

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

**Date:** 3 October 2023

**Public Authority:** Rural Payments Agency (Executive Agency of the Department for Environment, Food and Rural Affairs)

**Address:** PO Box 69  
Reading  
RG1 3YD

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to grazing rights and new common land applications. The Rural Payments Agency ("RPA") disclosed some information but withheld other information, citing regulation 12(3) (personal information) of the EIR.
2. The Commissioner's decision is that the withheld information engages regulation 12(3) of the EIR and to disclose it would breach the data protection principles.
3. The Commissioner does not require further steps.

**Request and response**

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4. On 11 January 2023, the complainant wrote to the Rural Payments Agency and requested:  
  
"As a result of changes to the BPS rules the allocations of shares of New Forest common land are no longer based on the number of animals an Applicant produces for a marking receipt each year. Since 2021 the RPA has allocated a reference amount to New Forest BPS applicants based on the maximum number of marking fees they declared in any year between 2015 and 2020. The RPA has confirmed

"This reference amount is taken as an expression of their grazing rights and is now used annually to calculate their area allocation for BPS."  
[RPA 10th January 2023]

Please provide the following information under the Freedom of Information Act/ Environmental Information Regulations:

1. Full details of the reference amount "taken as an expression of grazing rights" by the RPA for 2021 BPS New Forest common land applications. i.e. figures declared on the 2021 BPS Application Form at Part E Common land grazing rights under the heading at E4 "Number of rights of this type." And the number of 'eligible hectares' of New Forest common land the RPA calculated and allocated to each Applicant for the 2021 BPS based on the "expression of grazing rights."
2. Full details should include the address of the Applicant (and business address if different) and CPH number of the holding (but not the name of the applicant.)
3. Full details of the number and type of animal produced by each of those Applicants for a marking receipt that was used by the RPA to allocate the reference amount taken as an expression of grazing rights and to calculate the 'eligible hectares' allocated to each applicant at Part 1. i.e. the number of a) cattle and/or b) ponies/donkeys and/or c) pigs."
5. The RPA responded on 8 March 2023. It disclosed information in response to the request but redacted full business addresses and country parish holding numbers, except five, under regulation 12(3).
6. The complainant requested an internal review on 10 March 2023. They raised concerns about information that was outstanding and also the RPA's application of regulation 12(3).
7. On 12 May 2023 the RPA provided the outcome to its internal review. It disclosed the information the complainant had identified as outstanding but upheld its previous position in relation to regulation 12(3).

## **Reasons for decision**

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### **Is the requested information environmental?**

8. Regulation 2(1) of the EIR defines environmental information as being 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)...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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
9. The request relates to the monitoring of grazing rights. Therefore, the Commissioner is satisfied that the withheld information falls under the definition given at regulation 2(1)(a). The Commissioner also considers that the requested information could fall under the measures described at regulation 2(1)(c). For procedural reasons, he has therefore assessed this case under the EIR.

**Regulation 12(3) / regulation 13(1) – third party personal data**

- 10. Regulation 12(3) of the EIR exempts personal data from disclosure under the EIR, where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
- 11. In this case the relevant condition is contained in regulation 13(2A)(a). 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").

12. 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's not personal data, then regulation 13 of the EIR cannot apply.
13. Section 3(2) of the Data Protection Act 2018 defines personal data as: "any information relating to an identified or identifiable living individual."
14. The two main elements of personal data are that the information must relate to a living person, and that the person must be identifiable.
15. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name or location data.
16. 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.
17. To reiterate, the RPA has withheld full business addresses and country parish holding numbers, except five, under regulation 12(3).
18. The RPA has explained why it has disclosed five addresses and CPH numbers but withheld the rest:

'From our searches, we identified that four of these businesses are Private Limited Companies and one is a Charitable Incorporated Organisation. We determined that these would be considered as legal entities under UK law. Therefore, the address and CPH for these businesses would not constitute personal information within the scope of the UK GDPR and was disclosed.'
19. Of the remaining addresses, the RPI explained:

'They are not (neither are they required to be) registered at Companies House and have no obligations to maintain statutory records, prepare and file statutory accounts or to submit an annual return to the Registrar of Companies.'
20. The addresses that have been withheld are businesses addresses but also residential addresses. The RPI has also explained: 'CPH numbers are unique identifiers of both the location (postcode or land parcel/grid reference number) of the holding and the name and address of the

individual or business that the CPH is registered to.' The Commissioner has previously determined<sup>1</sup> that CPH numbers are personal data .

