

29 July 2013

Our ref: RFI 2022

Your ref:



By email

By Email: [REDACTED]

Dear [REDACTED],

Access to Information Request – Internal Review – RFI 2022

Thank you for your email dated 07 July 2013 asking for an internal review of Natural England's handling of your request for information under the Environmental Information Regulations 2004 (the Regulations). I have now completed that task and have set out, in this letter, my conclusions.

In accordance with Natural England's internal review procedures, your case has been reviewed by a more Senior Officer, who was not involved in the original decision, in discussion with colleagues who handled your original request.

Summary

In our original response to RFI 2018 we refused to confirm or deny whether we held any details about convictions on the licence application referenced. We withheld this information under Regulations (12)(3) – personal information.

I have therefore re-examined our response and have concluded that Natural England: correctly refused to disclose this information under Regulations 12(3) and that this information should continue to be withheld.

Chronology

31 May 2013	Natural England received your request for information.
31 May 2013	Natural England acknowledges receipt of your request.
03 June 2013	Natural England responded to your request for information.
07 July 2013	Natural England received your request for internal review.
07 July 2013	Natural England acknowledges receipt of your request for internal review.

Regulatory Regime

I have concluded that the Regulations are the applicable information access regime. This is because any such information held by Natural England would meet the definition of environmental information in the Regulations, being information on measures affecting or likely to affect the state of the elements of the environment and natural sites and an environmental agreement affecting or likely to affect the above. This therefore falls within the definition of environmental information in the Regulations.

Timeliness (Regulation 5)

I have considered whether Natural England complied with the requirement in the Regulations to respond to a requester within legal deadlines after the date of receipt of the request. Natural England responded on the 01 working day after receiving your request. Therefore, Natural England complied with Regulation 5.

Exceptions relied upon:

Natural England's reasons for continuing to withhold the information have not changed since

our response on 03 June 2013. However, I have provided more information, which should make it clearer why we are continuing to withhold this information.

Exception in Regulation 12(3) – Personal Information

We have refused to confirm or deny whether we hold details of any convictions by the licensee as these are considered by Natural England to be personal information as defined by the Data Protection Act 1998 and falls under the exception in EIR regulations 12(3), which cover personal information.

Under the Regulations any disclosure made is in effect a disclosure to the world at large, as any other applicant would be entitled to the same information on request. It is important that we take this into consideration when making any decisions as to whether it is in the public interest to disclose or withhold any information that is requested, especially when it relates to information that is defined as personal information.

The First Data Protection Principle says that personal data ‘shall be processed fairly and lawfully’. Guidance published by the Information Commissioner, ‘Freedom of Information Act 2000, Awareness Guidance No 1’, states that when considering fairness the following questions should be taken into account:

- Would the disclosure cause unnecessary or unjustified distress or damage to the person who the information is about?
- Would the third party expect that his or her information might be disclosed to others?
- Had the person been led to believe that his or her information would be kept secret?
- Has the third party expressly refused consent to disclosure of the information?

Under the Data Protection Act 1998, the presumption is in favour of protecting the privacy of the individual, and so the release of personal data will only be found to be fair if there is a genuine reason for disclosure. This involves a three-stage test:

- there is a legitimate interest in disclosure;
- the legitimate interest can only be met, or fully met, by the disclosure of information which identifies individuals (i.e. the disclosure is necessary to that purpose); and
- the disclosure would not involve unwarranted detriment to the individual’s privacy or other rights and legitimate interests.

As stated in our previous response letter it is part of Natural England’s standard procedures to ask all licence applicants for information on relevant past convictions. This information is taken into consideration in the assessment of the application. For example, this may lead to a more in-depth assessment of the application or additional monitoring of licensed actions. However the fact that a person has a previous wildlife related conviction (whether spent or not) does not automatically bar them for obtaining a licence and each licence application is judged on its merits.

We believe that those named on the licences have a reasonable expectation that this information should not be disclosed to the world at large. Particularly given the information you have requested is defined under Schedule.2 (g) and (h) of the Data Protection Act 1998 as sensitive personal information. In this Act “sensitive personal data” means personal data consisting of information that relates to

*(g) the commission or alleged commission by him of any offence, or
(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.*

The Information Commissioners guidance relating to the disclosure of sensitive personal information states that “*the disclosure of such information is likely to be unfair as it comprises information that individuals will regard as the most private. This means that in the*

majority of cases it will be in the reasonable expectation of the individual that such information will not be disclosed”.

In our opinion to either confirm or deny whether we hold this information would breach our obligations under the Act and cause unnecessary and unjustified harm or distress to the persons who the information is about.

Whilst Natural England believes in openness and transparency, as a public body, we also have a duty to safe-guard the personal information of those who apply for licences to allow them to undertake activities that would be otherwise illegal. While we believe that the public do have the right to know that licences has been issued, that all the necessary processes were undertaken and what the conditions of those licences are, we do not feel that this should not extend to placing peoples sensitive personal details in to the public domain.

Considering all the factors above, Natural England does not believe that the release of information is in this case, in the public interest and we are satisfied that the information requested fits the definition of sensitive personal data and that its release would be 'unfair' under the meaning of the first Data Protection Principle and should not be released.

I hope that the above answers your questions satisfactorily. However, if you remain dissatisfied, you have the right to apply directly to the Information Commissioner for a decision. 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

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Access to Information Team