



Neutral citation number: [2024] UKFTT 522 (GRC)

Case Reference: EA/2023/0455

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard at Field House on 16 May 2024

Decision given on: 20 June 2024

Before

**TRIBUNAL JUDGE Stephen Cragg KC
TRIBUNAL MEMBER Dr Phebe Mann
TRIBUNAL MEMBER Suzanne Cosgrave**

Between

IMOGEN BICKFORD-SMITH

Appellant

And

INFORMATION COMMISSIONER

Respondent

Decision: The appeal is Dismissed

**The Appellant represented herself
The Information Commissioner was not represented but made written
submissions**

REASONS

MODE OF HEARING

1. The proceedings were held in person.
2. The Tribunal considered an agreed open bundle of evidence comprising 282 pages, a closed bundle which consists of the withheld material in this case, and a skeleton argument from the Appellant.

BACKGROUND

3. On 11 January 2023, the complainant wrote to the Rural Payments Agency (RPA) and requested:-

As a result of changes to the BPS [Basic Payment Scheme] rules the allocations of shares of New Forest common land are no longer based on the number of animals an Applicant produces for a marking receipt each year. Since 2021 the RPA has allocated a reference amount to New Forest BPS applicants based on the maximum number of marking fees they declared in any year between 2015 and 2020. The RPA has confirmed "This reference amount is taken as an expression of their grazing rights and is now used annually to calculate their area allocation for BPS." [RPA 10th January 2023]

Please provide the following information under the Freedom of Information Act/ Environmental Information Regulations:

1. Full details of the reference amount "taken as an expression of grazing rights" by the RPA for 2021 BPS New Forest common land applications. i.e. figures declared on the 2021 BPS Application Form at Part E Common land grazing rights under the heading at E4 "Number of rights of this type." And the number of 'eligible hectares' of New Forest common land the RPA calculated and allocated to each Applicant for the 2021 BPS based on the "expression of grazing rights."
2. Full details should include the address of the Applicant (and business address if different) and CPH [County Parish Holding] number of the holding (but not the name of the applicant.)
3. Full details of the number and type of animal produced by each of those Applicants for a marking receipt that was used by the RPA to allocate the reference amount taken as an expression of grazing rights and to calculate the 'eligible hectares' allocated to each applicant at Part 1. i.e. the number of a) cattle and/or b) ponies/donkeys and/or c) pigs."

4. The RPA responded on 8 March 2023. It disclosed information in response to the request but redacted full business addresses and CPH numbers,¹ except five, under regulation 12(3) of the Environmental Information Regulations 2004 (EIR). The Appellant requested an internal review on 10 March 2023, and raised concerns about information that was outstanding and also the RPA's application of regulation 12(3) EIR. On 12 May 2023 the RPA provided the outcome to its internal review. It disclosed the information the Appellant had identified as outstanding but upheld its previous position in relation to regulation 12(3) EIR for the full business addresses of the relevant farmers and the CPH numbers, except five, under regulation 12(3) EIR. The Appellant then complained to the Commissioner.

THE LAW

5. Section 39 FOIA exempts environmental information from disclosure by a public body under the provisions of FOIA, and such information is covered by the EIR. It is common ground in this Appeal that information in respect of BPS Applicants' grazing rights, eligible hectares and species of animals on the New Forest common land would constitute 'environmental information' within the definition of Regulation 2 EIR. Once it is established that environmental information is held by the public body the EIR creates a presumption in favour of disclosure of information that relates to or affects the environment. However the duty of a public authority to make environmental information available on request is subject to certain exceptions, set out in Part III of EIR. For the purposes of this case, the relevant exceptions are found in Regulation 12 EIR which provides so far as is relevant:-

Exceptions to the duty to disclose environmental information

12.—(1) Subject to paragraphs ... (3) and ..., a public authority may refuse to disclose environmental information requested if...

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with Regulation 13.

6. Regulation 13 provides in part:-

¹ A CPH is an identification number for a farm or business which pinpoints the location of the land. It is a 9-digit number: the first two digits identify the county, the next three relate to the parish and the last four digits identify the holding.

Personal data

13.—(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

(2) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—

(i) any of the data protection principles; or

(ii) ...

(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

7. The definition of personal data is found in the Data Protection Act 2018 which reads insofar as relevant:-

3. Terms relating to the processing of personal data

(1) This section defines some terms used in this Act.

(2) “Personal data” means any information relating to an identified or identifiable living individual...

8. The first data protection principle is set out in Article 5 of the UK General Data Protection Regulations (UK GDPR) which reads so far as relevant:-

Article 5 Principles relating to processing of Personal Data

1. Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject (“lawfulness, fairness and transparency”);

(b) - (f) ...;

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1.

9. In order to be processed lawfully, one of the lawful bases listed in Article 6 of the UK GDPR must apply to the processing. The only potentially applicable basis in this case is in Article 6(1)(f) of the UK GDPR which reads insofar as relevant:

Article 6 Lawfulness of processing

1. Processing shall be lawful only if and to the extent that at least one of the following applies:-

... (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, ...

