

Freedom of Information Act 2000 (FOIA) Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 January 2021

Public Authority: Rural Payments Agency
Address: PO Box 69
Reading
RG1 3YD

Decision (including any steps ordered)

1. The complainant has requested information about a grant awarded to a named rural centre. The Rural Payments Agency ('RPA') has refused to disclose the information under regulation 12(3) of the EIR as it considers it to be the personal data of third persons.
2. The Commissioner's decision is as follows:
 - The requested information is the personal data, and special category personal data, of third persons and the RPA was entitled to withhold it under regulation 13(1) of the EIR by way of regulation 13(2A)(a) of the Data Protection Act 2018.
3. The Commissioner does not require the RPA to take any remedial steps.

Request and response

4. Regulation 2(2)(b) of the EIR states that the majority of public authorities covered by the Freedom of Information Act (the FOIA) are also public authorities for the purposes of the EIR. The Commissioner notes that under the FOIA the RPA is not a public authority itself but is actually an executive agency of the Department for Environment, Food and Royal Affairs (Defra) which is responsible for it. Therefore, the public authority in this case is actually Defra not the RPA. However, for

the sake of clarity, this decision notice refers to the RPA as if it were the public authority.

5. On 14 October 2019 the complainant wrote to the RPA and requested information in the following terms:

“Would you please provide full details of the most recent grant award to [Name of rural centre redacted].

Details to include.

Full Application including Appraisal details. Project costs. Applicants.

Who administered the application

The information is needed to review that displacement and competition has been addressed in line with recommendations of the PHSO in [date redacted] and indeed that of recent guidelines.

A copy of this request will be forwarded to our MP.”

6. The RPA responded to the request on 8 November 2019. It refused to disclose the requested information, citing regulation 12(3) of the EIR, as it considered the information to be the personal data of third persons which it would be unlawful to disclose.
7. The RPA provided an internal review on 20 December 2019. It upheld its position that regulation 12(3) of the EIR was engaged.

Scope of the case

8. The complainant contacted the Commissioner on 25 February 2020 to complain about the way their request for information had been handled.
9. During the course of the Commissioner’s investigation the complainant agreed to take one item of information - a ‘Growth Programme Full Application Appraisal Guidance’ document - out of the scope of their complaint.
10. The Commissioner’s investigation has focussed on whether the RPA was entitled to rely on regulation 13(1) of the EIR to refuse to disclose the remaining information falling within scope of the request.

Reasons for decision

Regulation 13 personal data

11. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) of the Data Protection Act 2018 is satisfied.
12. In this case the relevant condition is contained in regulation 13(2A)(a)¹ of the Data Protection Act 2018. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.
14. Second, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

15. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. The RPA has provided the Commissioner with a copy of the information it is withholding. It comprises:
 - 1) a completed Expression of Interest (EoI) form
 - 2) a completed EoI assessment form
 - 3) a completed application form
 - 4) a completed cost projections spreadsheet; and
 - 5) a completed appraisal form
20. In its submission the RPA has told the Commissioner that the grant applicant ie the data subject is listed on its Rural Payments system as a 'Partnership' not a 'Limited Partnership'. It says that no company registration number is held on the RPA's system and a check confirmed that the rural centre is not registered with Companies House. The RPA therefore regards the rural centre as a 'natural person' for the purposes of EIR and GDPR. It says that as all the information in the application and appraisal relates to the data subject, the RPA considers that information to be their personal information.
21. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information in the five documents under consideration relates to the grant applicant. She is satisfied that this information both relates to and identifies the grant applicant concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
22. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
23. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

24. Article 5(1)(a) of the GDPR states that:
"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".
25. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

26. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
27. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing.

Is any of the information special category data?

28. Information relating to special category data is given special status in the GDPR.
29. Article 9 of the GDPR defines 'special category' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
30. Without going into detail, the Commissioner agrees with the RPA that some information in the completed application form can be categorised as special category data.
31. Special category data is particularly sensitive and therefore warrants special protection. As stated above, it can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.
32. The Commissioner considers that the only conditions that could be relevant to a disclosure under the EIR are conditions (a) (explicit consent from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.
33. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to the EIR request or that they have deliberately made this data public.
34. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this special category data would therefore breach principle (a) and so this information is exempt under regulation 13(1) of the EIR. The Commissioner has gone on to consider the remaining personal data that is not special category data.

Lawful processing: Article 6(1)(f) of the GDPR

35. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.

36. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"*².

37. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test: -

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

² Article 6(1) goes on to state that: -

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that: -

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

38. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

39. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
40. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
41. The complainant has provided the Commissioner with a background to their request and has explained their interest in the information they are seeking. Without going into detail, the Commissioner accepts that the complainant's interest is a legitimate one for them to have, although they have not made a case that there are wider societal benefits.
42. The RPA has acknowledged that there is legitimate public interest in ensuring grant funding is administered transparently and openly.

Is disclosure necessary?

43. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
44. The RPA has explained that it is a requirement of Rural Development Programme for England (RDPE) schemes that recipients display the RDPE logo on their websites, publicity material, and at their premises, for a period of five years from completion of the project. Therefore, that the rural centre in question received grant funding is in the public domain. From this it can be understood that the RPA has received and approved a grant application from them and holds the paperwork for it. The RPA therefore considered it could not neither confirm nor deny that it holds information the complainant is seeking (a provision under regulation 13(5A) and 13(5B)). The RPA has explained why it considered that confirming it holds the information was necessary and, through the remainder of its submission, it is clear that it considers that disclosing that information is not necessary.

45. Given the complainant's interest in the rural centre that is the focus of their request, the Commissioner accepts that disclosing the information would be necessary to meet the complainant's legitimate interests.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

46. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
47. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
48. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
49. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
50. The RPA has noted that, although the data subject is not a public official, they are in receipt of public funding. It notes that the application form, as well as containing the data subject's address also gives other personal details about the data subject. In the circumstances the Commissioner does not intend to reproduce that detail in this notice.
51. Regarding the data subject's reasonable expectations, the RPA has noted that the application form does state that the information may be released under the FOIA if requested. The RPA argues that it would, however, also be a reasonable expectation of RDPE applicants that the information on the form – and in particular their identity, address, and

financial details – would not be released into the public domain. The Commissioner agrees that just because it is noted on the application form that information in it *may* be disclosed under FOIA (or EIR), that does not mean information *will* be disclosed. Each FOIA or EIR request is considered on its own terms. She is therefore satisfied that the data subject would have a reasonable expectation that their personal data would not be placed into the public domain.

52. The RPA says it has now contacted the data subject to see if they would consent to their personal data being disclosed in response to this request. The RPA has confirmed that it has not told the data subject who submitted the request. The data subject confirmed that they did not consent.
53. Finally, the Commissioner has considered the possible consequences of disclosing the information. The RPA has provided the Commissioner with details of events associated with a similar request submitted to it in 2014. In that case information had been disclosed. The Commissioner does not intend to reproduce that detail in this notice, suffice to say that she considers that if the information was disclosed the data subject would be likely to suffer unwarranted damage or distress.
54. The Commissioner appreciates that the complainant has an interest in the information they have requested, and she has noted the matters discussed in the Parliamentary and Health Service Ombudsman report that the complainant has referenced in their request. However, she has not been persuaded that these interests outweigh the data subject's interests or their fundamental rights and freedoms.
55. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.

The Commissioner's view

56. The Commissioner has therefore decided that the RPA was entitled to withhold the requested information under regulation 13(1), by way of regulation 13(2A)(a) of the Data Protection Act 2018.

Right of appeal

57. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

58. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
59. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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