

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 12 November 2008**

**Public Authority:** Department for the Environment, Food and Rural Affairs  
Nobel House  
17 Smith Square  
London  
SW1P 3JR

### Summary

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The complainant requested that the Rural Payments Agency disclose information regarding the distribution of subsidies under the European Union's Common Agricultural Policy. The RPA ultimately relied on the exemption provided by regulation 13 of the Environmental Information Regulations. The Commissioner found that the legitimate interest in the processing of the third party data outweighed the legitimate interests of the data subjects. The Commissioner therefore upheld the complainant's complaint and directed that the requested information be released.

### The Commissioner's Role

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1. As the information requested is environmental in nature, the Commissioner has made a decision as to whether the request was dealt with in accordance with the requirements of Part 2 of the Environmental Information Regulations (EIR).
2. The EIR came into force on 1 January 2005, pursuant to the European Union Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). All references to "regulations" in this decision notice are to the EIR unless otherwise stated. Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

## The Request

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3. The Commissioner notes that under the Act the Rural Payments Agency (“RPA”) is an executive agency (established 16 October 2001) of the Department for Environment, Food and Rural Affairs (“DEFRA”). DEFRA is therefore, the public authority in this case. However, for the sake of clarity this decision notice refers to the RPA as if it were the public authority.
  
4. On 19 October 2005, the complainant made a request to the RPA to release data, regarding agricultural subsidy payments that contained the following information for each year beginning 1999/2000:
  - full name of the recipient
  - business identification number
  - Address of recipient (and address of farm, if different)
  - Postcode of recipient (and address of farm, if different)
  - Amount of payment
  - Date of Payment
  - Name of CAP scheme under which the payment was made
  - CAP scheme code
  - Land parcel co-ordinates
  
5. On the 17 November 2005, the RPA replied that the diversion of its resources required to produce the extraction and breakdown of the data would be manifestly unreasonable and thus declined to provide the information pursuant to regulation 12. A further ground relied upon, not to disclose the requested information, was described by the RPA as “general privacy arguments”. The RPA did state however that the annual aggregated payments to recipients made under the common agriculture policy had been published. This publication gave, and would continue to give, figures for the year 2003 onwards.
  
6. In a letter dated the 17 November 2005, the complainant requested that the RPA reconsider its decision. The RPA did as asked and communicated the findings of the review, that its original decision was correct, to the complainant on 15 December 2005.

## The Investigation

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### Scope of the case

7. The complainant contacted the Commissioner on 29 March 2006 to complain about the way his information request had been handled by the RPA.

### Chronology of the case

8. The Commissioner entered into extensive correspondence with the RPA, regarding its reliance on exemption(s) not to comply with the information request. This included the Commissioner on 29 January 2007 serving upon the RPA an Information Notice pursuant to section 51 of the act.
9. The information notice required the RPA to provide:
  - A detailed explanation of why the request was manifestly unreasonable
  - If the request was considered manifestly unreasonable on the grounds of cost, the public authority to provide the following-
    - i. An estimate of the time needed to comply with the request.
    - ii. Detail as to how this time estimate had been arrived at, e.g. the time spent on each activity undertaken in order to comply with the request.
    - iii. An explanation of the structure and volume of the records in which the information requested is held.
  - A comprehensive explanation of its consideration of the public interest test.
10. In its reply the RPA confirmed that the request was considered manifestly unreasonable (as provided for in 12(4) (b) of EIR) on the grounds of cost and the diversion of resources stating -

“We estimate that it would take 69 days work at a cost of circa £35,500 to comply with the request in full. A breakdown of these costs is in the table at Annex A. This would involve the extraction, reconciliation and presentation of the data from RPA’s accounting systems. The relative cost of this process for the years prior to 2002-03, which was the first year that RPA published CAP payment data, reflects the complexities of producing data prior to the amalgamation and enhancement of RPA’s systems after its creation in 2001.”

11. The RPA also stated that the time estimate did not take into consideration the cost of providing the land co-ordinates that the complainant had requested. The stated reason for this is that “payment data is not linked to land or farm locations on its accounting systems”. To establish such a link would entail the development and creation of computer software. The cost of developing the software would be so high that the RPA declined to provide a more definitive estimate. The RPA also provided further details of their consideration of the public interest test
12. The complainant was informed of the RPA’s reply and in correspondence dated 3 May 2007, the complainant asserted to the Commissioner that –

