

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 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)

1. The complainant has requested information relating to the National Reserve Policy (NRP).
2. The Commissioner's decision is that the Rural Payments Agency (RPA) has complied with its duties under section 1 of the FOIA.
3. However, the Commissioner requires RPA to disclose the information it previously withheld by virtue of section 42.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. There is an extensive background to this case that the Commissioner does not feel necessary to repeat here and are dealt with by a previous decision notice (FER0519654). However, as there is some overlap in requests made under the DPA and the FOIA, he feels it is appropriate for this to be made clear at the outset of the decision notice.

Request and response

6. Following a response to a subject access request the complainant wrote to RPA on 3 May 2013 stating:

"Furthermore if the RPA really did have a policy formed at that time they should be able to supply me with the policy document as I am an RPA customer and RPA policy during that period is crucial to my case"

7. On 9 May 2013 the complainant wrote again stating:

"in my opinion the RPA's lack of firm policy before the end of October 2007 was a failure by the RPA in their duty of care to their customers who had been made National Reserve Awards"

8. On 30 May 2013 the RPA responded stating it had attached the information requested. The complainant responded the same day and stated:

"I cannot equate extracts from RPA 2005 handbook with response to my email of 3 May 2013. If you are alluding to this extract being the RPA's policy on National Reserve etc then,

b) why did you not send me the handbook extract before? There must have been something in particular that the RPA did not want me to see or, the policy document was not finished or finalised."

9. The Commissioner has not been provided with a copy of any response that may have been issued on this point.

10. Following further correspondence the complainant wrote to RPA on 7 June 2013 and asked:

"Why did you send me the extract from the SPS handbook? You have not said that this was your policy document which clearly it wasn't, so where is the policy document I wish to see?"

11. RPA appears to have responded on 12 July 2013. It stated:

"This document is now in the public domain, however, we have provided a copy, which is attached. Please note that the redactions have been made under section 42 (legal professional privilege) of the FOIA 2000."

12. On 2 August 2013 the complainant wrote to RPA again stating:

"After reading this it is clear to me that this is not a fully formed or ratified policy document. It think it is a provisional set of policy ideas, recommendations and suggestions, which were still awaiting further

*discussion, clarification and ultimate approval, as its title, **CAP REFORM: NATIONAL RESERVE – RECOMMENDED DETAILED DECISIONS** implies.*

This so called 'policy document' which is dated December 2004 shows clearly there was no firm decision on NR considerations which were still under discussion. When was this particular subject finally resolved? Furthermore if this is in the public domain why the redactions?"

13. RPA responded on 4 October 2013 and stated that, as previously explained the document in question had been redacted under section 42 of the FOIA. On 20 September 2013, the complainant wrote to RPA and stated the following:

"I forgot to mention the "so called" document you sent me on 13th July 2013, after sending the RPA Single Payment 2005 handbook, was not a policy document but a discussion document on policy and was dated December 2004.

Therefore to clarify the situation, I need to see the actual finalised document on which the RPA based their reversal of my National Reserve/New Entrant Award."

14. Following further correspondence RPA wrote to the complainant on 12 December 2013 and stated:

"In your request you have asked for a copy of the National Reserve Policy Document to be provided without redactions and a breakdown of information relating to Statutory Declarations submitted in 2004 and 2005.

National Reserve Policy Document

The redactions within the document supplied under RFI 2590 were applied under Section 40 – Personal Information and Section 42 – Legal Professional Privileged. RPA cannot supply an unredacted version of this document."

Scope of the case

15. The complainant first contacted the Commissioner on 8 November 2013 to complain about the way his request for information had been handled. The complainant stated:

"I wish to make a complaint regarding RPA's reluctance to provide me with a copy of the policy document.

I have not been allowed to see the proper finalised policy document, this and the date it was finalised would have a bearing on the RPA's time parameters for them to claw back any alleged overpayments."

16. During the course of the Commissioner's investigation, RPA withdrew its reliance on section 42 stating: *"Having reviewed matters, the RPA accepts that the decision to redact the reference to legal advice within the minutes (Points 13 and 50) went beyond the exemption covering Legal Professional Privilege. Internal procedures, training and guidance will be updated to make this clearer."*
17. As RPA did not advise of any other exemption it considered may apply, the Commissioner considers the scope of this case to be to determine if the RPA has complied with its duties under section 1 of the FOIA.

Reasons for decision

18. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
19. Under section 1(1) of the FOIA, a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
20. The Commissioner sought clarification from RPA with regard to the policy in question.
21. RPA confirmed the document provided is an accurate reflection of the final rules which were agreed and implemented regarding National Reserve, and there were no altered/amended versions which superseded or corrected it. The document and the rules/methods contained within were then used as the basis of the information that was published in the 2005 SPS Handbook and information booklets as a means of explanation for customers.
22. RPA explained that processing of National Reserve applications using this framework actually began in 2005, with the majority completed by early 2006 with only some residual cases and re-visits taking place after that.
23. It also confirmed that there are no other versions of this document.
24. The Commissioner notes that it appears RPA initially responded to the request with what it thought the complainant was requesting. It would

have been helpful if RPA had advised at the outset that no such document existed and explained the context around the information that was being provided i.e. extracts from its SPS Handbook.

25. The Commissioner acknowledges the complainant's comments that the information he was provided with was a discussion document on policy and was dated December 2004 and that there should be a finalised policy document. However, as RPA have confirmed above that no such document exists and the Commissioner is satisfied from the explanation it has provided that is the case, he has concluded RPA has complied with its obligations under section 1 of the FOIA.

Right of appeal

26. 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

27. 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.
28. 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
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