



Scottish Information  
Commissioner

**Decision 142/2007 Charles Clover of the Daily  
Telegraph and the Scottish Executive**

*Request for details of CAP subsidy payments made to Scottish  
farmers in 2002-03 and 2003-04.*

**Applicant: Charles Clover of the Daily Telegraph**

**Authority: Scottish Executive**

**Case No: 200502359**

**Decision Date: 20 August 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 142/2007 Charles Clover of the Daily Telegraph and the Scottish Executive**

***Request for details of CAP subsidy payments made to Scottish farmers in 2002-03 and 2003-04 – information withheld as exempt under sections 26(b) and 38(1)(b) of the Freedom of Information (Scotland) Act 2002 - Commissioner required disclosure.***

### **Relevant Statutory Provisions and Other Sources**

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2 (Effect of exemptions); 26(1)(b) (Prohibition on disclosure); 38(1)(b) (Personal information).

Data Protection Act 1998 (DPA) sections 1(1) (definition of “personal data”) (Basic interpretative provisions), Schedule 1, Part 1, paragraph 1 (the first data protection principle) and Schedule 2, condition 6(1) (conditions relevant for purposes of the first principle: processing of any personal data).

Environmental Information (Scotland) Regulation 2004 (EIRs) regulations 2(1)(a) and 2(1)(c)

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

### **Facts**

---

Charles Clover of the Daily Telegraph requested details of the Common Agricultural Policy (CAP) subsidy payments made to all Scottish farmers in 2002-03 and 2003-04 from the Scottish Executive (the Executive).

The Executive refused to provide this information, claiming that it was exempt from disclosure under the terms of section 26(b) and 38(1)(b) of FOISA. This decision was upheld in full following an internal review. Mr Clover was dissatisfied with the Executive’s responses and made an application for a decision to the Commissioner.



Following an investigation, the Commissioner found that Executive was correct to rely on the exemption in 38(1)(b) to withhold the addresses of subsidy recipients who are sole traders in accordance with Part 1 of FOISA, but that it was incorrect to rely on the exemptions in 26(b) and 38(1)(b) to withhold the names of subsidy recipients and the amounts they received, and he required the release of this information to Mr Clover.

## Background

---

1. On 22 March 2005, the Rural Payments Agency (RPA), an executive agency of the Department for Environment, Food and Rural Affairs (Defra) released the names of Common Agricultural Policy (CAP) subsidy recipients in England and the annual amount paid to them in the financial years 2002-03 and 2003-04. This took the form of a singular list that combined details of payments made under schemes administered through the Integrated Administration and Control System (IACS) (those under “pillar 1” of CAP) along with payments made under non-IACS schemes (those under “pillar 2” of CAP).
2. On 29 March 2005, Mr Clover asked the Executive to supply him with information, equivalent to that published by Defra, revealing the CAP subsidies paid to all farmers in Scotland in 2002-03 and 2003-04. He also asked to be provided with any additions that the Executive could add to the list of non-farming recipients of subsidies provided by Defra.
3. Mr Clover asked for the subsidy information to be presented in a different way from that disclosed by Defra. Mr Clover requested in particular that the information provided distinguished between payments made under pillar 1 and pillar 2 schemes and that the address of each subsidy recipient be supplied.
4. On 22 April 2005, the Executive wrote to Mr Clover in response to his requests for information. The Executive advised Mr Clover that it held the information he requested but that it considered it exempt from disclosure in terms of section 26 and 38 of FOISA.
5. The Executive explained that the individual payment data was collated as part of the IACS subsidy database, established by the European Council. The Executive argued that as Articles 9 and 9a of European Council Regulation EEC 3508/92 provide that all member states must protect data collected as part of the IACS subsidy database, the requested information is exempt from disclosure in terms of section 26 of FOISA, which prohibits the disclosure of information if it is incompatible with a Community obligation