“...at no point did the RPA ask me to reformulate my request to reduce the cost involved to a reasonable level...I still hold to my view that the data files submitted by the RPA to the European Commission for audit and control purposes would contain all the information I have requested, and that there is no need for the RPA to 'reinvent the wheel'.”
13. This assertion of the complainant that a “simple transfer” of data files submitted to the European Commission under the Clearance Audit Trail System (CATS) would meet the information request was put to RPA. The RPA response, on 7 June 2007, was, in essence, a referral back to its argument that due to the overall cost both financial and in time the request remained manifestly unreasonable.
14. On the 13 September 2007, the RPA enlarged upon its “general privacy arguments” as a further reason (i.e. in addition to “manifestly unreasonable”) not to communicate some of the requested information by referring to regulation 13 (personal data).
15. The RPA maintained that as regards sole traders and partnerships the information requested that was for:
  - Business identification number (SBI)
  - Address of recipient (and address of farm, if different)
  - Postcode of recipient (and address of farm, if different)
  - Date of payment
  - Name of CAP scheme under which the payment was made
  - CAP scheme code

constituted personal data that they could not lawfully disclose to third parties.
16. In correspondence dated the 25 September 2007 the Commissioner enquired of the RPA “To avoid any doubt if it is a question of communicating “raw data” does the Rural Payments Agency maintain its reliance on regulation 12(4)(b)”?

17. The RPA replied, on the 27 September 2007, that-

“*[name redacted]*’s reframed request that RPA should release information provided to the EU, without the need for any further processing, would over come RPA’ s assertion that the request was manifestly unreasonable. I can confirm that RPA would not maintain its reliance on EIR exception 12(4) (b) in response to this specific request. The one exception ... relates to land parcel co-ordinates. This was explained in our letter to the... (Commissioner)... dated 5 March 2007. In this instance we would maintain our reliance on exception 12(4) (b).”
18. The Commissioner on 20 November 2007 asked the RPA to explain in more detail the basis on which it relied upon 12(4)(b) not to communicate the land parcel co-ordinates.
19. In reply, (13 December 2007) the RPA explained that the relevant data was, until it was superseded in 2005, contained in a system called RADAX. The RPA contend that it would be necessary to engage the services of the IT supplier to determine via an impact assessment whether or not it would be possible to develop software that could retrieve the data. The RPA estimate that the cost of commissioning this impact assessment would be “several thousand pounds”.
20. The RPA also advanced further arguments why regulation 13 (personal data) exempted from disclosure some of the requested information. The RPA maintaining that where information relates to sole traders/partnership it is personal data as defined by section 1 of the Data Protection Act 1998 and thereby engaging regulations 12(3) and 13 of the EIR.

### **Findings of the case**

21. The Common Agricultural Policy (“CAP”) is a system of European Union agricultural subsidies and programs. These subsidies used to work by guaranteeing a minimum price to producers and by direct payment of a subsidy for crops planted. Since January 2005, payments are not tied to production but are paid per hectare of farmland kept in good agricultural condition.
22. The European Commission received computer files each year from the Member States concerning details of all individual payments made to CAP beneficiaries pursuant to Commission Regulation (EC) No 2390/1999 (as amended) . The detailed information is stored in a large database known as the Clearance Audit Trail System (CATS).
23. The RPA, established in October 2001, is an executive agency of DEFRA. It is the single paying agency responsible for CAP schemes in England and other schemes throughout the UK.

24. The RPA informed the Commissioner (in a letter dated 13 December 2007) that the amount of subsidy paid out under the CAP in the United Kingdom was as follows (figures are for billions in sterling):

1999-2000	2.7
2000-2001	3.3
2001-2002	2.7
2002-2003	3.0
2003-2004	3.4
2004-2005	3.6

25. The RPA has released limited information regarding cap payments for the years 2002-2003, 2003-2004 and onwards. The information released includes the name of the recipient (whether corporate or an individual), the amount received and the regional location the subsidy relates to. Accordingly what remains to be communicated to the claimant, unless an exemption applies, is all of his original request for the years 1999-2001. Regarding the years 2001-2004 the following information is still undisclosed,

- business identification number
- Address of recipient (and address of farm, if different)
- Postcode of recipient (and address of farm, if different)
- Date of Payment
- Name of CAP scheme under which the payment was made
- CAP scheme code
- Land parcel co-ordinates

## Analysis

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26. The Commissioner has considered the public authority's response to the complainant's request for information.

27. The first issue for consideration is whether the RPA were correct in considering the information request under the EIR rather than the Freedom of Information Act 2000. Regulation 2(1) (c) defines environmental information to include any information on -

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases

into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

28. The Commissioner believes that paragraph (c) is drafted widely enough to include the payment of subsidies under CAP, in that the program that was CAP and the activity that was the payment of farm subsidies is at least likely to effect elements in the environment. The Commissioner notes that the RPA's use of the EIR has not been criticised by the complainant.
29. The Commissioner acknowledges that the Scottish Information Commissioner in his decision, *Rob Edwards of the Sunday Herald and the Scottish Executive 126/2007*, came to a different conclusion on similar facts, that the FOIA instead of EIR was the applicable legislation. The Commissioner is not bound by the Scottish Commissioner (and vice versa) and declines in this instance to follow his decision.

