

07 September 2016

Our ref: RFI 3528



Mr Dave Rawlins

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

By email: request-349454-470a5d1d@whatdotheyknow.com

Dear Mr Rawlins,

Access to information request – Response - Request No RFI 3528

Thank you for your request for the information listed below which we received on 02 August 2016.

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

Your specific questions have been answered individually below but you will see many of them have been answered by referring you to the documents Natural England has now published in relation to this licence on our website. They include the application, technical assessment, summary of the decision, the licence and the internal guidance note in relation to lethal control of wild birds. These documents can be located here:

<https://www.gov.uk/government/news/buzzard-licensing-applications>

However within these documents we have withheld all details that could identify any of the individuals involved in the application including both the applicant and Natural England employees. We have also withheld all details and information that could identify either the business involved or the site of the destruction. This includes the location and sizes of the enterprises concerned e.g. area, numbers of pheasants reared, pheasant shot etc. We have withheld this information in accordance with the following exceptions in the Environmental Information Regulations 2004:

- Regulation 12(3) - Personal Information and
- Regulation 12(5)(a) – Public Safety

I have set out below the reasons for relying on these exceptions.

Regulation 12(3) – Personal information

The names, signatures, contact details and anything that could identify private individuals and some employees of Natural England 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, 'Personal information (section 40 and regulation 13)', 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.

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 types of 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. As a result, staff involved in handling these licence applications have collectively taken the decision to refuse consent to disclosure. Natural England has a duty of care towards its staff. Having considered all these factors 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.

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)(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 raptors, 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 precise 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.

1. What evidence did the applicant supply of “serious damage to young pheasants”?

This information is provided within the Technical Assessment which can be located in the link given above.

2. How was this evidence verified by Natural England?

This information is provided within the Technical Assessment which can be located in the link given above.

3. How many pheasants has the applicant lost to buzzards, each year, over the last 5 years?

Speak to Julie

4. What is the estimated financial loss to the applicant due to predation, by buzzards, of his pheasants?

This information is considered to be personal information by Natural England and has been withheld under Regulation 12(3). Our reasoning for this is given above.

5. What are the time limitations applied to the licence?

The licence is in force for seven weeks in 2016.

6. Please list all the other “stringent conditions” applied to the licence, mentioned in the announcement.

This information is provided within the Licence which can be located in the link given above

7. Please cite the law under which this licence was granted.

Natural England has a statutory duty to assess and issue wildlife licences within the legal framework of the Wildlife and Countryside Act 1981 (WCA)

8. Please cite the Natural England policy under which this licence was granted.

This information is provided within the Internal Guidance Note which can be located in the link given above

9. Please provide the “best available evidence”, other than that supplied by the applicant, that was available to Natural England when the decision to issue the licence was taken.

This information is provided within the Technical Assessment which can be located in the link given above

10. Who carried out the “rigorous assessment” mentioned in the announcement.

This information is considered to be personal information by Natural England and has been withheld under Regulation 12(3). Our reasoning for this is given above.

11. What was the methodology of the “rigorous assessment”, how long did it take and what was the conclusion?

This information is provided within the Licencing Summary and Technical Assessment which can be located in the link given above.

12. Please describe all the other methods that had been tried by the applicant to control predation by buzzards over the 5-year period mentioned in the announcement application. Which years were included in the 5-year period?

Speak to Julie

13. What are the non-lethal measures stipulated by the licence, to be used in conjunction with killing the buzzards.

This information is provided within the Licence which can be located in the link given above

14. How are buzzards inside the pheasant pens to be killed?

The licence permits up to ten buzzards to be shot.

15. What other methods of killing buzzards are permitted under the licence?

None and this is explained in the Licence.

16. How many metres from the pheasant pens do the buzzards have to be to be considered to be inside the area “immediately around the animal pens”?

There is no defined measurement of “immediately around the animal pens”. Lethal control by shooting may only be undertaken within or immediately adjacent to the four pens/woods listed on this licence and only where all conditions of this licence can be met.

17. The announcement states that “ the conditions (of the licence) are designed to make the licensed activity ... proportionate”. What criteria will Natural England apply to assess that killing 10 buzzards is a proportionate response to the loss of pheasants by buzzard predation. When will that assessment be reached?

This is the first licence that Natural England has issued for the lethal control of raptors to prevent serious damage to pheasant poults. The application has been assessed against the four principles in our Internal Guidance in order to decide if this licence will be effective and proportionate in resolving the issue. If the applicant seeks any similar future licences we would expect the applicants shooting returns for the 2016/17 season to show that this licence had been effective and proportionate in preventing serious damage.

18. The announcement states that “ the conditions (of the licence) are designed to make the licensed activity ... effective”. What reduction in losses of pheasants to buzzards will Natural England apply to assess that killing 10 buzzards is an effective response to buzzard predation. When will that assessment be reached?

This is the first licence that Natural England has issued for the lethal control of raptors to prevent serious damage to pheasant poults. The application has been assessed against the four principles in our Internal Guidance in order to decide if this licence will be effective and proportionate in resolving the issue. If the applicant seeks any similar future licences we would expect the applicants shooting returns for the 2016/17 season to show that this licence had been effective and proportionate in preventing serious damage.

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 request and wish to make a complaint or request a review of our decision, please email me at foi@naturalengland.org.uk and I will arrange for a review to take place. 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 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 at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Telephone: 01625 545 700, www.ico.gov.uk

Yours sincerely

Sarah Waterfield
Lead Adviser – Access to Information
Legal Services