6. Additionally, the Executive asserted that details of individuals receiving CAP subsidies in Scotland are exempt from disclosure in terms of section 38 of FOISA, as the information falls under the definition of 'personal data' in the Data Protection Act 1998 (DPA), and disclosure would be unfair under the terms of the DPA.
7. On 7 June 2005, Mr Clover wrote to the Executive requesting a review of its decision. In particular, he drew the Executive's attention to the fact that information of the type he sought had already been released by Defra in England. Mr Clover argued that it was in the public interest to know how taxpayer's money is being spent and to what extent the rural economy is reliant on CAP subsidies.
8. On 8 July 2005, the Executive wrote to notify Mr Clover of the outcome of its review. The Executive upheld in full its original decision to withhold the requested information in terms of section 26 and 38 of FOISA.
9. On 20 July 2005, Mr Clover wrote to my office, stating that he was dissatisfied with the outcome of the Executive's review and applying to me for a decision in terms of section 47(1) of FOISA. In particular, Mr Clover submitted that the Executive's reference to Articles 9 and 9a of the European Council Regulation EEC No 3508/92 as a rationale for withholding the information was inconsistent with Defra's decision to disclose the same CAP subsidy information for England.
10. Mr Clover's application was validated by establishing that he had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to his request. The case was allocated to an investigating officer.

## **The Investigation**

---

11. A letter was sent to the Executive on 10 August 2005, in terms of section 49(3)(a) of FOISA, giving notice that an application had been received and that an investigation into the matter had begun. The Executive was invited to comment on the matters raised by Mr Clover and on the application as a whole.



12. The Executive responded on 30 August 2005. It referred the investigating officer to submissions dated 4 May 2005, which were sent to my office in respect of another ongoing investigation concerning details of agricultural subsidy payments. The Executive also provided further background information in response to questions raised in relation to the particulars of Mr Clover's case. In particular, the Executive provided information on the differences in functions between the Scottish Executive Environment and Rural Affairs Department (SEERAD) and the Rural Payments Agency (RPA). The Executive also confirmed that it was withholding the information sought by Mr Clover in terms of section 26(b) and 38(1)(b) of FOISA.

### ***Submissions from the Executive***

13. The Executive contended that Defra's decision to release information regarding CAP subsidy payments to farmers in England was irrelevant to its own decision to withhold similar data in relation to farmers in Scotland.
14. The Executive noted that whereas Defra considered the CAP schemes to fall within the remit of the UK Environmental Information Regulations 2004 (EIR), it considers that the bulk of the CAP subsidy schemes do not concern 'environmental information' and would fall instead under the remit of FOISA. The Executive contended that the identities and subsidy amounts in relation to money, at least predominantly paid for agricultural reasons, may not fall within the definition of "environmental information".
15. The Executive explained its understanding that Defra was of the view that Article 9 and 9a of EEC Regulation 2508/92 only requires that the data collated through IACS is protected and that protecting data does not mean not disclosing it. However, the Executive questioned what protection the information could have, in terms of Article 9 and 9a, if it was routinely released to the public. The Executive maintained that there is no reason why protecting the information, by not generally releasing the information to the public at large for all farmers, goes beyond the proper application of Regulation 3508/92.

### **The Commissioner's Analysis and Findings**

---

16. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Clover and the Executive and I am satisfied that no matter of relevance has been overlooked.
  17. In what follows below, I will address a number of questions in turn.
-



- a) What information must I consider in this case?
- b) Is this information environmental information? (and so should Mr Clover's information request have been handled under FOISA or the Environmental Information (Scotland) Regulations 2004 (EIRs)?)
- c) Is this information exempt from disclosure?

