

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 May 2011

Public Authority: Department for Environment Food and Rural Affairs (DEFRA)
Address: Nobel House
17 Smith Square London SW1P 3JR

Summary

The complainant requested the amount of compensation higher than £750.00 paid, if relevant, to owners of camelids for the slaughter of their animals due to bovine tuberculosis. DEFRA refused to disclose the information under sections 40(2) and 40(3)(a)(i) of the Act as it comprised personal data, and disclosure would be unfair. The Commissioner considers that section 40(2) by virtue of 40(3)(a)(i) was correctly engaged in this case. The Commissioner requires no steps to be taken.

The Commissioner's Role

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.

Background

2. Bovine tuberculosis ("TB") is predominantly a disease of cattle but can affect a range of species, such as badgers and camelids (llamas and alpacas). It can be fatal if contracted by humans through contact with such animals, however the risk of humans contracting the disease is low. The government has measures in place to control the spread of bovine TB in the UK by testing herds for the disease.
3. Under the Cattle Compensation (England) Order 2006 the owners of cattle which have had to be slaughtered due to being infected with bovine TB are entitled to receive compensation for the loss of their

animals. There are currently similar compensation arrangements in place for camelid owners in the event that their camelids are slaughtered due to the presence or suspected presence of bovine TB. The current amount of compensation payable is £750.00 per slaughtered camelid.

4. For a brief period, prior to the current compensation arrangements being introduced (ie before June 2007) compensation at a higher rate than £750.00 per animal was payable. The amounts of compensation payable were determined by individual professional valuers of the animals.
5. The complainant, who is a camelid owner, wishes to ascertain the amount of any compensation exceeding £750.00 which has previously been paid to any camelid owners.

The Request

6. The Commissioner has received a complaint which states that, on 6 November 2009 the complainant made the following request for information to the Department for Environment Food and Rural Affairs (DEFRA) in accordance with section 1 of the Act:

"I would like to have a letter, from the Minister, to confirm that no agreement has previously been reached, with any camelid owner, to compensate (for compulsory/voluntary slaughter) at a rate higher than £750 per animal. He should be prepared, should this be so confirmed, for the statement to be investigated for its veracity. If this cannot be confirmed, I expect to receive details of the amounts paid per animal, the basis for arriving at that sum and confirmation that the same basis will be applied to all camelid owners whose animals have been/will be slaughtered post the date of that agreement."

7. On 2 December 2009 DEFRA issued a refusal notice to the complainant in respect of some of the requested information, namely the actual amounts of the higher rate of compensation ("the withheld information"), although it did disclose the fact that such compensation had been previously briefly paid at a higher rate.
8. On 25 January 2010 the complainant requested an internal review of DEFRA's decision not to disclose the withheld information. DEFRA wrote to the complainant on 19 April 2010 with the outcome of that internal review. That letter stated that the reviewer upheld the original decision not to disclose the withheld information under section 40(2) by virtue of section 40(3)(a)(i) of the Act.

The Investigation

Scope of the case

9. On 17 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - Whether DEFRA had correctly applied section 40(2) of the Act to the withheld information.

Chronology

10. On 13 July 2010 the Commissioner contacted the complainant to acknowledge his complaint and let him know that it had been allocated to one of the Commissioner's case resolution teams. On the same date the Commissioner contacted DEFRA to inform it of the complaint and to request a copy of the withheld information.
11. On 21 October 2010 the Commissioner wrote to DEFRA again requesting a copy of the withheld information and requesting further explanatory details regarding its refusal to provide the complainant with the withheld information. The Commissioner also wrote to the complainant to inform him that his complaint had been allocated to a specific caseworker.
12. On 17 December 2010 DEFRA replied to the Commissioner providing a copy of the withheld information and its detailed submissions regarding its refusal to disclose the withheld information and its application of section 40(2) of the Act. The Commissioner informed the complainant that he had received those submissions.

