the licence number.

In determining any licence application our expert staff take account of the requirements of the legislation and the five policy tests set out by Defra. A successful applicant must clearly demonstrate – with supporting evidence – that:

- actual damage or a problem is occurring;
- the species is actually causing the damage or problem;
- other reasonable and practical non-lethal alternatives have been considered and tried (such as scaring, trapping or proofing);
- the action is proportionate;
- and the conservation status of the species will not be negatively affected.

Please note 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.

We have only provided you with details of the how many birds were licenced to be controlled not the actual figures of the birds that were controlled under the licence (birds controlled can be less than those licenced for a variety of reasons) as this information (the returns) is not contained within specific data fields recorded on our licensing database. These returns cannot be searched other than by manual means and to accurately provide you with this information would require all cases to be checked manually. This would be an enormous task and require an unreasonable diversion of resources.

As such we consider this aspect of your request to be manifestly unreasonable in accordance with the exception in Regulation 12(4)(b) of the Environmental Information Regulations 2004. An explanation of how Natural England has applied this exception is set out below.

Natural England's assessment of 'manifestly unreasonable'

It is Natural England's policy, in line with the ICO's Guidance, in respect of the EIR that we refuse requests for information where the cost of responding exceeds £450 (18 hours) and the request is manifestly unreasonable.

The information requested is not contained within a searchable system and these documents cannot be searched other than by manual means. To accurately provide you with all information that you requested that is not accessible by our current reporting system it would require the returns of all cases to be checked manually. This would be an enormous task and require an unreasonable diversion of resources.

Regulation 12(4)(b) - Request is manifestly unreasonable

Regulation 12(4)(b) states:

"12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable"

As explained the information you requested is not data that can be captured by the licensing software we use. Therefore we cannot simply supply some of your requested information from an electronic search. In order to search for, and provide, the information you requested we need to manually check records for any cases where this may have been recorded.

We have estimated that if we undertake this task it would take a minimum of 10 minutes to locate and manually search through each one of the applications (6 per hour) in scope of your request to identify if the information you have requested. Using the amount of rows within the spreadsheet it would take 211 hours ($1270 \div 6 = 211\text{hrs}$) to check our records just for the licences issued during 2018.

We consider that this is an unreasonable diversion of resources.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 allow us to set a nominal charge of £25 per hour and just too manually search through 5 years of licences would reach an equivalent cost of **£5291.66**. This has been calculated as follows: £25 x 211 hours = £5291.66. It does not include the time already taken to run the searches of our software or the time needed to undertake the manual searches required to locate the information prior to 23 March 2014.

We therefore consider data prior to our new system to be manifestly unreasonable in light of the time, resources and excessive costs needed to comply with it.

The ‘public interest test’:

In applying this exception, we have to balance the public interest in withholding the information against the public interest in disclosure. Whilst Natural England believes in openness and transparency, as a public body, Natural England has a duty to be both accountable and transparent in the effective and wise spending of public money. It is clear from the estimates outlined above, that the cost equivalent of providing the information requested, is far in excess of the £450 “appropriate limit” as stated in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, and that the request (even if narrowed down to a specific time period) would place a substantial and unreasonable burden on the resources of Natural England. Moreover the work involved requires an unreasonable diversion of resources from the provisions of our public service and core functions. Whilst there is a presumption in favour of disclosure of information, Natural England considers that the public interest will genuinely be served in this case, by withholding this information.

We have withheld location details at a level that could identify the specific sites these licences were issued for. This information in accordance with the following exceptions in the Environmental Information Regulations 2004:

- Regulation 12(5)(a) – Public Safety

I have set out below the reasons for relying on this exception.

Regulation 12(5)(a) – Public Safety

Regulation 12(5)(a) 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., Natural England is therefore of the opinion that to release and subsequently place into the public domain details that could identify this location would adversely affect public safety. We believe that the release of these details 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 have received, has clearly demonstrated that the management of problems caused by wild birds, even the use of non-lethal options, is an emotive and sensitive issue.

We therefore believe that the release of this information could impact adversely upon the people who have applied for the license.

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 legitimately apply for licenses. Whilst we believe that the public do have the right to know that licenses have been applied for and issued or refused we feel that this should not extend to providing the location of the sites the licenses have been applied 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 aside from giving individuals/groups the opportunity to target the sites or the persons for the purposes of objection. While it is a public right to object 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.

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.

This information may also contain third party copyrighted material and you will need to obtain permission from the copyright holders concerned before you re-use it.

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: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Telephone: 0303 123 1113 (local rate), www.ico.org.uk

Yours sincerely

Kate Donovan
Adviser – Access to Information
Legal & Governance Team

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