### ***Mr Clover's information request***

18. Mr Clover asked the Executive to provide:
  - a) A listing of all CAP subsidy recipients in Scotland in the years 2002-03 and 2003-04, along with the amounts of money each recipient received under CAP in each of the specified years (separated out into Pillar 1 and Pillar 2)
  - b) The address of each CAP subsidy recipient.
  - c) Any additions to the list of non-farming subsidy recipients published by Defra.
19. The Executive notified Mr Clover that the CAP subsidy payments he sought form part of the IACS subsidy database, which was established in accordance with Council Regulation EEC 3508/92. The Executive has provided background information to my office on the administration of CAP subsidies across Scotland and the UK. It has explained that the Executive administers pillar 1 subsidies under the IACS system for all subsidy recipients in Scotland. However, pillar 2 schemes (those administered outside the IACS) are administered on behalf of the Scottish Ministers by the RPA.
20. Therefore, the Executive explained that it did not hold information relating to subsidies under pillar 2 schemes. I have noted that the information on subsidy payments disclosed by Defra included payments made to farmers in Scotland under pillar 2 (but not pillar 1) subsidy schemes. Having considered the Executive's submissions on this matter and information made available by Defra, I am satisfied that the Executive does not administer pillar 2 subsidy schemes and that information relating to payments made to farmers in Scotland under these schemes is held by Defra rather than the Executive. I will therefore consider only the information held by the Scottish Executive in relation to pillar 1 subsidy schemes administered under IACS in what follows below.
21. The Executive's submissions also advised me that the IACS subsidies that it administers are all paid to farming businesses. Subsequently, I am satisfied that the Executive cannot provide any additions to the list of non-farming recipients published by Defra and this decision will not consider this part of Mr Clover's request further.



22. To summarise, the information that I will be considering in this case are the names and addresses of all pillar 1 (IACS) subsidy recipients in Scotland for the years 2002-03 and 2003-04, along with the amount of money each recipient received under pillar 1 schemes in each of those years.

### **FOISA or EIRs?**

23. I now turn to consider whether the information identified above should be considered environmental information, and so whether the request should have been dealt with under FOISA or the EIRs.
24. The Executive responded to Mr Clover's request in terms of FOISA and has subsequently made detailed submissions to me about why it did not consider it appropriate to consider this request in terms of the EIRs.
25. In considering this matter, I have taken into account the comments made by the Executive, and also my previous decisions *224/2006, Mr Alex Gordon-Diff and the Scottish Executive*, and *126/2007, Mr Rob Edwards and the Scottish Executive*. I have also noted guidance issued by Defra in July 2006 (revised December 2006) on the boundaries between the EIR and FOI.
26. Having reviewed all of the above, I am satisfied that in this case the Executive was correct to respond to Mr Clover's request for information in terms of FOISA and not the EIRs. I will therefore now examine whether the Executive has appropriately cited the exemptions in section 26(b) and 38(1)(b) of FOISA in response to this request.

### **Application of the exemption in section 26(b)**

27. Section 26(b) of FOISA exempts information if its disclosure, otherwise than under FOISA, is incompatible with a Community obligation. This is an absolute exemption; if it is held to apply to the information then the public authority is not required to consider the public interest in disclosure of the information.
28. In this case, the Executive has confirmed that it considers all of the IACS subsidy payment information requested by Mr Clover to be exempt in terms of section 26(b).



29. In applying this exemption, the Executive has cited Articles 9 and 9a of the Council Regulation EEC No. 3508/92. This Regulation established the Integrated Administration and Control System (IACS) for certain Community aid schemes. Article 9 states:

*“The Member States shall take the measures necessary to ensure protection of the data collected”.*

Article 9a requires Member States to ensure that administration and control systems relating to the aid schemes are compatible with the integrated system in certain specified respects.

