

## Freedom of Information Act 2000 (Section 50)

### Environmental Information Regulations 2004

#### Decision Notice

Date 29 January 2007

**Public Authority:** Rural Payments Agency (an executive agency of  
Department for Environment, Food & Rural Affairs)  
**Address:** Nobel House  
17 Smith Square  
London  
SW1P 3JR

#### Summary

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The complainant requested information relating to three land parcels from the public authority. The Commissioner has determined that the requested information constitutes environmental information. Therefore the requests should have been processed in accordance with the Environmental Information Regulations 2004 ('the EIR'). The public authority did not consider the request under the EIR. It also initially refused to provide some of the requested information on the basis that it was personal data. When refusing access to the material the public authority did not issue a Refusal Notice which met with the requirements of Regulation 14. However following an internal review the public authority supplied the complainant with the information requested. The Commissioner is satisfied that the requested information has now been supplied to the complainant and therefore he has not specified any steps in this regard.

The complainant did not consider the information supplied to him following the internal review was that which he had requested. Following the Commissioner's intervention, the public authority identified the areas that were actually of interest to the complainant. It then supplied further material to the complainant. The Commissioner is satisfied that the public authority has complied with the complainant's clarified request.

In its initial refusal the public authority also explained that information on land parcel TA0436 9589 was not held. The Refusal Notice did not meet the requirements of Regulation 14. The complainant disputed the public authority's assertion because he considered that it was under a legal obligation to map the land in question.

The Commissioner has investigated the complainant's assertion that further information is held regarding land parcel TA0436 9589. He is satisfied that the public authority does not hold any further information relevant to the request. He has not ordered any steps in relation to this part of the request.

## The Commissioner's Role

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1. The Commissioner's role 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').
2. In this case the Commissioner considers that the information sought by the complainant is environmental information. Environmental information is exempt under section 39 of the Act. Requests for such information should be processed in accordance with the Environmental Information Regulations 2004 ('EIR').
3. The EIR were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR. In light of this, the Commissioner has considered whether the public authority has replied to the complainant's request in accordance with the EIR. His decision is set out in this notice.

## The Request

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4. Prior to making a request to the public authority the complainant had been informed by The Land Registry that three land parcel numbers; 9589, 0006 and 9000 had been changed. On **4 November 2005** he made the following request to the public authority:

'REQUEST FOR INFORMATION MAP REF TA036

I have been informed that parcel numbers 9589, 0006 and 9000 have changed. Please could you provide me with the new parcel numbers and measurements that replace these parcel numbers? I also require information on the legal use of the land and where the measurable boundaries to the agricultural land are.'

5. The public authority wrote to the complainant on **25 November 2005** stating that land parcels 0006 and 9000 were not adjacent to his land and belonged to other people. Consequently due to the requirements of the Data Protection Act no information could be provided. Land parcel 9589 was identified as belonging to the complainant but was un-mapped and therefore no information was held in relation to it.
6. An internal review was undertaken by the public authority following receipt of a letter from the Information Commissioner's Office. On **26 January 2006** the complainant was provided with two maps illustrating the positions of land parcels TA0436 0115 (formerly 0006) and TA0435 8785 (formerly 9000). Measurements of both land parcels were also provided. No further information was given in

relation to TA0436 9589. The public authority stated that this is un-mapped and no information is held in relation to it.

## The Investigation

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### Scope of the case

7. On **30 January 2006** the complainant contacted the Commissioner to complain about the way his request for information had been handled by the public authority. The complainant specifically asked the Commissioner to consider the following points:
  - The maps supplied by the public authority do not relate to the Ordnance Survey parcel numbers he requested.
  - With reference to Ordnance Survey land parcel TA0436 9589, the complainant asserted that this had to be mapped since European Law requires all agricultural land to be measurable. This land is agricultural land because the local council has never granted a change of use. Therefore he believed that the public authority must hold information about land parcel 9589 because it is legally obliged to map it.
8. In view of the above the Commissioner's investigation has focused on clarifying whether the maps supplied to the complainant are relevant to his request and what, if any, information is held regarding land parcel TA0436 9589.

### Chronology

9. The caseworker wrote to the public authority on **12 June 2006** asking it to confirm that the maps it had supplied to the complainant related to those in his original request, and further, seeking confirmation that the public authority held no information relating to land parcel TA0436 9589.
10. The complainant telephoned the Information Commissioner's Office on **15 June 2006** to express his concern that the public authority's maps showed the land parcels named in his request in the wrong locations. The caseworker explored with the complainant that the request may concern the accuracy of the information supplied to him.
11. On **13 July 2006** the public authority confirmed that it held no information concerning land parcel TA0436 9589 as this land parcel relates to a domestic dwelling and therefore it has not been mapped on the Rural Land Register (RLR). It further confirmed that the information originally supplied to the complainant concerning land parcels TA0436 0115 (formerly 0006) and TA0435 8785 (formerly 9000) related to the land parcels specified in the original request.
12. On **24 July 2006** the complainant telephoned the Information Commissioner's Office. He stated that he had not been given the information he had requested,

