FREEDOM OF INFORMATION REQUEST REFERENCE NUMBER: 000043/12

Thank you for your request for information regarding the Government's Badger Culling Policy which has now been considered.

Applicant Question (redefined):

Copies of all communications by ACPO to DEFRA / the Home Office and their agencies relating to the use of ballistics and firearms in respect of the government's badger culling policy since May 2010 Which may not have been included within the Index provided in ACPO FOI response 08/11 to date.

Minutes of all discussions held between ACPO and DEFRA / Home Office Minsters and/or officials relating to the government's badger culling policy since May 2010 Which may not have been included within the Index provided in ACPO FOI response 08/11 to date.

Copies of all electronic and hard copy correspondence between ACPO and DEFRA / Home Office relating to the government's badger culling policy since May 2010 Which may not have been included within the Index provided in ACPO FOI response 08/11 to date.

ACPO Response:

ACPO do hold information captured by your request.

I have pleasure in attaching to this letter, information held and releasable into the public domain in compliance with the legislation:

Home Office Report: Badger Control – What we’re announcing;

Home Office Report: Bovine TB – Key Facts and Figures;

Home Office Report: Dealing with TB Nationally – The proposal to allow badger culling will only have local benefits.

I can confirm ACPO do hold further information which, in compliance with the legislation, I am unable to disclose by virtue of the relevant exemptions.

Section 17 of the Freedom of Information Act 2000 requires ACPO, when refusing to provide information by way of exemption, to provide you with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states why the exemption applies. In accordance with the Freedom of Information Act 2000 this letter acts as a Refusal Notice for those aspects of your requests.

I engage the exemption Section 22 of the Act, for those documents which are planned for future publication. Those documents are:
Annex F BPG: Controlled shooting in the field, and cage-trapping & despatch of badgers, under licence to prevent the spread of bTB in cattle July 2011;

Cage-trapping & despatch of Badgers under licence to prevent the spread of bTB in cattle BPG December 2011;

Controlled Shooting of Badgers in the field under licence to prevent the spread of bTB in cattle BPG December 2011;

Controlled Shooting of Badgers in the field under licence to prevent the spread of bTB in cattle BPG December 2011;

RESTRICTED: Establishing and Running a Badger Culling Training Course and Assessing Competence: February 2012.

I am not obliged to provide information if the information held is intended for future publication and exempt this Information under section 22(1)(a) of the Freedom of Information Act.

Section 22 is a qualified exemption and as such is subject to a public interest test. This means that I have identified the exemption, considered whether the public interest in not disclosing the information outweighed the public interest test in disclosing the information.

In determining the public interest, I have evaluated the information against the need for public bodies to exercise their functions. In this case, I have concluded that to release the guidance prior to the document being approved by all bodies would be irresponsible on ACPO’s part.

This point however is further tempered by the fact that disclosure before deliberations have finished are that the guidance may not be effective and could adversely affect the process of all organisations and the effectiveness of the Police Service and other Public Bodies.

The legislation: Section 22 Information Intended For Future Publication

(1) Information is exempt information if –
(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
(b) the information was already held with a view to such publication at the time when the request for information was made and
(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)

The exemption is aimed at preserving intact all existing laws providing access to information. The Freedom of information Act is not designed to subsume other legal access rights, or to give alternative routes of access where existing regimes are already available. The Freedom of Information Act access rights build on, but do not replace, previous access rights. Those existing rights, and the separate procedural regimes which are tailored to them, continue in place, and the Freedom of Information Act observes corresponding limits to its role.

Section 22 allows for circumstances when it is reasonable and correct for public authorities to delay the provision of information until it is made generally available through publication.

I am not obliged to provide information if the information held prevent the detection of crime and exempt this information under section 31(1)(a)(b) of the Freedom of Information Act.

I engage the exemption Section 31 of the Act, for those documents which are exempt for the purpose of Law Enforcement. Those documents are:

RESTRICTED Email thread between Hampshire Firearms & Explosive Licensing Officer, ACPO Lead Staff Officer and the Home Office regarding Badgers – Best Practice dated 06/12/2011;

RESTRICTED Email from DEFRA to Staff Officer to ACPO Lead regarding Agenda for Meeting: Badger Control Project: Security Implications dated 01/02/2012;
Email from Hampshire Firearms & Explosives Licensing Officer to DEFRA regarding Badger Culling Training Course dated 28/02/2012;

Email from DEFRA to ACPO Lead Staff Officer regarding Pilot Area Maps dated 25/01/2012.

RESTRICTED DEFRA Report: Bovine TB Difficult Q & A is exempt from disclosure. The information contained within this report relates to internal communications and operational planning. The information contained within this report also relates to security implications and public safety.

Emails dated 01/02/2012 and 28/02/2012 are exempt from disclosure. The information contained within these emails relates to security implications and public safety.

