

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2014

Public Authority: Department for Environment Food and Rural Affairs (DEFRA)

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested information from DEFRA about the number of pig movements over a 12 month period. The request for information included details of the number of animals involved, the dates of the movement and the outbound postcode of the originating and destination premises.
2. DEFRA sought to rely upon section 40(2) of the FOIA. It stated that some of the requested information was personal data and that its release would infringe the Data Protection Principles as its release would be unfair. In respect of information relating to commercial enterprises it advised that it was not able to separately identify this information without manually going through 178,000 data entries.
3. The Commissioner's decision is that the exemption at section 40(2) is engaged in relation to the information that has been requested in so far as it relates to the information of individuals or sole traders. Further, that DEFRA has incorrectly applied section 40(2) to the information which concerns commercial enterprises. In failing to disclose the non-personal information to the complainant it has breached section 1(1)(b) and section 10 of the FOIA.
4. However, the Commissioner considers that he has discretion not to order a step to remedy non-compliance with section 1 because to do so

would be manifestly unreasonable, in this particular case, in terms of the administrative burden it would create. He therefore does not require DEFRA to take any steps.

Request and response

5. On 29 March 2013 the complainant contacted the Department for Environment, Food and Rural Affairs ("DEFRA") and requested information in the following terms:

"Please provide the details of each pig movement registered with BPEX from 1st January 2012 through to the 31st December 2012.

Please provide a data 'row' per registered transportation.

- * the date of transportation/movement*
- * source 'outbound' postal code*
- * destination 'outbound' postal code*
- * number of pigs moved*

The ICO describe anonymising postcode data :-

<http://bit.ly/13Eg0wl>

their guidance indicates that providing postcodes in this form is perfectly acceptable under the DPA. It is this 'outbound' form of postcode that I would like you to use in responding."

6. On 2 April 2013 DEFRA acknowledged receipt of the request for information and advised that it would be dealing with matters under the Environmental Information Regulations 2004 ("EIR").
7. On 30 April 2013 the complainant sent a further email enquiring as to the progress with his request. On the same date DEFRA advised the complainant that it wished to extend the time for its response to the request by 10 working days on the grounds that the request raised a number of complex legal issues which required legal advice.
8. On 14 May 2013 DEFRA provided its response to the request dated 29 March 2013. It confirmed that it held the information requested but sought to rely on exceptions under the EIR in relation to the information that it stated it held. It said it was relying on regulations 12(3) and 13(1) of the EIR which provide that personal data relating to third parties is exempt information if its disclosure would breach the Data Protection Act 1998 (the "DPA").

9. It advised that it was of the view that to allow access to the data requested would allow pig farmers to be identified. Further that these individuals would have had a reasonable expectation that their personal data would not be put into the public domain in such a way as to allow them to be identified.
10. On the same date the complainant requested DEFRA to carry out an internal review of his request. In addition he suggested how the information sought could potentially be further anonymised to avoid disclosure of any personal data.
11. On the 16 May 2013 DEFRA acknowledged receipt of the request for an internal review and advised that it would attempt to respond by 12 June 2013.
12. On 12 June 2013 the complainant sent a further email chasing up a response to his request for an internal review of the decision to withhold information.
13. On 13 June 2013 DEFRA acknowledged receipt of his email and advised that it would require additional time to complete the internal review.
14. On 9 July 2013 DEFRA provided a response to the request for an internal review to the complainant. It advised that his request should have been dealt with under the FOIA rather than the EIR. It maintained that it sought to withhold the information on the same basis as previously and relied upon section 40(2) of the FOIA. It provided further arguments to the complainant as to why it was not able to provide the information requested.

Scope of the case

15. The complainant contacted the Commissioner on 26 July 2013 to complain about the way his request for information had been handled. He stated that he was not satisfied with the response received. Therefore the scope of this case has been to consider whether DEFRA was correct in relying upon section 40(2) in refusing to provide the information in the request dated 29 March 2013.
16. Since the involvement of the Commissioner DEFRA has sought to anonymise the data requested and has provided the complainant with the dates, number of animals and outbound postcodes (redacted to the first two letters) in relation to the 178,000 pig movements recorded with Bpex from 1 January 2012 to 31 December 2012.
17. The complainant has stated that he still requires the full outbound part of the postcode to be released. Therefore the scope of this case has

been to consider whether DEFRA is entitled to rely upon the exemption claimed in respect of the outstanding part of the outbound postcode for the originating and destination premises.

18. During his investigations the Commissioner also sought to establish whether DEFRA intended to rely upon any further exemptions as a basis for withholding information particularly in relation to information that related to commercial entities and was clearly not personal data. DEFRA confirmed that it only relied upon section 40(2) of the FOIA in respect of the identified information.

Reasons for decision

Is the requested information "environmental"?