- citing advice given by the Ordnance Survey. The complainant stated that grid references could not change and therefore he was unable to understand why the maps for land parcels TA0436 0115 and TA0435 8785 did not reflect the land parcels which were of interest to him.
13. On **27 July 2006** the caseworker's team leader wrote to the public authority asking it to consider two parcels of land shown on an Ordnance Survey map which had been marked by the complainant as being those relating to his request. The public authority was asked to determine if it would release information relating to these marked parcels.
  14. The public authority sent the complainant a new map on **2 August 2006** and asked that he mark on it the area he was interested in.
  15. On **9 August 2006** the public authority supplied the complainant with two new maps, one of which gave the measured field sizes for the mapped land parcels.
  16. The complainant telephoned the caseworker on **14 August 2006** to discuss the 'white' un-mapped area shown on the public authority's maps. He contended that this should be mapped under European law because it was agricultural land. The complainant also stated his reasons for his assertion that the land was classified as agricultural.
  17. The caseworker telephoned the public authority on **15 August 2006** to discuss the complainant's assertions regarding its obligations to map all agricultural land under EU law.
  18. On **17 October 2006** the caseworker spoke to a manager at the public authority with the purpose of establishing the legal basis on which it performs its functions. The manager passed the enquiry to the public authority's Legal Department.
  19. On **7 November 2006** the public authority provided a detailed account of its statutory obligations.

### Findings of fact

20. The public authority carries out its activities on behalf of the Crown and there is no UK legislative basis for these activities. Its role in mapping land arises from European legislation, specifically, Council Regulation 1782/2003 Articles 17 – 20 ('the Regulation'). These oblige the public authority to operate an Integrated Administration and Control Scheme, including an identification system for agricultural land parcels.

## Analysis

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### **Information provided relevant to parcels 0006 (now TA0436 0115) and 9000 (now TA0435 8785)**

21. The Commissioner is satisfied that the information provided to the complainant on the 25 January 2006 was material that was relevant to his request. The request specified particular parcel numbers that the complainant wanted information about. The maps and measurements given to him on the aforementioned date pertain to those reference numbers. Therefore the Commissioner is satisfied that the public authority has now complied with its obligation to disclose information under Regulation 5 of the EIR in relation to the original request.
22. Nevertheless, the Commissioner has investigated the complainant's allegation that he was given the wrong information. During the course of the investigation the caseworker's team leader compared the information disclosed by the public authority on 25 January 2006 with an Ordnance Survey map that the complainant supplied. The Ordnance Survey map indicated the two parcels of land adjacent to the complainant's property which were of interest to him. The team leader found that the Ordnance Survey map showed the numbers 9000 and 0006 on the plots of interest. Therefore it is reasonable to see why the complainant would specify those numbers in his request.
23. However the Commissioner understands that the public authority uses its own mapping and referencing systems which do not necessarily reflect exactly what is shown on the Ordnance Survey map.
24. In view of the above, it appears to the Commissioner that the complainant requested information from the public authority referencing parcel numbers 0006 and 9000, in the belief that this would result in the disclosure of maps relating to the land next to his property.
25. Having identified the confusion caused by the two separate mapping regimes the Commissioner's staff contacted the public authority to try to clarify the position. On 27 July 2006 the caseworker's team leader wrote to the public authority and asked it to consider disclosing information relating to land parcels identified on the complainant's map.
26. As a result of the Commissioner's intervention the public authority reverted to the complainant to clarify his request. On 9 August 2006 two further maps were supplied to the complainant that pertained to the land adjacent to his property.

### **Procedural issues**

27. The public authority did not identify the requested information as environmental information. The Commissioner considers that the complainant's request should have been processed in accordance with the EIR. Therefore the Commissioner has considered the public authority's response in line with the EIR and has explained his findings below.

28. The Commissioner notes that the Refusal Notice issued to the complainant on 25 November 2005 did not identify which exemption applied to the requested information. However, it did indicate that in the public authority's view the information could not be disclosed because of the Data Protection Act 1998 (DPA). Where a public authority refuses to provide information it must specify which exemption or exception applies and why, if it is not otherwise apparent. In this case the relevant exception would have been Regulation 13 which pertains to personal data. In failing to identify this exception in its Refusal Notice the public authority did not comply with Regulation 14 (3). It is also important to clarify that, even if the Commissioner were satisfied that the public authority had correctly processed the request under the Act, it still would have breached section 17. This is because it did not identify section 40 as the relevant exemption or explain why it applied.
29. The Commissioner notes that there was a lack of clarity about the information that the complainant in fact required from the public authority despite the specific references to parcel numbers in the request. In his view it would have assisted the complainant if the public authority had clarified the request when it was initially considering its response or at least at the internal review stage.
30. In reaching the above conclusion the Commissioner has taken into account the fact that the complainant indicated that he "was the owner of part of the land contained within all the above parcel numbers" in his initial request. In the response dated 25 November the public authority explained that it was unable to supply the requested information, "other than to confirm what I told you over the telephone a while ago, which is that the land parcels TA0436 0006 & 9000 are not adjacent to your house (which shows up on the unmapped parcel TA0436 9589)".
31. In addition the public authority provided the Commissioner with copies of some of its internal correspondence generated at the time it conducted the internal review. This indicates that it had recognised that the information requested was not near to the complainant's property prior to issuing its initial refusal. This was mentioned again when the internal review was considered. The public authority also obtained details of the land that does surround the complainant's home prior to communicating the outcome of the internal review. Given that there appears to have been some question within the public authority about the information that the complainant was actually interested in, the Commissioner considers that it would have been helpful if it had clarified the request at an earlier stage.
32. Notwithstanding the comments above, the Commissioner is satisfied that the public authority disclosed information relevant to the clarified request on 9 August 2006. Therefore it has also complied with Regulation 5 in that regard.

