

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 7 April 2014

**Public Authority:** Rural Payments Agency (an Executive Agency of the Department for Environment, Food and Rural Affairs)

**Address:** North Gate House, Reading RG1 1AF

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to 'Statutory Declarations' provided to the Rural Payments Agency (RPA).
2. The Commissioner's decision is that RPA has correctly applied regulation 12(4)(b) to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### **Request and response**

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4. On 28 June 2013 the complainant made the following request for information under the EIR for:

*"How many Statutory Declarations have RPA received since August 2004 to the present day in connection with the:*

- *Single Payment Scheme;*
- *National Reserve;*
- *New Entrants; and*
- *Other Schemes*

*How many of these documents received were requested by RPA, either verbally or in writing for:*

- *Single Payment Scheme;*
- *National Reserve;*
- *New Entrants;*
- *Other Schemes; and*
- *Other reasons*

*How many Statutory Declarations were accepted by the RPA?  
How many Statutory Declarations for any of the above were rejected,  
either verbally or in writing?*

*How many, for any of the above, were returned to their senders? If so  
please state the reason(s) for return."*

5. The RPA responded on 19 July 2013 and refused to provide the requested information citing regulation 12(4)(b) of the EIR as its basis for doing so.
6. Following an internal review the RPA wrote to the complainant on 17 September 2013 and maintained its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 3 October 2013 to complain about the way his request for information had been handled.
  8. The Commissioner wrote to the complainant to clarify his concerns and to provide guidance on the Commissioner's remit under the legislation. Further background to this case is contained in a confidential annex at the end of the decision notice. This is only to be provided to the complainant and the RPA.
  9. The Commissioner considers the scope of this case to be to determine if the RPA has correctly applied the exceptions it has cited.
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## Reasons for decision

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### Regulation 12(4)(b) – manifestly unreasonable

10. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
11. At paragraph 32 of his decision on FS50440146 (Luton Borough Council)<sup>1</sup>, the Commissioner made it clear that the inclusion of “manifestly” in regulation 12(4)(b) indicates Parliament’s intention that, for information to be withheld under this exception, the information request must meet a more stringent test than simply being “unreasonable”. “Manifestly” means that there must be an obvious or tangible quality to the unreasonableness.
12. The Commissioner continued at paragraph 33 by saying that the regulation will typically apply in two sets of circumstances: firstly, where a request is vexatious; or secondly, where compliance meant a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources.
13. Unlike FOIA and specifically section 12, the EIR does not contain a provision that exclusively covers the time and cost implications of compliance. The considerations associated with the application of regulation 12(4)(b) of the EIR are, instead, broader than with section 12 of FOIA. In particular, the Commissioner recognises that there may be other important factors that should be taken into account before a judgement can be made that environmental information can be withheld under the exception:
  - Under the EIR, there is no statutory equivalent to the “appropriate limit” – the cost limit beyond which a public authority is not obliged to comply with a request – described at section 12 of FOIA.
  - The proportionality of the burden on the public authority’s workload, taking into consideration the size of the public authority.
  - The requirement, under regulation 12(1) of the EIR, to consider the public interest test.

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<sup>1</sup>[http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs\\_50440146.ashx](http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs_50440146.ashx)