30. As I explained in my Decision 136/2007 *Mr Stewart and the Scottish Executive*, although EEC Regulation 3508/92 was repealed in 2003 by Regulation EEC No. 1782/2003, article 153 of 1782/2003 makes it clear that Articles 9 and 9a will still apply to any IACS payments made before 2005.
31. The key question is whether Articles 9 and 9a impose a Community obligation which would be breached by the disclosure of the information sought by Mr Clover. I considered this point in my Decision 224/2006 and reached the view that no such obligation is created or implied, and so would not be breached by disclosure of the information requested relating to the Farm Woodland Premium Scheme. I therefore concluded that the exemption in section 26(b) of FOISA did not apply in that case.
32. The reasoning set out in paragraphs 23-28 of decision 224/2006 applies in this case also, and so I will not repeat these arguments in full here. Briefly, however, I took the view that Article 9 refers to information about payments in terms of protecting the data rather than prohibiting its disclosure and I concluded that the UK provides this protection through the Data Protection Act 1998. So, if disclosure of the information would not contravene the data protection principles laid down by the DPA, disclosure would not be incompatible with the obligation imposed by Articles 9 and 9a. For the same reasons fully set out in that decision, I have concluded that the exemption in section 26(b) of FOISA has been wrongly applied by the Executive in this case.

### ***Application of the exemption in section 38(1)(b)***

33. Section 38(1)(b), read in conjunction with section 38(2)(a)(i) or (b) states that information is exempt from disclosure if it is personal data and its disclosure to a member of the public otherwise than under FOISA would contravene any of the data protection principles set out in Schedule 1 of the DPA.





34. The Executive has informed me that the recipients of CAP subsidy payments comprise a mix of individuals, sole traders (estimated at around 45% of recipients), partnerships (estimated 45%) and businesses (estimated around 10%). The Executive indicated that whilst it was aware that the information relating to businesses would not normally qualify as “personal information” the information held relating to recipients did not distinguish between the different types. It has indicated that the majority of the information held concerning subsidy payments would constitute personal data.
35. The Executive has submitted that where information requested by Mr Clover constitutes personal data, its disclosure would be in breach of the first data protection principle, because this would be unfair to those claimants. Because the information held by the Executive does not allow it to distinguish between sole traders, companies and partnerships, the exemption in section 38(1)(b) has been applied to details of all subsidy recipients as requested by Mr Clover

*Does information relating to subsidy payments (including the names and addresses of recipients) constitute personal data?*

36. When considering the exemption in section 38(1)(b), I must first consider whether the information concerned is personal data. In this case, the Executive has stated that some of the information requested by Mr Clover (that portion that relates to companies) is not personal data. However, it has indicated that a significant portion of it is personal data, but it is not able to determine the status of any particular recipient from the information it holds.
37. In my Decision 126/2007, in which I also considered agricultural subsidy payments, the Executive contended that determining the individual status of each subsidy recipient would require the additional collation of information, possibly through contacting each organisation concerned to verify their status. The Executive has submitted the same arguments in this case and I accept (as I did in decision 126/2007) that this would exceed what it is required to do under FOISA.
38. Having considered the submissions provided by the Executive I am satisfied that it does not hold information about the individual business status of recipients in a reliable and accurate format.
39. I considered whether information about agricultural subsidy payments should be considered personal data in some detail in my Decisions *041/2007 Mr Jock Meikle and the Scottish Executive* and *224/2006*. I also considered whether farm addresses constitute personal data in my decision *132/2007 Mr John Stewart and the Scottish Executive*. My thinking in this case has been informed by similar considerations to those set out in the above decisions.



40. Before information can be considered personal data for the purposes of the DPA, two questions must be answered:
- a) Can a living individual be identified from the data held by the Executive or from that data and other information which is in possession of, or is likely to come into the possession of the Executive?
  - b) Does the data relate to a living individual?

In the decision of *Durant v the Financial Services Authority* [2003] EWCA Civ 1746 (*Durant*) the English Court of Appeal took the view that for information to relate to an individual it had to be about that individual. The information has to be biographical in a significant sense, i.e. go beyond the recording of the individual's involvement in a matter or event that has no personal connotations.

41. In all the circumstances of this particular case, I am satisfied that the names and addresses of recipients of agricultural subsidy payments together with the amounts received constitute personal data where this information relates to a sole trader.
42. However, in line with my findings in decision 041/2007 (and for the reasons set out in paragraph 47 of that decision) I do not accept that information relating to a partnership (or, indeed, to a company) constitutes personal data.