### **Procedural issues**

30. Regulation 14 (2) states that if a request for environmental information is refused, this refusal should be made in writing in no later than 20 working days after the date of the request. Regulation 14(3) (a) states that the refusal must specify any exception being relied upon under regulations 12(4), 12(5) or 13 not to make the requested information available.
31. The Commissioner finds as fact that the information request was made on the 19 October 2005 and was refused on the 17 November 2005 and therefore in compliance with regulation 14 (2). However, the RPA in its refusal notice on the 17 November 2005 stated that the requested information would not be communicated to the complainant due to, amongst other things, "general privacy arguments". The Commissioner therefore finds that a breach of the Regulations 14 (3) (a) occurred as the public authority fails to specify that regulation 3 (1) was being relied upon not to make information available to the complainant.

### **Exemptions**

32. On receiving a request for information, which falls within the ambit of the EIR, the public authority has a duty to provide it unless they are exempt from doing so (regulation 5). The RPA initially relied upon regulation 12(4) (b) (i.e. that they considered the request was

manifestly unreasonable) not to provide the information. Reliance upon this exemption was based upon the RPA reading of the original request. The RPA assumed the complainant wished the information to be presented in the following fields-

- full name of the recipient
- business identification number
- Address of recipient (and address of farm, if different)
- Postcode of recipient (and address of farm, if different)
- Amount of payment
- Date of Payment
- Name of CAP scheme under which the payment was made
- CAP scheme code
- Land parcel co-ordinates

33. However, as referred to at paragraph 12 above, the complainant clarified that he merely required the data that contained the above information. The complainant would, if needs be, undertake the analysis himself. On this being put to the RPA they informed the Commissioner that they “would not maintain ... (their) ... reliance on EIR exception 12(4) (b) save for as the request related to land parcel co-ordinates” (see paragraphs 17 and 19 above).
34. The Commissioner notes that the RPA acknowledges (paragraph 19 above) that it has the “land parcel co-ordinates” but go on to say its extraction would be at such an anticipated cost to make the request manifestly unreasonable. However, the complainant has stated that he does not require the RPA to undertake such an extraction .The Commissioner decision is that the RPA were wrong to maintain its reliance on regulation 12 (4)(b) given that there was no expectation or compulsion to undertake the extraction they envisaged .
35. The RPA, in its refusal notice also stated, that it would not release the requested information due to” general privacy arguments”. In later correspondence with the Commissioner, the RPA maintained that to release the information, which identified –
- Address of recipient (and address of farm ,if different)
  - Postcode of recipient (and address of farm ,if different )
  - Date of Payment
  - Name of CAP scheme under which the payment was made
  - CAP scheme code
  - Business Identification Number-

would be contrary to rule 13 of the regulations.

36. Regulation 13 (1) makes provision for an exception from the duty to disclose environmental information where the person requesting



personal data is not its subject matter (i.e. third party data). It provides that such information must not be disclosed where its disclosure would breach any of the data protection principles set out in Part 1 of Schedule 1 of the Data Protection Act 1998 as set out in the legal annex to this decision.

### **Is the requested information personal data**

37. In order to rely on the exemption provided by regulation 13, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information as:

*'...data which relates to a living individual who can be identified*  
*a) from those data, or*  
*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*  
*and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'*

38. The Commissioner accepts the RPA assertion that the data, so far as it relates to the names, addresses, amounts received and the business identification number constitutes personal data where it relates to a sole trader or a partnership.

### **Would disclosure breach the DPA**

39. The first Data Protection Principle states-

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 is met..."*

This principle introduces the requirement that as a requisite of fair and lawful processing, personal data shall not be processed unless at least one of the conditions in Schedule 2 of the DPA ("the conditions for processing") is met. Moreover, in the case of the processing of sensitive personal data at least one of the conditions in schedule 3 of the DPA is met. In this case, the withheld information contains no sensitive personal data and therefore only the schedule 2 conditions need be considered.