21. The fact that information constitutes personal data does not automatically exclude it from disclosure under the EIR. The Commissioner must now consider whether disclosure of the requested information would contravene any of the data protection principles.
22. The most relevant data protection principle in this case is principle (a) which states that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"<sup>2</sup>.

### **Would disclosure contravene principle (a)?**

23. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an EIR request if to do so would be lawful, fair and transparent.
24. In order to be lawful, one of the lawful bases listed in Article 6(1)<sup>3</sup> of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

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

25. 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."

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<sup>1</sup> [ic-129710-s4x2.pdf \(ico.org.uk\)](#)

<sup>2</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

<sup>3</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

26. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made 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.

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

### **Legitimate interest test**

27. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin the EIR or may represent the private concerns of the requestor.
28. It is important to remember that disclosure under the EIR is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest, then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).
29. The complainant has explained 'This new request for information was made because the methodology the RPA has used to distribute subsidy between 2015 and 2020 was found to be unlawful. From 2021 a new methodology to distribute subsidy for the New Forest BPS was adopted but it was based on figures/data established between 2015 and 2020.'
30. Clearly, the complainant is concerned with changes to the ways that basic payment scheme monies are calculated in relation to New Forest

common land.<sup>4</sup> This is a valid legitimate interest for the complainant to have.

### **Is disclosure necessary?**

31. The Commissioner will now go onto consider whether disclosure is necessary to fulfil this legitimate interest. The information that has been disclosed to the complainant shows: the number of animals (cattle, donkeys, ponies, sheep and pigs) each applicant has, as well as the allocated area of land and in which area of the New Forest the applicant is based.
32. However, if the complainant is concerned that the methodology for distributing monies is flawed, the Commissioner accepts the complainant might wish to scrutinise each individual application further and to do so will require disclosure of the withheld information. Therefore, since this information isn't in the public domain, disclosure is necessary to meet this legitimate interest.

### **Balancing test**

33. Since the Commissioner is satisfied that disclosure is necessary for the purpose that this legitimate interest represents, he will now go onto consider whether the identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subject.
34. 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.
35. In performing this balancing test, the Commissioner has considered the following
  - 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.

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<sup>4</sup> [Changes to the Basic Payment Scheme in the New Forest - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

36. In the Commissioner's view, the balancing test should take into account whether the data subjects' concerned have a reasonable expectation that their information would not be disclosed. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
37. In its refusal notice, the RPA advised that 'RPA contacted a selection of the data subjects to advise that a request (dealt with under the EIR) for information had been received that concerned their business to gauge their views on disclosure of the requested information into the public domain. None of these data subjects consented to the disclosure of this information.'
38. It also advised the complainant that 'The requested information was collected for the purposes of RPA's public tasks under Basic Payment Scheme processing...The data subjects would not reasonably expect their personal data to be processed for purposes other than those for which it was initially collected, therefore, it is RPA's view that disclosure would not be fair.'
39. To reiterate, the addresses and CPH numbers that have been withheld relate to business addresses but also residential address, the disclosure of which is likely to cause the data subject distress were it disclosed to the world at large.
40. The information the RPA has disclosed goes some way into meeting this legitimate interest, in that it addresses how many animals each applicant has (which is relevant to the change in methodology). However, the Commissioner isn't convinced that the legitimate interest in the personal data requested outweighs the rights and freedoms of the data subjects concerned. Therefore, he's determined the personal data should continue to be withheld under regulation 13(1), by way of regulation 13(2A)(a).

## **Other matters**

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41. The complainant is concerned that the RPA disclosed similar information, under the EIR, to them in 2019. However, each case must be considered on its own merits and just because information was disclosed previously doesn't mean it will automatically be disclosed again, or that it was correctly disclosed in the first place.
42. The previous request was put before the Commissioner in 2019 but due to the Commissioner's retention period this information is no longer held, so the Commissioner can't comment any further.

## Right of appeal

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43. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

44. 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.
45. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**