19. "Environmental Information" is defined at regulation 2 of the EIR. In order for it to be environmental, information must fall within one or more of the definitions set out at regulation 2(1)(a) to (f) of the EIR – constituting "information on" any of the subjects covered by those six sub-sections.
20. The complainant has requested information concerning the number of pig movements over a 12 month period. The request for information included details of the number of animals involved, the dates of the movement and the outbound postcode of the originating and destination premises.
21. When initially dealing with this matter DEFRA applied the EIR and gave its response under this statutory regime. It subsequently reconsidered its position upon internal review and amended its response to apply the FOIA legislation.
22. The Commissioner has considered the applicable regime in this case and is satisfied that the requested information is not within a category of information cited in regulations 2(1)(a) and 2(1)(f) of the EIR and therefore it is not "environmental information" as defined by the EIR.
23. The Commissioner's decision is that the FOIA is the applicable legislation in this case.

Section 40(2) of the FOIA – personal data

24. In this matter DEFRA advised the complainant that it relied upon section 40(2) of the FOIA, as it believes that the information requested is personal data the disclosure of which would breach the principles of the DPA.

25. Sections 40(2) and 40(3)(a)(i) set out an exemption for information which is the personal data of a third party, the disclosure of which would be in breach of the principles of the DPA. In this case DEFRA sought to rely on the first principle of the DPA which states that personal data must be processed fairly and lawfully.

Is the requested information personal data?

26. Personal data is defined in section 1(1) of the DPA as data
- "..which relates 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 sny other person in respect of the individual."*
27. In relation to the information which is the subject of the request the Commissioner's view is that not all of the information sought will necessarily relate to individuals. The transportation of pigs is likely to be undertaken by commercial enterprises, as well as sole traders and individuals.
28. During the investigation of the case DEFRA has maintained that it only seeks to rely upon section 40(2) of the FOIA in so far as it relates to the personal data of sole traders and individuals.
29. However, it has argued that it is not possible to separate out which movements relate to commercial operations and which relate to individuals as the information it holds does not reflect this level of categorisation and the numbers involved (178,000) are too onerous to go through and do a manual separation of each individual movement.
30. It maintains that to release the information requested together with the outbound postcode of the originating and destination points would be to release the personal data of the individuals concerned (where that information relates to an individual or a sole trader) and that they would be identifiable from other information available elsewhere.
31. The Commissioner has published guidance on "Determining what is personal data".¹This looks at whether:

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http://ico.org.uk/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

(a) a living individual can be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public, and

(b) the data "relate to" the identifiable living individual, whether in personal or family life, business or profession.

32. Essentially, if a member of the public can, on the balance of probabilities, identify individuals by cross referring the requested information with other information that was available to them, then the information is personal data.

33. In this matter the issue is whether the requested information can be considered to be personal data in respect of each individual movement of pigs. The information being sought by the complainant is in respect of date, number of pigs and the outbound postcode of both the originating and destination points involved in the movement of pigs on the specific dates.

34. Whilst the Commissioner accepts that there will be a large number of movements that occur between properties that are in the control of individuals or sole traders it is also very likely that a significant proportion will involve movements to and from locations which belong to businesses such as abattoirs and food processing companies. In this latter case the postcode of such a location could not be considered to be personal data as it will relate to an identifiable commercial enterprise.

35. Therefore the information which relates to an individual or sole trader will have to be considered separately to that which can be identified in respect of a commercial business.

Individual/Sole Trader

36. The postcode of an individual or sole trader is clearly personal data as it relates to an identifiable living individual. The issue in this case is whether identification of an individual is possible from an outbound postcode only.

37. In this case the information requested relates to the outbound postcode locations involved in the transportation of pigs to and from premises on a specific day including the number of pigs involved in the process.

38. The issue is whether the outbound postcode is sufficient in this set of circumstances to enable the identification of the individuals involved. If the addresses of the properties involved could be identified then steps could be taken to identify the persons involved. The address together

with the information sought could potentially amount to the personal data of the individual as it is listing the extent of that person's business activities on specific days and over an extended period of time.

39. DEFRA has argued that the outbound postcode alone is sufficient to identify the individual properties involved as the number of premises involved in this activity in any one given postcode area is likely to be very limited and therefore, a determined person could make sufficient enquiries using the internet to establish which premises were involved in any given pig movement on a particular day.
40. The Commissioner has considered the situation in relation to the outbound postcode and concludes that a reasonably determined individual could make sufficient enquiries which would result in the identification of some of the premises involved in the movement of pigs. This would especially be the case in more rural areas where the number of producers and/or premises would be limited and it would be a relatively straightforward matter for these premises to be identified using internet searches involving written information, google map and street view searches and visits to specific localities. The size of the premises could also be determined from information in relation to the number of animals moved which would enable a determined person to identify individually owned premises. Therefore the Commissioner considers that individuals could be identified from the information in question.
41. The Commissioner has gone on to consider whether the disclosure of this information would be fair. In considering this the Commissioner has taken the following factors into account:
 - the consequences of disclosure to the data subject;
 - the data subject's reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
42. DEFRA has submitted that keepers of pigs are advised that all of the information they enter on the movement document for each move is being collected for disease control purposes only. It advises that it is dependent upon owners reporting moves promptly and accurately to ensure that records are up to date for disease control purposes and would not wish any concerns on the part of producers as to what could happen to their personal data to compromise the security of this reporting system.