40. DPA, Schedule 2, paragraph 6(1) provides a condition for processing personal data where:

*"The processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of*

*prejudice to the rights and freedoms or legitimate interests of the data subject.”*

41. The Information Tribunal in the case of *House of Commons v ICO & Norman Baker MP* (Appeal Number: EA/0006/0015 and 0016) stated (at paragraph 90) that the application of paragraph 6 “...involves a balance between competing interests broadly comparable, but not identical, to the balance that applies under the public interest test for qualified exemptions...”
42. The balance, the tribunal went on to say, being between “...(i) the legitimate interests of those to whom the data would be disclosed which in this context are members of the public...and (ii) prejudice to the rights, freedoms and legitimate interests of the data subjects ...”. The tribunal then stated that “...because the processing must be ‘necessary’ for the legitimate interests of members of the public to apply we find that only where (i) outweighs or is greater than (ii) should personal data be disclosed.”
43. The first question to be answered under paragraph 6 of schedule 2 is whether the third party has a legitimate interest in the processing of the third party data requested.
44. The Commissioner accepts that the complainant, as a member of the public and a member of the press, has a legitimate interest in knowing how agricultural subsidies (involving large amounts of public monies) have been distributed and possibly, therefore, being able to discern the effect, if any, on the environment. Additionally the Commissioner believes there is a legitimate interest in the public dissemination of information regarding the scale and recipients of the payments. Accordingly, the Commissioner finds that there is a legitimate interest in processing the third party data.
45. In the context of this first question The Information Tribunal in *House of Commons v ICO & Leapman, Brooke, Thomas* (EA/2007/0060) noted a factor for consideration was whether the legitimate aims pursued by the complainant were achievable by means that interfere less with the privacy of the data subjects.
46. The RPA, in correspondence with the Commissioner, argued that by releasing some of the information for the years 2001 onwards they had met the legitimate interests, i.e. the scale and distribution of funding, of the complainant. However, the limited release still means a decision is required on the releasing of information requested but not released.
47. A large part of the information requested resides only with the RPA and the European Commission. The Commissioner is therefore unable to identify other obvious means whereby the legitimate aims of the

complainant in their totality are achievable in a way that interferes less with the privacy of the data subjects.

48. The second question that falls to be answered is whether the rights, freedoms and legitimate interests of the data subjects are outweighed by any legitimate interest in processing their data. The following matters were considered in answering this question:
- There is a strong public interest in knowing how public money is being spent
  - There is a strong public interest in the efficient and equitable distribution of public money and in the accountability of those making the payment.
  - The CAP schemes have a high profile. Informed debate is important.
  - The information relates to the payment of public money
49. The Commissioner notes the RPA argument that to release names and addresses may make the data subject prey to cold callers and that this is particularly important as farm addresses are often also domestic addresses. However, no evidence has been advanced by the RPA that supports their expressed concerns.
50. The Commissioner is of the view that a distinction can be drawn between matters which relate to a person's business circumstances and those which are intrinsically personal. In this instance, communicating the detail of a subsidy from public funds paid to a person operating in a business capacity is justified. This remains true notwithstanding that some of the detail (i.e. personal addresses) is intrinsically personal. The Commissioner also notes that limited information about the recipients of CAP payments has already been released by the RPA and that in at least some of the cases this will have enabled the recipient to be identified.
51. The Commissioner concludes that the release of the personal data is necessary for the purposes of the complainant's legitimate interests and is not unwarranted. Therefore it can be processed by virtue of sixth condition of schedule 2 of the DPA.
52. The Commissioner has also considered whether the release of the personal data in question would breach the more general requirements of the first Data Protection Principle that personal data shall be processed "fairly and lawfully". For the reasons set out above, he does not consider that there would be any unfairness to the data subjects concerned notwithstanding that they might not have been aware that there would be a disclosure of their personal information when they

applied for CAP subsidies. Nor does he consider that the release of the information would breach a duty of confidence or be unlawful in any other way.

## **The Decision**

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53. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Regulations it incorrectly withheld information under regulations 13(1) and (2)(a) and 14 of the EIR.

## **Steps Required**

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54. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- To provide a copy of the data files submitted by the RPA to the European Commission for audit and control purposes for the years 1999/2000 to 2004/2005.
55. The public authority must take the steps required by this notice within 35 calendar days from the date of this notice.
56. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

## Right of Appeal

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57. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 12<sup>th</sup> day of November 2008**

**Signed .....**

**David Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **LEGAL ANNEX**

### **The Environmental Information Regulations 2004**

#### **Regulation 2(1)**

In these Regulations –

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

#### **Regulation 5 - Duty to make available environmental information on request**

**Regulation 5(1)** Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

**Regulation 5(2)** Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

**Regulation 5(3)** To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

### **Regulation 13 - Personal data**

**Regulation 13(1)** To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

**Regulation 13(2)** The first condition is –

- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
  - (i) any of the data protection principles; or
  - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it;and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

**Regulation 13(3)** The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

### **Data Protection Act 1998**

#### Schedule 1: Data Protection Principles

##### First principle:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

Schedule 2: Conditions relevant for purposes of the first principle: processing of any personal data

6 (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data

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are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.