*Would disclosure breach the first protection principle?*

43. I must now go on to consider whether disclosure of the personal data falling under the scope of Mr Clover's request would breach the first data protection principle.
44. The first data protection principle states that personal data must be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met and, in the case of sensitive personal data, at least one of the conditions in each of Schedule 2 and Schedule 3 is met. (I have considered the definition of "sensitive personal data" in section 2 of the DPA and do not consider that the information sought by Mr Clover falls into that category).
45. With regard to the lawfulness of the processing, it should be noted that the Executive have advanced no argument which would suggest that processing would be unlawful for the purposes of the first data protection principle, beyond the arguments made in relation to the application of section 26(b) of FOISA. As I have not accepted the Executive's claim that a prohibition on disclosure exists within Council Regulation EEC No.3508/92, I am satisfied that the existence of this provision does not entail that disclosure would be unlawful for the purposes of the first data protection principle.



46. According to guidance from the Information Commissioner ("Freedom of Information Awareness Guidance 1", which can be viewed at [http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detail\\_ed\\_specialist\\_guides/awareness\\_guidance%201%20personal\\_information\\_v2.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detail_ed_specialist_guides/awareness_guidance%201%20personal_information_v2.pdf)), the assessment of fairness includes looking at whether the third party would expect that his/her information might be disclosed to others and/or whether the third party would expect that his/her information would be kept private. In addition, this guidance also states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

47. The Executive's submissions assert that disclosure would be unfair because (prior to the introduction of the Single Farm Payment Scheme (SFPS) in 2005) there was an expectation among subsidy applicants that information relating to payments would not be disclosed to the public at large.
48. Additionally, the Executive has submitted that where the information requested by Mr Clover constitutes personal data, its disclosure would be in breach of the first data protection principle, because this would be unfair to those claimants.

*Is it fair to disclose the names and addresses of subsidy recipients (who are sole traders) and the amounts they received?*

49. I considered whether the disclosure of the names of IACS recipients and the payments they received was fair (in terms of the first data protection principle) in some detail in my decisions 126/2007 and 136/2007, and my thinking in this case has been informed by similar considerations to those set out in these decisions. In particular, paragraphs 56-62 of my Decision 126/2007 address the Executive's submissions on the issue of 'fairness' in some detail.
50. In my Decision 126/2007 I accepted that IACS subsidy recipients prior to 2005 may have some expectation that information relating to payments would not be published, and may also have had the expectation that it would not be publicly disclosed. However, I argued that given the nature of the notices provided in the 2003 and 2004 IACS guidance booklets, it could equally be held that claimants were aware that there was at least the possibility that information may have to be released.
51. The Executive has concluded that given an expectation against disclosure, it would be unfair to disclose this information, and that none of the conditions in Schedule 2 of the DPA can be met in this case.



52. It is my view that condition 6 within Schedule 2 of the DPA is the only condition which might be considered to apply in this case. Condition 6 enables processing (for example, by disclosure) to be considered fair for the purposes of the first data protection principle where it is necessary for the purposes of legitimate interests pursued by the third party to whom information is 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.
53. In order to determine whether condition 6 can be met in this case, I must first consider whether the third party or parties to whom the data would be disclosed have a legitimate interest in the processing of the personal data to which the request relates. If legitimate interests are identified, I must go on to consider whether or not these are outweighed by the legitimate interests of the data subject (in this case the subsidy recipients).
54. I accept that Mr Clover, as both an individual and journalist, has a legitimate interest in knowing the amount paid in publicly-funded subsidies to individual farms and farm businesses. In addition, I also consider that a wider legitimate interest in this information is shared by the general public.
55. Disclosure of this information would contribute to the transparency and oversight of the use of significant amounts of public funding. It would allow understanding of the scale of payments made to individual farms both before and after the reforms that introduced the Single Farm Payment Scheme.
56. I have considered whether these interests might reasonably be met by any alternative means. In all the circumstances, I have concluded that these legitimate interests cannot be met without disclosure of the subsidy payment details and therefore that disclosure of this data is necessary for the purposes of the legitimate interests.
57. Disclosure would be unfair for the purposes of the first data protection principle, however, if it was unwarranted due to prejudice to the rights or freedoms the competing legitimate interests of the data subject. I must therefore balance the legitimate interests of Mr Clover and the wider public in having access to the payment information, and the legitimate interests of the data subjects in having it remain private.