10. Case-law has established the 'legitimate interest' basis for processing is subject to a three-part test, as applied by the Commissioner in this case. The three-part test is:-

- (a) Legitimate interest test: whether a legitimate interest is being pursued in the request for information;
- (b) Necessity test: whether disclosure of the information is necessary to meet the legitimate interest in question;
- (c) Balancing test: whether the above interests override the fundamental rights and freedoms of the data subject.

11. The processing of personal data will be unlawful (and so a public authority will be entitled to withhold it under the EIR) if any limb of the three-part test is not met.

DECISION NOTICE

12. In the decision notice of 3 October 2023 the Commissioner applied this legal framework:-

14. The two main elements of personal data are that the information must relate to a living person, and that the person must be identifiable.

15. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name or location data.

16. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

17. To reiterate, the RPA has withheld full business addresses and country parish holding numbers, except five, under regulation 12(3).

18. The RPA has explained why it has disclosed five addresses and CPH numbers but withheld the rest:

'From our searches, we identified that four of these businesses are Private Limited Companies and one is a Charitable Incorporated Organisation. We determined that

these would be considered as legal entities under UK law. Therefore, the address and CPH for these businesses would not constitute personal information within the scope of the UK GDPR and was disclosed.’

19. Of the remaining addresses, the RPA explained:

‘They are not (neither are they required to be) registered at Companies House and have no obligations to maintain statutory records, prepare and file statutory accounts or to submit an annual return to the Registrar of Companies.’

20. The addresses that have been withheld are businesses addresses but also residential addresses. The RPA has also explained: ‘CPH numbers are unique identifiers of both the location (postcode or land parcel/grid reference number) of the holding and the name and address of the individual or business that the CPH is registered to.’ The Commissioner has previously determined that CPH numbers are personal data.

13. This last point is a reference to a previous Commissioner decision notice IC-129710-S4X2.²

14. The Commissioner noted that the fact that information constitutes personal data does not automatically exclude it from disclosure under the EIR and that the Commissioner also needed to consider whether disclosure of the requested information would contravene any of the data protection principles. The most relevant data protection principle in this case is the principle in Art 5(1) (a) UK GDPR which states that ‘Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject’ as set out in the legal framework above.

15. In considering the application of Article 6(1)(f) UK GDPR (as set out above), the Commissioner applied the tripartite test (also set out above). Thus:-

27. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester's own interests as well as wider societal benefits...

28. It is important to remember that disclosure under the EIR is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest, then disclosure is unlikely to be proportionate.

29. The complainant has explained ‘This new request for information was made because the methodology the RPA has used to distribute subsidy between 2015 and

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021267/ic-129710-s4x2.pdf>

2020 was found to be unlawful. From 2021 a new methodology to distribute subsidy for the New Forest BPS was adopted but it was based on figures/data established between 2015 and 2020.'

16.The Commissioner concluded that as the Appellant 'is concerned with changes to the ways that basic payment scheme monies are calculated in relation to New Forest common land' that this 'is a valid legitimate interest' for the Appellant.

17.In relation to whether disclosure is necessary for that legitimate interest the Commissioner said:-

31...The information that has been disclosed to the complainant shows: the number of animals (cattle, donkeys, ponies, sheep and pigs) each applicant has, as well as the allocated area of land and in which area of the New Forest the applicant is based.

32. However, if the complainant is concerned that the methodology for distributing monies is flawed, the Commissioner accepts the complainant might wish to scrutinise each individual application further and to do so will require disclosure of the withheld information. Therefore, since this information isn't in the public domain, disclosure is necessary to meet this legitimate interest.

18.That meant that the Commissioner needed to go on and consider the balancing test:-

36.In the Commissioner's view, the balancing test should take into account whether the data subjects concerned have a reasonable expectation that their information would not be disclosed. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

37.In its refusal notice, the RPA advised that 'RPA contacted a selection of the data subjects to advise that a request (dealt with under the EIR) for information had been received that concerned their business to gauge their views on disclosure of the requested information into the public domain. None of these data subjects consented to the disclosure of this information.'

38. It also advised the complainant that 'The requested information was collected for the purposes of RPA's public tasks under Basic Payment Scheme processing...The data subjects would not reasonably expect their personal data to be processed for purposes other than those for which it was initially collected, therefore, it is RPA's view that disclosure would not be fair.'

39. To reiterate, the addresses and CPH numbers that have been withheld relate to business addresses but also residential address, the disclosure of which is likely to cause the data subject distress were it disclosed to the world at large.

40. The information the RPA has disclosed goes some way into meeting this legitimate interest, in that it addresses how many animals each applicant has (which is relevant to the change in methodology). However, the Commissioner isn't convinced that the legitimate interest in the personal data requested outweighs the rights and freedoms of the data subjects concerned. Therefore, he's determined the personal data should continue to be withheld under regulation 13(1), by way of regulation 13(2A)(a).

