

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 20 December 2006

**Public Authority:** Department for Environment, Food and Rural Affairs  
**Address:** Nobel House  
17 Smith Square  
London SW1P 6JR

### Summary Decision

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The complainant asked Defra for a copy of the list showing details of the producers to whom the farm ID numbers on eggs relate. Defra initially refused to provide the information, saying that it was personal information covered by the Data Protection Act. Defra subsequently decided that the request should have been dealt with under the Freedom of Information Act, but still declined to release the information, citing sections 38 and 43(2) of that Act. The Commissioner decided that section 38 was engaged in relation to the information sought and that the public interest lay in favour of maintaining that exemption. He also decided that section 40 was engaged in respect of certain personal information. Since those exemptions covered all of the information in question, he saw no need to consider whether section 43(2) was also engaged. The Commissioner welcomed Defra's agreement to release to the complainant a list relating farm ID numbers to particular counties. However, he concluded that Defra had breached section 17 of the Act.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ("the Act"). This Notice sets out his decision.

### The Request

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2. On 7 April 2005 the complainant emailed the Egg Marketing Inspectorate ("EMI") of the Department for Environment, Food and Rural Affairs ("Defra") asking where Defra published the details of the farm ID printed on eggs, saying that he had been unable to find anything published on Defra's website.

3. On 8 April 2005 EMI replied, saying that the ID code defined what kind of eggs were being bought (ie what method of production), which country they were from and from which farm (by ID number). EMI said that a list of producers could not be published for a number of reasons associated with the security of personal information about individuals, and about the premises that were involved in the production and marketing of eggs, under its obligation under the Data Protection Act. EMI offered to pass the complainant's details on to any producer should he wish to contact them to buy eggs, but said that it could not pass producers' information to anyone not associated with enforcement of certain legislation without their explicit permission.
4. On 12 April 2005 the complainant emailed EMI saying that his interest, as a consumer, was based on a preference for locally produced produce; hence, he wanted Defra to publish a list of producers. He did not agree with EMI's comments that such a list could not be published because of reasons associated with the security of personal information about individuals - egg producers were businesses not private individuals, and were thus 'not covered by the 'personal information about individuals' clause of the Freedom of Information Act'. He said that, in his view, the list of producers should be in the public domain, 'as is the list of companies, charities etc'.
5. On 21 June 2005 EMI replied, saying that a considerable number of producers, packers and other businesses listed by Defra were individuals. EMI said, however, that it might be able to arrange for a list of producers' and packers' registration numbers, and the county in which they were located, to be produced. On 22 June 2005 the complainant accepted the suggestion. On 15 July 2005, having received nothing, the complainant asked EMI when the information offered would be available, but EMI did not reply. On the same day, the complainant raised the matter with the Minister for Sustainable Food and Farming. Replying on behalf of the Minister on 4 August 2005, Defra said that provision of producer details was controlled by the Data Protection Act, so individuals would have to give consent for their details to be released to the public.
6. On 20 September 2005 the complainant referred the matter to the Commissioner. Following a letter from the Commissioner's staff, on 3 November 2005 the complainant sought an internal review, reiterating his view that the name and address of an egg producer was a business address and therefore not covered by the Data Protection Act.
7. Defra replied on 1 February 2006 saying that, although EMI had not identified the specific exemptions that applied in this case (for which Defra apologised), Defra considered that EMI had correctly explained some of the reasons why the information could not be released: Defra upheld the original decision. It said that the information was being withheld under the exemptions in section 38 of the Act relating to health and safety of individuals and section 43(2) relating to commercial interests, both of which were subject to the public interest test.
8. As regards section 38, Defra said that it was possible that disclosure of the list would, or would be likely to, endanger the health or safety of individuals. Defra recognised that there was a public interest in having access to information about

the place of origin of eggs; however there was also a strong public interest in ensuring that egg producers were able to go about their business without unwarranted contact or interference from persons who might wish to cause harm to them or their businesses. Defra said that the safety of producers had to be a very high priority and that EMI was aware of a number of incidents where the health and safety of an individual had been endangered: these included incidents such as criminal damage to premises and equipment, arson and theft. Defra considered that these concerns outweighed the public interest in disclosure in this case. As to section 43(2), Defra said that the disclosure of egg producer details could enable unscrupulous traders to take advantage by using the details of genuine egg producers to market falsely identified eggs; that, and the examples of criminal damage and theft mentioned above, would be likely to damage an egg producer's business reputation and affect the confidence that customers, suppliers or investors had in it. Defra considered that the disclosure of producers' details could have a negative impact on their ability to successfully participate in commercial activity.