*Claimants' names and subsidy received*

58. In all the circumstances of this case, I have concluded that the legitimate interests of the data subjects do not outweigh the countervailing legitimate interests of the applicant with respect to the disclosure of the names and amounts received by subsidy recipients.



59. It is my view that a significant legitimate interest exists in terms of ensuring that the public are informed of how the government distributes public funds in order to determine that the monies are being spent correctly. This requirement for transparency and accountability is particularly relevant in the case of agricultural subsidies which account for significant amounts of public monies (more than £433 million were allocated in 2005) and which are consequently of great interest to the general public. I consider that this wider legitimate interest held by the public outweighs the competing interests of the claimants in this case.
60. In reaching this decision, I have recognised that subsidy applicants might reasonably have an expectation that this information (for the period 2000-2004) would not be disclosed. However, I have noted that the subsidy information, while a factor in determining sole traders' personal income, essentially relates to their business rather than personal activities. Given the significant legitimate interest in understanding how significant amounts of public funding are spent, I do not consider the disclosure of the information requested by Mr Clover to be unwarranted.
61. When reaching this view, I have also taken into consideration comments made by the Information Commissioner's Office (ICO) to my office in the course of my investigation. The ICO noted that:
- "In considering whether the principle is breached the interests of individuals should be balanced against the public interest in disclosing payments made out of public funds, for example to ensure they have been made correctly. A distinction can be drawn between matters which relate to a person's business circumstances and those which are intrinsically personal. In this instance, details of a subsidy from public funds paid to a person operating in a business capacity may be justified given these counter balancing concerns."
62. In all the circumstances of the case, I am satisfied that in this case disclosure of the names of all IACS subsidy recipients in Scotland in the years 2002-03 and 2003-04 and the amounts they received in each year would be fair for the purposes of the first data protection principle. I have therefore concluded that the Executive incorrectly applied the exemption in section 38(1)(b) of FOISA (read in conjunction with section 38(2)(a)(i) or 38(2)(b) to this information.



### *Claimants' addresses*

63. However, having considered both the submissions from the Executive and the ICO guidance on data protection (outlined in paragraph 46 above) I accept that disclosure of the addresses of sole traders (but not their names or the amounts they each received in subsidy payments) would be unfair and would breach the first data protection principle of the DPA. I take this view as the business addresses of sole traders will often also function as their home address, and I am of the opinion that the public release of this information could impact on the private lives of the sole traders, and would therefore be unfair.
64. I am aware that the addresses of many of the sole traders concerned will be available from publicly available sources (such as a telephone directory). However, I am also aware that some will choose not to make their personal addresses readily available and where this is the case, I believe it would be unfair for this information to be disclosed along with the other information requested by Mr Clover. The legitimate interest that is served by the disclosure of the names of subsidy recipients and the amounts received can be served without the disclosure of the claimants' addresses.
65. Therefore, I have concluded that the Executive correctly applied the exemption in section 38(1)(b) of FOISA to the addresses of subsidy recipients who are sole traders on the grounds that these are personal data and their disclosure would breach the first data protection principle.
66. However, in my previous decision 126/2007 I accepted that some information could be provided about the location of subsidy recipients without any breach of the first data protection principle. Although I do not require the Executive to provide the full address of each subsidy recipient, I require the information provided to Mr Clover to substitute for each recipient the region within Scotland (in terms of the 8 regions used by the Executive when publishing details of payments under the Single Farm Payment scheme) within which that claimant is based.