Analysis

Substantive Procedural Matters

Legislation

13. The Commissioner notes that DEFRA handled the complainant's request under the provisions of the Act. Given the circumstances and the subject matter in question, the Commissioner has considered whether or not the request should have been dealt with under the Environmental Information Regulations 2004 (the "EIR").

14. "Environmental information" is defined at regulation 2 of the EIR. In order to be environmental, information must fall within one or more of the definitions set out at regulation 2(1)(a) – (f) of the EIR (see the Legal Annex). It must constitute "information on" any of the subjects covered by those six sub-sections.
15. For example, regulation 2(1)(f) refers to information on "*the state of human health and safety*". Given that the subject matter of the request in this case deals with issues relating to bovine TB, a disease which can be fatal to humans if caught from cattle and other animals, it would seem at first glance that the request relates to human health and safety and falls fairly comfortably within the confines of the EIR. However, in the Commissioner's view, matters are not necessarily so straightforward.
16. In coming to a view in any given case, the Commissioner believes that the correct approach is to examine the information in question and its relationship, if any, to regulations 2(1)(a) to (f): in effect, is the information held definable as information **on** one of the matters set out in that part of the EIR? In this context, the Commissioner is also of the view that a relatively broad approach should be taken. The Commissioner has followed the approach he adopted in a previous decision involving DEFRA dated 9 April 2008.¹
17. In this case, the subject matter of the requested information is essentially DEFRA's payment of compensation to certain camelid owners at a higher rate than the standard agreed £750.00 per animal. The withheld information consists of the higher amount of compensation paid. While, therefore, the context of this information could be said to be environmental, the actual matter of the amount of the compensation is not. Therefore, the Commissioner believes that the withheld information does not constitute information on one of the matters set out in regulations 2(1)(a) to (f) of the EIR.

Can the withheld information be linked back to regulation 2(1)(a)?

18. As stated above, the actual withheld information does not constitute information on the state of the environment: it deals with the amount of compensation paid in relation to a situation that happens to be an environmental one. However, the Commissioner's approach in such a case is to determine whether the withheld information can be linked back to regulation 2(1)(a), either directly or through regulations 2(1)(b) and 2(1)(c).

¹ FS50105954

19. Regulation 2(1)(f) provides that information on "*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*" is environmental information "*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)*"
20. The Commissioner's view is that "may be affected" denotes a lower threshold of likelihood. So there must be some likelihood of the state of human health and safety being affected by the elements of the environment but this likelihood need not be substantially more than remote.
21. Under regulation 2(1)(f) it is not sufficient for information to be on the state of human health and safety, it must be on the state of human health and safety as affected by the state of the elements of the environment. This may be a direct effect or via a relevant factor, measure or activity. The elements in regulation 2(1)(a) must ultimately affect those things in regulation 2(1)(f).
22. The Commissioner does not believe that the withheld information is on the state of human health and safety as affected by the state of the elements of the environment. The complainant's request relates to human health and safety insofar as it relates to a disease spread by animals which could potentially be contracted by humans. However, the withheld information consists of a specific figure, ie the amount of compensation paid in a certain situation, ie when the spread of the disease occurs and infects certain animals. This is unlikely to be a situation where human health and safety is affected by any of the elements of the environment. Therefore, the Commissioner is not satisfied that the withheld information can be linked directly back to regulation 2(1)(a).
23. The Commissioner has considered whether the withheld information can be linked back indirectly to regulation 2(1)(a) through regulations 2(1)(b) or (c). It appears possible that the information could be linked back through regulation 2(1)(c), as it relates to government measures. However, the Commissioner does not consider that the state of human health and safety, to which the withheld information relates, is affected by the measures in place to pay compensation to affected animal owners and nor do the measures affect or are likely to affect any of the elements of the environment.
24. The Commissioner is not, therefore, satisfied that the withheld information is information on one of the matters set out in regulations 2(1)(a) to (f) of the EIR. Further, he is not satisfied that the withheld

information can be either directly or indirectly linked back to regulation 2(1)(a). Therefore, the Commissioner has concluded that the withheld information is not environmental information.