9. As to the complainant's comments that he did not consider the name and address of an egg producer to be personal information, and that it should not be covered by the provisions of the Data Protection Act, Defra said that it agreed in respect of some egg producers. However, the industry frequently involved small businesses, such as sole traders and partnerships, and Defra considered it likely that the information would be personal data relating to those individuals; some egg producers' details therefore might be personal information, but others might not. Defra said that, in this case, the information was being withheld for the reasons given above, and not because it was considered it to be personal information.

## The Investigation

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### Scope of the case

10. On 5 February 2006 the complainant contacted the Commissioner, saying that he had now exhausted Defra's complaints procedure and did not agree with the conclusion that the information he sought was exempt from disclosure under sections 38 and 43(2) of the Act. The complainant made the following comments:
  - Defra had said that EMI knew of incidents where the health and safety of individuals had been endangered, but had provided no details to support these claims and no indication of the motives behind such incidents; that these alleged incidents had happened anyway without Defra disclosing information, and that Defra had provided no argument as to why disclosure should lead to an increase in them; and that a web search had revealed a category of 'livestock- egg merchants, egg producers and packers, poultry wholesalers' with forty six names and addresses in Scotland alone;
  - In respect of the contention that disclosure would prejudice commercial interests, this implied that every time a manufacturer of a product printed its name and address on its product packaging its commercial interests were being prejudiced.

This was nonsensical; the only beneficiary of non-disclosure of producer details were unscrupulous traders.

11. The Commissioner considers that Defra acted incorrectly in initially citing the Data Protection Act as the grounds for refusing to provide the complainant with the information he sought. Requests for personal information about third parties fall to be considered under the Freedom of Information Act. Defra subsequently recognised this, and the Commissioner's investigation has therefore involved assessing whether Defra has correctly applied the exemptions in sections 38 and 43 (2) of the Act to the information requested. Details of these exemptions, together with the exemption in section 40 relating to personal information (which, by implication, Defra were citing above), which the Commissioner considers to be relevant, and other statutory provisions relevant to this complaint, are set out in the Legal Annex to this Decision Notice.
12. The complainant also raised other issues, in particular whether there should be a county identifier on eggs similar to the system operated by Bord Bia, a commercial producer organisation in Eire. This is a request for a change of policy rather than an information request and it is thus not addressed in this Notice because there is no requirement to do so under Part 1 of the Act.

## Chronology

13. The Commissioner emailed Defra on 21 April 2006 confirming that he would be investigating the complaint. He asked Defra for a copy of the list of egg producers sought by the complainant, together with any comments it wished to make about its reliance on the exemptions cited. Further correspondence ensued in order to clarify certain issues.
14. In the course of that correspondence, the Commissioner established that Defra was unable to provide a copy of the list which was current in April 2005, when the complainant first requested it. Defra said that lists 'were generated from the EMI database on a 'needs only' basis and had not been generated regularly at the time of the request'. Defra provided the Commissioner with the version current in August 2005, which Defra said would have been very similar to the April 2005 version. The Commissioner would not condone Defra's failure to generate and retain a copy of the April 2005 print following the complainant's information request, but since, for the reasons which follow, the Commissioner does not propose to require the release of the list, this is not crucial to his consideration of this particular complaint.

## Analysis

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15. The Commissioner has considered carefully the complainant's representations, and Defra's responses to the complainant and to the Commissioner's request for clarification of certain matters.

## Procedural matters

16. In reaching his decision in this case the Commissioner has first considered how Defra dealt with the complainant's information request. The complainant initially sought information by email from EMI on 7 April 2005. Despite further correspondence, Defra did not recognise his request as having been made under the Act, and thus did not set out details of the exemptions on which they were relying, until 1 February 2006, when responding to the complainant's request for a review of Defra's refusal to provide him with the information he sought. This was significantly more than 20 working days after the initial request was made. Defra was thus in breach of section 17 of the Act in that it failed within that timescale to give the complainant a notice which stated that the information was exempt, specified the exemptions in question and stated why the exemptions applied.

## Exemptions

17. Having studied the August 2005 version of the list, the Commissioner has noted that the register shows entries under the headings 'registration number' (ie farm ID number), 'premises name' and premises address'. Under the heading 'premises name' are listed a mixture of the names of individuals and the names of businesses.