### *Provision of information regarding companies and partnerships*

67. It will be recalled that I have only accepted that information relating to individual sole traders is personal data and that only the addresses of sole traders is exempt from disclosure in terms of 38(1)(b). I determined that IACS information relating to the addresses of companies and farm partnerships is not personal data.



68. I have accepted the Executive's submission that it does not hold information which accurately identifies the precise legal status of each subsidy recipient in Scotland. However, it is clear that a number of these recipients will be companies and partnerships. In these circumstances I see no reason for the addresses of companies and farm partnerships not to be provided to Mr Clover. However, I am unable to order the release of the addresses of partnerships and companies where their status is not clear to the Executive. Therefore, my decision does not require the disclosure of the addresses of any subsidy recipients.
69. As in decisions 132/2007 and 041/2007, I recognise this to be an unsatisfactory conclusion, but in the circumstances I am unable to conclude differently. I would suggest (as I have done previously) that in future it would be good practice for the Executive to amend its valuations forms, application forms etc. to clearly show whether an applicant for funding etc. is a sole trader, partnership or limited company.

## Decision

---

I find that the Scottish Executive (the Executive) acted partly in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in its response to Mr Clover's information request.

I find that the Executive wrongly applied the exemption in section 26(b) to all information requested by Mr Clover.

I also find that the exemption in section 38(1)(b) of FOISA [read in conjunction with 38(2)(a)(i) or (b)] was also incorrectly applied in relation to the names of all recipients of subsidies under pillar 1 of CAP in Scotland in 2002-03 and 2003-04 and the amounts they received in each of these years. The Executive therefore failed to comply with section 1(1) by withholding this information from Mr Clover's request.

I have found that the Executive correctly applied the exemption in section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or 38(2)(b), when withholding the addresses of those subsidy recipients in Scotland who operated as a sole trader. However, I also find that the Executive failed to comply with Part 1 of FOISA in withholding the addresses of those subsidy recipients operating as companies or farm partnerships and whose status is unclear from their names. I have found that this information is not exempt from disclosure under the terms of 38(1)(b), and so I find that the Executive failed to comply with section 1(1) of FOISA by withholding this. However, given the lack of clarity as to their status, I do not require the Executive to release any information in relation to this breach.





I have concluded that some information - which would not be exempt from disclosure under the terms of section 38(1)(b) of FOISA - should be provided with respect to the location of a subsidy recipient. I require the Executive to provide to Mr Clover the information he has requested, but substituting the address of the recipient with the region within which that farm or farm business is located, as set out in paragraph 66 of this decision.

I now require the Executive to disclose this information to Mr Clover within 45 days of the receipt of this decision.

## **Appeal**

---

Should either Mr Clover or the Scottish Executive wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this decision notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**20 August 2007**





## Appendix

---

### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

##### 26 Prohibitions on disclosure

Information is exempt information if its disclosure by a Scottish public authority (otherwise than under this Act)-

- (b) is incompatible with a Community obligation; or

##### 38 Personal information

- (1) Information is exempt information if it constitutes-
  - (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
- (2) The first condition is-
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
    - (i) any of the data protection principles; or
  - [...]
  - (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

#### Data Protection Act 1998

---



## **1 Basic interpretative provisions**

(1) In this Act, unless the context otherwise requires –

...

personal data” means data which relate 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 intentions of the data controller or any other person in respect of the individual

## **Schedule 1: The data protection principles**

### **Part 1: The principles**

1. 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 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.

## **The Environmental Information (Scotland) Regulations 2004**

### **Interpretation**

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 and marine areas, biological diversity and its components, including genetically



modified organisms, and the interaction among these elements;

...

(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 paragraphs (a) and (b) as well as measures or activities designed to protect those elements;