The legislation: Section 31 Law Enforcement:

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to prejudice –
(a) the prevention or detection of crime
(b) the apprehension or prosecution of offenders

Section 31 creates an exemption from the right to disclose information if releasing it would, or would be likely to cause significant harm to the functions of a public authority.

Section 31 is a qualified exemption and as such is subject to a public interest test. This means that I have identified the exemption, considered whether the public interest in not disclosing the information outweighed the public interest in disclosing the information.

In determining the public interest, I have evaluated the information against the need for public bodies to exercise their functions. In this case, I have concluded that to release the information would be irresponsible on ACPO’s part.

In order to continue working relationships with other bodies, there is a level of expectation regarding internal briefing reports which contain sensitive information, which, if released into the public domain could adversely affect the effectiveness or security of other law enforcement agencies. To release the information would undermine the expectation of trust and confidentiality of our partner agencies. This will damage future operational relationships between the police service and other departments.

There is a general expectation that information held by ACPO and exchanged with other agencies will be dealt with appropriately and securely in the knowledge that confidences will be maintained.

Modern day policing is intelligence led, particularly with regard to policing events that attract public disorder. To disclose information that would reveal the security implications at specific locations and/or the ongoing projects would prejudice any security operations. This knowledge would enable individuals who are intent on carrying out criminal activity to target specific days, events or locations as they would be able to assess the strength of policing presence at these locations.

Such disclosure would demonstrate ACPO’s commitment to being open and honest in relation to the Government’s Badger Culling Policy which is of national interest.

Disclosure of this information would allow the public to be better informed about the new security measures and operational planning that is being put in place to aid the detection and prevention of crime in relation to the badger cull.

In addition it would show that ACPO have seriously considered the allocation of resources.

Factors favouring non-disclosure relate directly to the evidence of harm mentioned above. The disclosure of security measures based on specific tasking regarding proposed culls would directly compromise law enforcement tactics that are being established to combat potential criminal activity.

Under the Act, I cannot and do not request the motives of any applicant for information. I have no doubt the vast majority of applications under the Act are legitimate and do not have any ulterior motives, however, in disclosing information to one applicant I am expressing a willingness to provide it to anyone in the world. This
means that a disclosure to a genuinely interested and concerned applicant automatically opens it up for a similar disclosure to anyone, including those who might represent a threat to individuals, or the UK as a whole.

Release of the requested information could enable an individual to circumvent the security measures ACPO are putting in place to prevent and detect crime which may be committed to the planned operations and render them ineffective.

The public interest is not what interests the public, but what will be of greater good if released to the community as a whole. It is not in the public interest to disclose information that may compromise the service’s ability to fulfil its core function of law enforcement. Thereby providing any information which may be used by those with criminal intent to disrupt the safe running of the planned operations can not be seen to be in the interest of the public.

Any disclosure under the Act which may result in an increase in opportunity to commit crime and thus risk the safety of the public can not be seen to be beneficial.

It is my opinion that the requested information should today be exempted due to the factors favouring non-disclosure, which in this instance outweigh the factors favouring disclosure.

The lack of the enhancement to the public debate that the exemption produces, coupled with the risks leave me in no doubt that the balance, at this time lies in non disclosure.

Email dated 25/01/2012 I have provided to you has been sanitised with redactions. The redactions relate to telephone numbers and email addresses that are not publicly available.

Numerous direct dial telephone numbers and email addresses are contained within the document and disclosure of the information would enable an individual, intent on committing an offence to make contact with the department, pose as a police officer and try to glean information which would assist in their offending behaviour.

Disclosing information which may place the public at risk, or make it easier for crime to be committed cannot be in the public interest.

The police service primary performance indicator is the reduction of crime, and disclosure which has a negative impact on that agenda affects public trust in policing and in this case may make it more difficult to police.

With regard the evidence of harm itself, there is a threshold that requires the predicted issues to be ‘more than likely’. In the case of an offender identifying full investigative techniques or gleaning information which would assist in offending behaviour can be difficult to establish and evidence the harm without actually disclosing exempt information. However, the principles are well established in terms of Freedom of Information legislation that to a certain extent the professional opinion of the police must be taken into account.

Yours sincerely

Sherry Traquair
Freedom of Information Officer & Decision Maker

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COMPLAINT RIGHTS

Internal Review

If you are dissatisfied with the response you have been provided with, in compliance with the Freedom of Information legislation, you can lodge a complaint with ACPO to have the decision reviewed within 2 months of the date of this response. The handling of your request will be looked at by someone independent of the original decision, and a fresh response provided.

It would be helpful, if requesting a review, for you to articulate in detail the reasons you are not satisfied with this reply.

If you would like to request a review, please write or send an email to ACPO Freedom of Information, c/o PO Box 481, Fareham, Hampshire, PO14 9FS.

If, after lodging a complaint with ACPO, you are still unhappy with the outcome, you may make an application to the Information Commissioner at the Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.