### Section 38

18. Section 38 provides an exemption in relation to information which, if disclosed, would, or would be likely to, endanger the health or safety of an individual. Defra has cited this exemption because it considers that individuals and organisations could be at risk if their names and addresses were to be released. In response to the Commissioner's request for clarification, Defra said that, unlike operators of other businesses, egg and poultry producers, or more particularly their staff, often reside on the units and could be targets of abuse and intimidation in their own homes by animal rights extremists. Defra also confirmed that the registration scheme applied not only to those with flocks of 350 or more hens but also to those such as sole traders who sold their eggs at local markets. While section 38 could be applied to the business names and addresses in the list of producers, the Commissioner considers that the disclosure of information relating to living individuals is more appropriately dealt with under section 40 of the Act (see paragraphs 22-24 below).
19. As to those business names and addresses, Defra has provided details of a number of incidents to illustrate situations in which activists threatened or committed violence against producers. While there can be no absolute certainty that the release of the relevant information would put the individuals and organisations listed at risk, there is sufficient evidence to lead the Commissioner to conclude that there is a real possibility of it. The Commissioner is therefore satisfied that the section 38 exemption is engaged in relation to the businesses whose names and addresses appear on the list, as the release of that information could endanger the health and safety of those involved. However, as mentioned

above, the Commissioner considers that section 40 is the exemption which should be applied to information about individuals specifically named in the list.

### **Public Interest Test**

20. Section 38 is a qualified exemption and the public interest test therefore needs to be considered. The complainant contends that there is a strong public interest in 'food miles' and the provenance of food, and that Defra has not provided any strong grounds for suggesting that the release of the names and addresses of businesses on the list would increase the risk to the individuals and organisations concerned. He also contends that egg producers are businesses and, as such, that their details should be readily available, as are those of companies and charities; further, that an internet search enables access to a number of producers' names and addresses. Defra, however, point out that egg and poultry producers and/or their staff often live on the premises and that their business address is therefore also their home address (unlike most other businesses and charitable concerns). Further, egg producers and their staff are more likely to be targets of harassment (or worse) than many other businesses or charities. Defra also say that it estimates that only some 10% of producers and packers choose to advertise on the internet, the overwhelming majority placing more importance on their personal safety than on any business need to advertise.
21. While extremists undoubtedly already have their networks for finding their targets, the release of the information on the list would, in the Commissioner's opinion, certainly make it much easier for such organisations to establish their locations. The Commissioner recognises the strong public interest in the origin of food but, in all the circumstances of the case, he considers that, given the real risk to the health and safety of those producers (and their staff) included in the list, the public interest is, on balance, better served by maintaining the exemption so as to withhold the information in question.

### **Section 40**

22. The principal function of section 40 is to protect personal data relating to living individuals rather than organisations. The names and addresses of individuals (as opposed to businesses) which appear in the list of producers requested by the complainant clearly constitute personal data as they relate to personal information about third parties. The information will constitute exempt information if one of two conditions referred to in section 40(2) are satisfied. In considering the first condition the Commissioner has to consider whether or not any of the data protection principles would be breached by releasing the information. The first data protection principle requires that personal data should be processed fairly and lawfully and, in particular, that it should not be processed unless at least one of the conditions in schedule 2 of the Data Protection Act 1998 is met.
23. As stated above, the information in question comprises the names and addresses of individuals. The Commissioner accepts that the individuals concerned have not given their consent to the release of this information, and had no expectation that it would be released into the public domain. Having concluded that none of the conditions in Schedule 2 of the 1998 Act are met, and having taken into account



both Defra's concerns and the complainant's representations, the Commissioner has decided that releasing the information in this case would not constitute fair and lawful processing and would breach the first data principle. It should therefore remain withheld.

24. Section 40 provides an absolute exemption where disclosure of personal data about someone other than the complainant would contravene any of the data protection principles. The exemption is not, therefore, subject to the public interest test.

### **Section 43(2)**

25. Given the absolute nature of section 40, and his view that the public interest does not require the release of information protected on health and safety grounds under section 38, the Commissioner has seen no need to consider the arguments put forward under section 43(2).

### **The Decision**

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26. The Commissioner's decision is that Defra has dealt with the request in accordance with section 38 of the Act and that section 40 also applies to information relating to individuals. However, the Commissioner has also decided that, in failing to provide a refusal notice within 20 working days, Defra has failed to comply with section 17 of the Act. The Commissioner, nevertheless, welcomes Defra's agreement to provide the complainant with a list identifying the counties of origin of farm registration numbers, which, at the outset, the complainant believed would be suitable for his purposes. He also welcomes Defra's apology for their failure to act upon the complainant's acceptance of their offer to provide that information in June 2005.

### **Steps Required**

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27. The Commissioner does not require the public authority to take any steps to ensure compliance with the Act, but trusts that the list identifying the counties represented by farm ID numbers will now swiftly be provided to the complainant.

## Right of Appeal

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28. 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 20 day of December 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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



## Legal Annex

### Relevant Statutory Obligations under the Act

**Section 1(1)** provides that:

“Any person making a request for information to a public authority is entitled -

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

**Section 2(2)(b)** provides that:

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that

- (b) in all the circumstance of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

**Section 17(1)** provides that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 38** provides that:

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to -

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

**Section 40** provides that:

“(1) Any information to which a request for information relates is exempt information if it is personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if –

- (a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of the 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 this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

**Section 43(2)** provides that:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."