43. DEFRA contends that any keeper of pigs would have a reasonable expectation that it would not place personal information in the public domain in a way that may allow them to be identified in such a way that it may affect their legitimate economic concerns or raise issues in relation to their own security for example from animal welfare rights organisations.
44. When considering the consequences of disclosure DEFRA has argued that there are concerns that the individual premises may be targeted by animal welfare rights organisations and the information, as to extent of economic activity together with specific location, may be used to gain commercial advantage by companies involved in pig production. This could potentially result in unwarranted approaches to individual producers by such organisations – resulting in an invasion of privacy.
45. It is especially concerned about the integrity of the pig movement reporting process which relies upon the prompt reporting of all animal movements to ensure the security and safety of the food chain. It further argues that the expectation of the reporting producers was that the information is obtained to secure the traceability of the animals only not for information as to the economic activity of individual producers to be put into the public domain.
46. The complainant has stated that it is very important that there is accountability as to animal movements in this country given recent traceability issues and the public interest in the same.
47. Having considered the arguments submitted by DEFRA above and the representations of the complainant the Commissioner is satisfied that to release this information would not be fair in these circumstances.
48. The Commissioner considers that the disclosure of the information in question could have a detrimental and distressing effect upon the individuals concerned who would legitimately have concerns that their location could be identified by a determined individual or organisation.
49. Also that the level of their economic activity could be established including the days on which animals were moved from farm to abattoir if it could be established that such movements in some cases took place on a predetermined and established pattern. The Commissioner accepts that an individual has the right not to have details of business activities placed in the public domain and that the expectation of the individual in providing detailed information about animal movements was that the information was only going to be used for DEFRA's monitoring purposes. This was the basis on which the information was provided and it is a reasonable assumption that the individuals concerned would not have expected the information to be used for any other purpose.

50. The issue of the balance between the rights and freedoms of the individual concerned and the legitimate interests of the public has also been considered. The producers concerned will range from individuals with a handful of pigs to more large scale concerns operating from a range of premises. Given recent issues with regard to the production of food in this country the public will undoubtedly have concerns about the security of the food chain and issues of traceability.
51. However, after consideration of both the complainants' arguments that DEFRA should release information which evidences that it is properly monitoring animal movements and DEFRA's concerns about the release of personal data of the individuals concerned, the Commissioner is of the view that the balance lies in favour of protecting the rights and freedoms of the individual. Accordingly it would not be fair for the requested information to be released in so far as the same relates to the personal data of an individual or sole trader.

Commercial enterprises

52. As stated previously the Commissioner accepts that there will be a significant proportion of movements of pigs that will involve movements to and from locations which belong to businesses such as abattoirs and food processing companies. In this latter case the outbound postcode of such a location will not be considered to be personal data as it will relate to an identifiable commercial enterprise.
53. DEFRA has not sought to rely upon any other exemption as a basis for not providing this information. It has stated that it is not able to separate the information in to separate categories of personal and non-personal data other than through a manual process which would involve checking 178,000 entries.

The Decision

54. In view of the above the Commissioner finds the exemption at section 40(2) is engaged in relation to information that relates to the information of individuals or sole traders.
55. The Commissioner finds that DEFRA has incorrectly applied section 40(2) to the information which concerns commercial enterprises. In failing to disclose the non-personal information to the complainant it has breached section 1(1)(b) and section 10 of the FOIA.

Steps required

56. Although DEFRA has not complied with its obligations under section 1 of the FOIA the Commissioner had decided not to order steps to be taken in this case.

57. DEFRA has advised the Commissioner as to the difficulties it faces in manually assessing 178,000 individual movements of pigs to ascertain whether the information held relates to an individual or a commercial enterprise. It maintains that it is not possible to separate out what information relates to individuals/sole traders and which relates to commercial concerns unless the individual status of each producer is looked at individually. Therefore if the Commissioner ordered disclosure of the outstanding information that does not relate to an individual, DEFRA would be obliged to manually assess 178,000 records in order to establish whether this information related to an individual or a sole trader.
58. The Commissioner considers that he has discretion not to order a step to remedy non-compliance with section 1 of the FOIA in certain exceptional circumstances. The Commissioner considers that he should not order a step that is manifestly unreasonable in terms of the administrative burden compliance would create. The relevant provision in the Act on discretion is listed in section 58 of the FOIA which relates to appeals of the Commissioner's decisions to the Information Tribunal, which can consider, if required to do, the exercise of the Commissioner's discretion in a particular case.
59. The Commissioner has considered the issues in this matter and has concluded that to require DEFRA to take steps to separate out personal data from non-personal data would be too onerous a burden due to the large number of movements recorded and the fact that no mechanism exists for separating out the material other than through manually identifying the status of the each producer involved in 178,000 pig movements.
60. The Commissioner therefore requires no steps to be taken.

Right of appeal

62. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

63. 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.
64. 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

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