- The EIR's express presumption in favour of disclosure.
  - The requirement to interpret restrictively the exceptions in the EIR.
  - The individual circumstances of the case.
14. To guide him on the respective merits of the application of regulation 12(4)(b), the Commissioner has asked the RPA for clarification in the following areas:
- Confirm, as far as possible, where the requested information would be held and the extent of the information that Defra considers would be covered by the request.
  - Describe the role and size of business areas that would need to be employed in order to recover and extract the relevant information.
  - Set out clearly the activities that Defra would need to undertake in order to comply with the request.
  - Provide a detailed estimate of the time needed to provide the relevant information, making reference to the activities described above. While under EIR there is no statutory equivalent to the "appropriate limit" designated in FOIA, an estimate can be a useful starting point in establishing that complying with a request would be burdensome.
  - Verify whether the RPA has carried out a sampling exercise in order to determine whether the request was subject to the exception.
15. RPA explained the basis of the information is held on an RPA internal system called RITA. It is held on the customers 2005 scheme year claim forms (23,722) which are held in the customer folder section of RITA. Contextually there are 120,000 claims that potentially also fall into this category. It is also held in the electronic version of the claim form where the data was manually extracted and recorded in 2005.
16. It went on to explain that there is no designated team in RPA who are able to undertake this activity. RPA would need to find the resource which is likely to involve liaising with each directorate to determine the availability that will involve taking RPA people away from their normal day to day activity. They will need to agree a process and the number of people involved. RPA estimates that in order to complete this exercise within as example the 24hr threshold it would require 55 RPA people. This would have an impact on RPA's business.
17. To obtain the information there are two processes that RPA would need to undertake. The first would be to manually extract each claim form from RITA. This would involve logging into the system, entering the

customer's number, searching for the 2005 claim form and saving it to a local drive.

18. Once each one is saved, the data held against each one will need to be extracted and electronically recorded for those affected by National Reserve, which RPA estimate to be 23,722. A further manual search of each customers file would need to be conducted to determine the outcome of their National Reserve application. This information will also need to be electronically recorded.
19. The second process where RPA have the information stored on the electronic version of the claim form, would mean that the RPA would need to commission a script to extract the data. This commissioning process for the script would involve costs in terms of the management and technical resource time needed to design, build, test and deploy it. Any script would have to be procured via a commercial provider as this work could not be done in-house, and likely to cost several thousand pounds.
20. However, the RPA would need to action both the technical and manual process to interrogate the data to determine the outcome of their National Reserve applications and to see if it answers the questions set out by the complainant.
21. RPA estimated it would take 55 days just to extract the base data, based on one person performing the activity as detailed below:

<b>SBI</b>	<b>Number</b>	<b>Time in RITA</b>
106361193	1	4.25
106339252	2	3.15
106716373	3	3.45
108196993	4	3.2
106408951	5	3.25
106416358	6	3.5
106575512	7	3.05
107349347	8	3.1

106408951	9	3.05
111538106	10	3.55
	<b>Total</b>	33.55
	Average	3.36
	2005 SP5's	23,722

<b>Legislation cost limit</b>	<b>£600</b>
Hourly rate	£25
# of hours to exceed cost limits	24
# of days to exceed cost limits	3.5
# of SP5's x Average time (mins)	79,587.31
Minutes	79,587
Days	55
<b>Request exceeding details</b>	
Cost of request – Days	288
Cost of request – Hours	6920
Exceeds days by	52
Exceeds hours by	6896
Cost	£33,161.38
<b>Exceeds costs by</b>	<b>£32,561.38</b>

22. RPA carried out a sample of 10 customer claims which is what the above estimates are based on.

23. In addition, RPA stated it no longer holds the 2004 claim forms as they have been destroyed in line with its retention process.
24. In assessing whether the cost of complying with a request for environmental information is reasonable, the Commissioner bears in mind the EU Directive from which EIR originates, which states at 4(2) *that "the grounds for refusal... shall be interpreted in a restrictive way"*. Furthermore, the Implementation Guide to the Aarhus Convention (page 57) notes that:

*"Although the Convention does not give direct guidance on how to define 'manifestly unreasonable', it does hold it as a higher standard than the volume and complexity referred to in article 4, paragraph 2.*
25. Under that paragraph, the volume and complexity of an information request may justify an extension of the one month time limit to two months. This implies that volume and complexity alone do not make a request "manifestly unreasonable."
26. *In DBERR v ICO and Platform (EA/2008/0096) the Tribunal were clear that regulation 12(4)(b) is not an equivalent to section 12 of FOIA (paragraph 35) and the regulation requires the public authority to consider the request more broadly (paragraph 36). The approach under regulation 12(4)(b) is more flexible, taking into account a range of factors other than strict rules on cost calculations; it is also therefore possible the exception could apply in circumstances where the costs calculations do not reach the 'appropriate limit' under section 12.*
27. For instance, it is envisaged that it will be appropriate to take into account the tasks listed in regulation 4(3)(d) of the Fees Regulations as a starting point for calculating costs under EIR. However the broader scope of regulation 12(4)(b) means that there may be circumstances where it is reasonable to also take into account some costs that fall outside the Fees Regulations, although the justification for doing so would have to be clear. Such arguments should not be dismissed out of hand just on the basis of the Fees Regulations; instead, the Commissioner will consider whether those costs are reasonable in all the circumstances of the case.
28. The Commissioner acknowledges the EIR's express presumption in favour of disclosure however this has to be balanced against the proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority.
29. In this case, it is clear that to provide the information requested would take a significant time and resource just to extract the base data. This would then need to go through one of the processes described in

paragraphs 18-21. The Commissioner considers that in this case it would be manifestly unreasonable to ask RPA to provide the requested information.

### **Public Interest Test**

30. Regulation 12(1)(b) requires that a public interest test is carried out in cases where regulation 12(4)(b) is engaged. The test is whether in all the circumstances of the case the public interest in maintaining the exception overrides the public interest in disclosing the information. When considering his decision the Commissioner must also bear in mind the presumption in favour of disclosure provided by regulation 12(2).
31. The Commissioner notes that RPA has not provided any submissions with regard to the public interest in this case. Therefore he reminds them of this requirement when applying this exception. RPA should take care to ensure that it does not assume that as there is no public interest test relating to section 12 of the FOIA, this is not the case when dealing with regulation 12(4)(b) of the EIR.
32. The Commissioner is aware that the RPA is an Executive Agency of Defra and has researched its funding. From the latest information available from its Annual Report and Accounts 2012-2013 ([http://rpa.defra.gov.uk/rpa/index.nsf/0/f7f198fb7f2d6f9f80257b9d0053ec1a/\\$FILE/RPA%20Annual%20Report%20and%20Accounts%202012-13%20v1.0.pdf](http://rpa.defra.gov.uk/rpa/index.nsf/0/f7f198fb7f2d6f9f80257b9d0053ec1a/$FILE/RPA%20Annual%20Report%20and%20Accounts%202012-13%20v1.0.pdf)), the Commissioner has obtained the following information:

*"RPA's running costs are funded by Defra. Payments under the European Agriculture Guarantee Fund and the European Agriculture Fund for Rural Development are initially funded by the UK Exchequer. Following payments being made to claimants, reimbursement is sought from the European Commissioner, which when received is repaid to the UK Exchequer, net of any short-term funding requirements."*
33. The report details RPA's costs and expenditure from staff costs to costs relating to the schemes it administers. Given the amount of detail in the report the Commissioner considers that it is not an appropriate use of resources to identify the parts pertinent to this case. However, he does consider that, in these economic times when government is reducing public spending, it is not in the public interest for an executive agency to spend £30,000+ to respond to a request.
34. The request itself, although of significance to the individual, is of lesser significance in terms of the public interest test.



35. Having considered the evidence provided in this matter the Commissioner finds that the public interest test in openness, transparency and the disclosure of environmental information, is outweighed by the public interest in refusing to respond to a manifestly unreasonable request.
36. In view of the above, the Commissioner considers that in all the circumstances of this case, the public interest in maintaining the exception under regulation 12(4)(b) outweighs the public interest in disclosing the information and therefore finds that the request is manifestly unreasonable.
37. The Commissioner acknowledges the complainant's reasons for making the request and also acknowledges the frustration and cost that has been caused to the complainant with regard to the background to the case. However, the Commissioner's remit is to regulate the legislation he oversees and therefore makes his decisions within the confines of that legislation.

## Right of appeal

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38. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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