### **Information about land parcel TA0436 9589**

33. The complainant was informed on 25 November 2005 and 26 January 2006 that the public authority did not hold information relevant to land parcel TA0436 9589. However he contends that the public authority must hold this information. During a telephone conversation with the caseworker on 14 August 2006 the

complainant explained that this particular piece of land is agricultural. He asserted that although there are residential properties on the land, it has always been agricultural and no planning application has ever been made for a change of use or for a certificate of lawful development.

34. The complainant contends that the public authority must hold the requested information about land parcel TA0436 9589 because it is under a legal obligation to map **all** agricultural land.
35. The caseworker contacted the public authority to obtain further clarification about its role and to enquire whether it is under any statutory obligation to map land. As mentioned in paragraph 20 above, the public authority's activities in relation to mapping land arise out of Council Regulation 1782/2003. Article 17 requires that each Member State must have an 'integrated system' for administering and controlling the rules laid out in Chapters 1 to 3 of the Regulation. The integrated system must include "an identification system for agricultural parcels". When reviewing the Regulation the Commissioner has particularly noted that Article 20 states the following:

"The identification system for agricultural parcels shall be established on the basis of maps or land registry documents or other cartographic references. Use shall be made of computerised geographical information system techniques including preferably aerial or spatial orthoimagery, with an homogenous standard guaranteeing accuracy at least equivalent to cartography at a scale of 1:10000".
36. When reviewing the Regulation the Commissioner has found no obligation on the public authority to map all agricultural land. The requirement of the Regulation is that each Member State has integrated system so that it can administer the Single Payment Scheme (SPS) and Environmental Stewardship Scheme (ESS). The public authority fulfills its identification system obligations by maintaining the RLR. In order to be eligible for SPS or ESS payments, land must be registered on the RLR. To register land an RLE1 form must be completed and submitted to the public authority. Once this is received the public authority will capture the relevant field information and produce a map which is then sent to the applicant.
37. The public authority has invited the complainant to submit an RLE1 so that it can map this parcel of land. The complainant has confirmed to the caseworker that he has not submitted an RLE1. He is the owner of Land Parcel TA0436 9589, but he is not a farmer and therefore he is not eligible for payments under the SPS or ESS. However, this does not prevent him from applying to register his property on the RLR.
38. The caseworker communicated the public authority's explanation as to why it does not hold a map of land parcel TA0436 9589 to the complainant. The complainant then suggested that the previous owner of the property was a farmer and was in receipt of financial assistance. Therefore he argued that land parcel TA0436 9589 must have been mapped by the public authority in the past. The public authority has searched its records and the integrated system and has not located any information about land parcel TA0436 9589.

39. The public authority has explained that if the previous owner had registered the land parcel and made a claim against it, then it would have shown up in its integrated system. In relation to the complainant's contention that financial payments were received by the previous owner the public authority has explained that they may have been claimed against a different area of land or under a different parcel number. The Commissioner is satisfied that even if the previous owner did receive payments and therefore some of his land was mapped this information would not fall within the scope of any of the complainant's requests. This is because the request was for information about land parcel TA0436 9589.
40. On the basis of the information above the Commissioner is satisfied that the public authority does not hold the information requested about land parcel TA0436 9589.
41. As mentioned previously, a public authority must issue a Refusal Notice in accordance with Regulation 14 of the EIR when it refuses to supply information to an applicant. This must specify which of the exceptions in Regulation 12 is applicable. In this case the public authority did not issue a Refusal Notice specifying that Regulation 12 (4) (a) applied. This states that "a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received".

The Refusal Notice should also provide the applicant with details of the public authority's internal review procedures. In this instance the public authority failed to provide a Refusal Notice that complied with Regulation 14.

## The Decision

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42. The Commissioner's decision is that the public authority initially failed to recognise that the information requested should have been considered under the EIR. It also failed to comply with Regulation 14 when initially refusing the request. However he is satisfied that the public authority has now complied with the original request regarding land parcels 0006 and 9000. He is also satisfied that the public authority provided additional information to satisfy the clarified request on 9 August 2006. He has not specified any steps in relation to either of these requests in this decision notice.
43. The Commissioner is further satisfied that the public authority does not hold information relevant to Land Parcel TA0436 9589. The public authority did inform the complainant that this information was not held but the Refusal Notice did not meet the requirements of Regulation 14. However, the Commissioner has not ordered any steps in this regard.

## Right of Appeal

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44. 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)

45. 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 29 day of January 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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