

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

Decision notice

Date: 2 October 2017

Public Authority: Rural Payments Agency
Address: North Gate House
Reading
RG1 1AF

Decision (including any steps ordered)

1. The complainant requested any information relating to whether a particular piece of land was subject to the requirements of cross compliance and in receipt of Pillar 1 farm payments under the Common Agricultural Policy.
2. The Rural Payments Agency (RPA) initially relied on Regulation 13(5)(a) of the EIR to neither confirm nor deny whether the requested information was held. During the course of the Commissioner's investigation the RPA disclosed the requested information to the complainant.
3. The Commissioner's decision is that the RPA has breached Regulation 5(2) of the EIR as it provided the information outside the 20 working day time frame.
4. As the information has been provided to the complainant the Commissioner does not require the RPA to take any steps.

Request and response

5. On 28 November 2016 the complainant, on behalf of the Open Spaces Society, wrote to the RPA and requested information under the EIR in the following terms:

"Please would you provide any information held by the agency as regards whether the land identified in the attached map 1) is subject to

the requirements of cross compliance under the Common Agricultural Policy, 2) subject to claims for Pillar 1 farm direct payments under the Common Agricultural Policy, or was so subject since 2005."

6. The RPA responded on 16 December 2016 advising the complainant as to the type of the information it holds and asking the complainant to clarify what he meant by 'any information held'. The complainant provided clarification on 19 December 2016 (the refined request) as follows:

"I wish to know whether the specified land is subject to cross compliance, and whether it has been claimed under Pillar 1. I am not at all interested in anything more complex (such as what crop use codes are employed)."

7. On 17 January 2017 the RPA responded to the refined request and neither confirmed nor denied that the requested information existed and was held by the RPA, on the grounds that to do so would breach one or more of the data protection principles; it applied Regulation 13(5)(a) of the EIR.
8. The complainant requested an internal review of the RPA's decision on 18 January 2017 on the grounds that he considered the RPA's reliance on Regulation 13(5)(a) to be mistaken.
9. Following an internal review the RPA wrote to the complainant on 7 March 2017 in which it upheld its previous decision.

Scope of the case

10. The complainant contacted the Commissioner on 22 March 2017 to complain about the way his request for information had been handled and asked the Commissioner to consider whether his request had been handled in accordance with the EIR, in particular whether it was correct to rely upon Regulation 13(5)(a).
11. During the course of the Commissioner's investigation, the RPA disclosed the requested information to the complainant. The complainant then asked the Commissioner to issue a Decision notice to record her finding, stating that:

"we are not satisfied that the RPA will apply the same principles in like cases. Indeed, the RPA has merely responded to the [complainant] disclosing the information originally requested, without any explanation of how it considers the tests in the Environmental Information

Regulations 2004 met, or its original decision and internal review mistaken."

12. The Commissioner does not intend to provide a detailed analysis of the RPA's application of Regulation 13(5)(a) in this Decision notice on the basis that the RPA reconsidered its position during the course of the investigation and disclosed the information to the complainant. In any event the Commissioner was not in receipt of the RPA's final submissions at that stage and accordingly is not in a position to complete her analysis.
13. The Commissioner therefore considers that the scope of the case is whether the procedural requirements in Regulation 5(2) of the EIR were applied correctly by the RPA.

Reasons for decision

Regulation 5(2) – time for compliance

14. Regulation 5(1) of the EIR states that:

"..... a public authority that holds environmental information shall make it available on request."

15. Regulation 5(2) of the EIR provides that:

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

16. In this case the complainant made his initial request on 28 November 2016 and his clarified request on 19 December 2016. The RPA initially refused the request under Regulation 13(5)(a) within the prescribed 20 working days. However, during the course of the Commissioner's investigation, the RPA reconsidered its decision, and on 13 September 2017 disclosed the requested information to the complainant.
17. As the RPA did not communicate the requested information to the complainant within 20 working days of the request, the Commissioner has decided that the RPA has technically breached Regulation 5(2) of the EIR.
18. As the RPA has disclosed the information to the complainant she does not require the RPA takes any steps.

Right of appeal

19. 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@hmcts.gsi.gov.uk

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

20. 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.
21. 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

Andrew White
Information Commissioner's Office
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Water Lane
Wilmslow
Cheshire
SK9 5AF