Exemptions

Section 40(2) – personal data of third parties

25. Section 40(2) of the Act (see Legal Annex) is an exemption which relates to the personal information of individuals other than the applicant. This provision creates an absolute exemption (one not subject to the public interest test) for information falling within the definition of personal data contained in section 1(1) of the Data Protection Act 1998 (the "DPA").
26. Personal data is defined in section 1(1)(a) of the DPA as:
"data which relate to a living individual who can be identified: - from those data, or; from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."
27. Personal data is exempt if either of the conditions set out in section 40(3) or 40(4) are met. The relevant condition in this case is at section 40(3)(a)(i), where disclosure would breach any of the data protection principles as set out in Schedule 1 to the DPA.
28. DEFRA applied the exemption under section 40(2) to the withheld information, which was information relating to the higher rate of compensation paid under agreement to certain camelid owners for death of their camelids due to bovine TB.
29. The Commissioner is satisfied that all of the withheld information falls within the definition of personal data as set out in the DPA. It contains information about living individual(s) who it would be possible for the public to directly identify from those data. Since the community of camelid owners is very small, the Commissioner believes that disclosure of the withheld information would immediately identify specific individual(s) within that community. Therefore, the Commissioner is satisfied that the exemption under section 40(2) is engaged in relation to the withheld information.

Would disclosure breach the first data protection principle?

30. DEFRA claimed that disclosure would be unfair and therefore would breach the first data protection principle.
31. The first data protection principle states that:

"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..."

32. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account a range of factors including the potential consequences of disclosing the information, ie what damage or distress would the individuals suffer if the information was disclosed?
33. The Commissioner, in considering whether disclosure would cause any unnecessary or unjustified damage or distress, has concluded that the individual(s) in general would be distressed if their personal details were placed in the public domain.
34. The Commissioner has also considered the reasonable expectations of the individual(s) in terms of what would happen to their personal data. These expectations can be shaped by factors such as the individuals' general expectation of privacy and also the purpose for which they provided their personal data.
35. The Commissioner is of the view that the individual(s) concerned, who received the higher rate of compensation, would have a reasonable expectation that their personal information would not be disclosed to the public. The withheld information contains details about the amount of compensation received by camelid owners whose animals have had to be slaughtered due to the presence or suspected presence of bovine TB. In the Commissioner's view the individuals concerned would have suffered damage and distress as a result of the loss of their animals and would therefore, in addition to the general expectation of privacy, have a reasonable expectation that DEFRA would not exacerbate the said damage and distress by disclosing details of the amount of compensation they received for their loss.
36. However, notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, the Commissioner believes that it may still be fair to disclose personal data if it can be argued that the legitimate interest in the public accessing the material is compelling. Therefore, when assessing fairness the Commissioner will also balance the rights and freedoms of the data subject with the legitimate interests in disclosing the information into the public domain.
37. The Commissioner has considered whether there is a legitimate interest in the public accessing the withheld information. The

Commissioner notes that the complainant has personal reasons for requesting the information, as it is specific to a process in which he has an interest. The Commissioner accepts that there is a wider public interest in transparency of public sector organisations, also a more specific public interest in knowing that people are properly compensated by government departments for the loss of their animals and that the compensation is calculated fairly and accurately. Those interests would be served by the disclosure of the withheld information. However, the Commissioner does not believe that any legitimate interest in the public accessing the withheld information would outweigh the potential damage and distress to individuals caused by disclosure of that information. Therefore the Commissioner is unable to conclude that disclosure of the withheld information is necessary to meet a legitimate public, rather than personal, interest.

38. In view of all of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure of any of it would breach the first data protection principle as it would be unfair.

The Decision

39. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

40. The Commissioner requires no steps to be taken.

Right of Appeal

41. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 9th day of May 2011

Signed

**Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

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(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Section 40 -Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes 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 paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] 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),

Environmental Information Regulations 2004

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 those 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) and (b) 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 life 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);