

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 6 January 2014

Public Authority: Natural England

Address: Foundry House
3 Millsands
Riverside Exchange
Sheffield
S3 8NH

Decision (including any steps ordered)

1. The complainant has requested information about an Environmental Stewardship Agreement regarding the granting of European funds to a local farmer and landowner. Natural England provided the complainant with the agreement but redacted some information including the name of the beneficiary of the grant and the related payment details under regulation 12(3) of the EIR. The complainant has argued that this name and the amount of the grant should be provided to him but Natural England considers the information to be the personal data of the individual concerned.
2. The Commissioner's decision is that Natural England has correctly applied regulation 12(3) of the EIR to the withheld information. He requires no further steps to be taken.

Request and response

3. On 15 November 2012, the complainant submitted a request for information concerning land which forms the River Avon flood plains from Nafford Lock via Eckington Bridge down to the weir south of Strensham Lock. Specifically, he asked:

"1. *I want to find out, what agreements have been reached with farmers and landowners in that locality?*

2. *Do we as taxpayers have the right to request the details of any of these agreements?*
 3. *Where I can find out my rights to access sites of special or scientific interest and information relating to why they have been declared SSSIs?*
 4. *Where does Natural England get the funding from for any grants that are awarded?"*
4. Natural England responded on 16 November 2013 and referred the complainant to a number of relevant websites. On 11 January 2013 the complainant explained that the information provided on the websites was not specific enough for his purposes.
 5. The complainant explained he wanted as much information as possible about a specific agreement. He provided the number of the agreement.
 6. On 8 February 2013 Natural England provided the complainant with a formal response under the EIR. It provided him with a redacted version of the stewardship agreement in question but withheld some information including the name and payment details of the relevant individual under regulation 12(3) of the EIR.
 7. Natural England explained that it considered it would not be fair to provide the name and payment details of the individual who had received Environmental Stewardship Agreement funds. It therefore considered that disclosure would contravene principle 1 of the Data Protection Act 1998 (the DPA).
 8. The complainant requested an internal review of the decision to withhold the name of the contracted individual and the payment details relating to the particular Environmental Stewardship Agreement.
 9. Natural England provided an internal review on 28 May 2013. It maintained its original position.

Background

10. The European Agricultural Fund for Rural Development (EAFRD) is a European agricultural fund which was set up for the financing of Rural Development Programme (RDP) actions by European Union Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the Common Agricultural Policy (CAP).
11. The Rural Development Programme for England (RDPE) is the vehicle by which the Department for Environment, Food and Rural Affairs (Defra) fulfils its rural development obligations in England, as set out by the

RPD. Environmental Stewardship (ES), which is part of the RDPE, is delivered by Natural England on behalf of Defra.

12. ES is an agri-environment scheme that provides funding to farmers and other land managers in England to deliver effective environmental management on their land. It is a voluntary scheme, it is not an entitlement. ES is made up of a number of levels, for example Entry Level Stewardship (ELS) and Higher Level Stewardship (HLS).

Scope of the case

13. The complainant contacted the Commissioner on 29 May 2013 to complain about the way his request for information had been handled.
14. The Commissioner considers the scope of this case to be concerned with the application of regulation 12(3) of the EIR to the withheld name of the contracted individual and their payment details.

Reasons for decision

Regulation 2

15. Regulation 2(1) of the EIR defines environmental information as follows:

"any information in written, visual, aural, electronic or any other material form on –

(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...

(b) factors, such as substances, energy, noise, radiation or waste, emissions...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...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".

16. The Commissioner considers that the requested information falls under the scope of regulation 2(1)(c). The information required concerns the issue of funding for the effective environmental management of land. This will have an impact upon several of the elements referred to in regulations 2(1)(a). The Commissioner therefore considers Natural England is correct to consider this request under the EIR.

Regulation 12(3) and 13

17. Regulations 12(3) and 13 provide an exception for information that is the personal data of a third party where the disclosure of that personal data would be in breach of any of the data protection principles.
18. Personal data is defined in section 1(1) of DPA as data which relate to a living individual who can be identified from that data, or from that data and other information which is in the possession of (or is likely to come into the possession of) the data controller.
19. The withheld information in this case consists of the name of an individual and the amount of a European grant that this person has received. The Commissioner therefore considers that this information is personal data in accordance with the definition given in section 1(1) of the DPA.
20. In determining whether disclosure of this information would be in breach of any of the data protection principles, the Commissioner has considered the first principle, which requires that personal data be processed fairly and lawfully, and particularly whether disclosure would be in general fair.
21. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of this information.

Reasonable expectations

22. Natural England has explained that when it collected the personal information of agreement holders it informed them via its handbook privacy notice that their information may be released. The relevant section of the handbook states the following:

"To meet our obligations under the Data Protection Act 1998 we need to explain how we will handle the information you give us.

Because Environmental Stewardship involves expenditure of public money, there is public interest in how the money is spent. Therefore Defra, may in certain circumstances, make information about your application and agreement publicly available for this purpose. We may also need to disclose details about your application and agreement to other organisations or individuals for administration, evaluation or monitoring purposes.

Details disclosed may include your name, the name of your farm or business, grid references, the total area under agreement, the payment

you receive, the location of fields and details of the environmental features and management options they contain. Such information may be released upon request under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000."

23. This can be found in section 1.1.7 of the first edition of the ELS handbook (February 2005)¹ which was in force at the time this particular agreement went live.
24. Natural England has explained that an applicant also signs a declaration accepting the requirements as laid out in the ELS handbook.
25. Natural England has therefore explained that before 2010 the information withheld in this case would have been disclosed and it would have considered consent for disclosure was given.
26. However in 2010 the European Court of Justice passed a judgement that made the publication of information relating to the beneficiaries of European agricultural funds partially invalid.
27. The European Court Judgement (ECJ) of 9 November 2010 in cases [C-92/09 and C-93/09 Volker und Markus Scheke GbR and Hartmut Eifert](#) partially invalidated Council Regulation (EC) No 1290/2005 and in particular Article 44a which introduces an obligation for Member States to publish the data of beneficiaries of agricultural fund. It also invalidates Commission Regulation (EC) No. 259/2008 in its entirety.²
28. All Member States were requested by the European Commission with immediate effect to "...suspend the publication of data on individual beneficiaries affected by the invalidated provisions." (Communication to the Committee (AGRI/D/801605/2010)).
29. Natural England (following advice and guidance from Defra) translated "natural persons/individual beneficiaries" to mean those agreement holders that have a recorded trading status as "private individual" or "sole trader". This is in line with ICO guidance.
30. Natural England has confirmed that the agreement holder in this case is a sole trader.

¹ [ELS Handbook](#)

² Please see press release http://europa.eu/rapid/press-release_CJE-10-110_en.htm?locale=en.

31. As a result of this judgement, Natural England has explained that names and payment details of private individuals and sole traders in receipt of an Environmental Stewardship or Countryside Stewardship payment are now classed as personal information. This is additional to the information that was previously considered to be personal such as contact details, banking details and vendor numbers.
32. Following the European Court case and the discussions with UK authorities, Natural England removed the information on natural persons from its websites and stopped any other types of publication.
33. Subsequently, Council Regulation (EC) No 259/2008 was amended by [Commission Implementing Regulation \(EC\) No 410/2011](#) following the ECJ judgement and now specifically limits publication to only "Legal Persons".
34. Since the ECJ ruling Natural England has therefore only been releasing details of agreement holders that are not "private individuals" or "sole traders".
35. Although consent for disclosure has been given via the acceptance of the provisions in the ELS handbook, Natural England has argued that due to the 2010 European judgement, the expectations of the individuals concerned will have changed and they will have no expectation that their names and amounts received would be disclosed.
36. The Commissioner considers that although consent for disclosure has been obtained, circumstances have changed since that consent was obtained. As Natural England's current practice is not to publish the names of those who have received grants with the amounts received, the Commissioner is satisfied that the expectation of the individuals concerned will be that their names and payments will not be made public.
37. In view of the above, the Commissioner considers that it would not be in the reasonable expectations of the individuals involved that their names and payment details would be published.

The consequences of disclosure

38. Natural England has argued that the disclosure of the requested information may result in subsequent contact with the individual concerned and that this may cause unjustified distress or damage to that individual.
39. The complainant has argued that he knows the identity of the person who owns the land in question and that their name is publicly available via the land registry. He has argued that he has a copy of a planning application with respect to the land in question which names the owner

of the land. He does not accept that disclosure of the information would distress the individual concerned.

40. However, the Commissioner considers that disclosure counter to the expectation of privacy may be distressing to the individual concerned. Disclosure of the name in this case would confirm that the individual had an Environmental Stewardship agreement and such information is not currently publicly available (although it was prior to the ECJ judgement in 2010). The Commissioner also considers that distress may result through damage to relationships between the data subject and others within their community who may wish to question the use of the grant received.

Legitimate public interest

41. Natural England recognises the presumption of openness and transparency in relation to environmental information. It understands that there is a public interest in agri-environmental schemes.
42. The complainant has argued that it is in the public interest that such information is transparent and that the individuals are accountable for the public money they have received.
43. However Natural England has argued that the public interest in transparency is served by the provision of the details of the stewardship agreement in question. This details the environmental projects which are being undertaken with the funding. Natural England does not consider that there is a public interest in knowing the identity of the individual who received the grant, or the total amount of money received.
44. In addition, Natural England has argued that it needs to balance the requirement for transparency against the ECJ ruling and the EU advice that release of information relating to 'natural persons' would breach the European Convention for the Protection of Human Rights and Fundamental Freedoms. As a public authority, Natural England has argued that it has a duty to follow instructions of courts and of those organisations on whose behalf they distribute funding.
45. There is a clear public interest in transparency concerning grants from Europe. However, the Commissioner accepts that the need for transparency is served with the provision of the details of the stewardship agreement. He considers that the European judgement sets the expectations of the individual concerned and he does not consider that the legitimate interest in making the requested information public outweighs the right to privacy of that individual.

Conclusion

46. Having found that the data subjects would have an expectation that this information would not be disclosed, and that disclosure of it would be likely to result in distress, the conclusion of the Commissioner is that it would not be fair to release the required information. He does not accept that the legitimate public interest in transparency warrants disclosing this information as it does not outweigh the reasonable expectations of privacy of the individual concerned.
47. The Commissioner has found that this information does constitute personal data and that disclosure of it would breach the first data protection principle. His conclusion is, therefore, that the exception provided by regulation 12(3)/13 is engaged and that Natural England is not required to disclose the specific information concerning name and payment details.

Other matters

48. The complainant has also complained that Natural England used outdated guidance in its response to him dated 8 February 2013. The Commissioner notes that there is no statutory requirement for a public authority to consider his guidance when responding to a request for information but he considers that it would be good practice to do so. The Commissioner also does not consider that the version of the guidance referred to by Natural England in this case has had a material impact upon its outcome.

Right of appeal

49. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

50. 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.

51. 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

Rachael Cragg
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