THE APPEAL

19. The Appellant filed an appeal dated 23 October 2023. As in her original request, the Appellant set out the background to her request:-

1. The Basic Payment Scheme (BPS) is administered by the Rural Payments Agency (RPA) which is an executive agency of DEFRA. Both the Single Payment Scheme (SPS) that ran from 2005-2014 and the BPS (2015 onwards) are described as schemes of 'decoupled' income support for farmers. A main objective was to help protect the environment from overuse and over production. Therefore, rather than subsidy paid for example per beef animal or amount of crop produced, payments were instead to be made per 'eligible hectare' of land that the farmer could claim was 'at his disposal' each individual scheme year.

2. The information requested relates to changes that had to be made by the RPA to its allocations of New Forest common land for the 2021 BPS. Reference amounts taken by the RPA as "an expression of grazing rights" were based on controversial and flawed allocations made between 2015 and 2020.

20. The Appellant sets out a history of previous requests for information and refers to a judicial review application in 2020 as a result of which 'the RPA changed the rules for the 2021 BPS year and awarded reference amounts based on the maximum number of animals for which 'marking fees' had been declared in any year between 2015 and 2020'.

The Appellant concludes:-

The ICO is respectfully asked to accept that as this request for information relates to controversial farm subsidy payments that have been claimed from public funds paid to a person operating in a business capacity the interest in transparency and accountability outweighs the legitimate right to privacy of claimants. The disclosure of the addresses and CPH numbers specific to the 2021 New Forest common land BPS allocations awarded by the RPA is proportionate to the legitimate aims pursued.

21. The Commissioner responded to the appeal. The Commissioner notes that:-

50. In effect the Appellant argues that the data subjects should not enjoy a reasonable expectation of confidentiality because the BPS concerns public money to enhance the environment (by inference, for everyone's benefit), and great weight should be given to all such things being accountable and transparent.

51. In reply, the Commissioner maintains there is a reasonable expectation held by BPS claimants that their names will not be made public for the following reasons:-

- i) The BPS claimants are private sector farmers going about their everyday business - their landholding and livestock activities are not required to be publicly known;
- ii) RPA does not publish claimants' names in relation to applications they have submitted;
- iii) It is generally understood that BPS applications are confidential and that information relating to them is only known to the parties directly involved, e.g. the claimant and the RPA.

57....the BPS data subjects have expressed concerns about disclosure of their data.

58. In addition, when weighing the balance of the rights and freedoms of the BPS data subjects the Commissioner notes the withheld claimants are largely individuals, sole traders and partnerships, and the business addresses are typically also their residential addresses.

59. It is therefore considered appropriate to take account of likely distress caused by disclosure of their identities.

60. For example, individuals who are dissatisfied with the operation of the BPS may seek to confront or challenge the BPS claimants directly or otherwise embark upon campaigns against them – this being a distinct possibility given the Appellant's description of the BPS scheme as being "controversial", "flawed" and giving rise to "serious issues".

61. Finally, the Appellant appears to argue that the Commissioner gave insufficient weight to the legitimate interest of the public in disclosure of the withheld information in order to hold the RPA to account for its (mis)-management of the BPS.

62. The Commissioner, in paragraphs [27] – [30] of his DN accepted that on the facts of this case there is a legitimate interest in knowing how New Forest BPS payments are calculated.

63. However, the Commissioner nevertheless maintains that, for the reasons given in the DN and above, on the facts of this case, such a legitimate interest is outweighed in the balancing exercise by the consequences of disclosure of the identities of the BPS claimants on their fundamental rights and freedoms.

22. In response the Appellant states:-

Those who applied for BPS subsidy signed a declaration on their application form each year and were made aware that their payment is subject to EU Regulations/ UK laws. And when payments are provided under those Regulations/laws (including Regulation(EU) 1307/2013 and 1306/2013 and/or UK-funded payments for schemes run under retained EU legislation) DEFRA/RPA is obliged to publish information for each Scheme year that includes the names of beneficiaries and the amounts of BPS subsidy they received.

...

And under the heading “Data Protection” the Applicants are made aware of the “Rural Payments Agency Personal Information Charter”.

The Information Charter explains the lawful basis for processing personal data. That includes the RPA legal obligation to publish information about beneficiaries of BPS subsidy and also information that for example “promotes democratic engagement”.

I have attached pages from both the 2021 and 2022 CAP payments search - not only to show what is published by the RPA/DEFRA about my own claim but also importantly because the payment figures they’ve published are not accurate. (mine and others).

...

A CPH number must be obtained for land and buildings used to keep livestock for any purpose. Livestock includes cattle (and other bovine animals) pigs, goats, sheep and deer. A CPH number is required for disease control purposes. And the RPA have said:

“A CPH number covers the location of the land, rather than the correspondence address it is registered against, which may be different. For example a CPH number could be issued to an address in Kent for a farm in Yorkshire.”

THE HEARING

23. At the hearing the Tribunal heard from the Appellant in person, and the Commissioner did not appear at the hearing.

24. The Appellant told us about the need for there to be a sustainable future in the New Forest and that was her key interest in having the information sought. As much information as possible is needed for this purpose. The Appellant was concerned that farmers were turning out more animals than they had previously, in order to increase the subsidy available. She explained that it was not enough to have the names of all those in

receipt of BPS and how much they received. It was also necessary to have the addresses and the CPH number. The address was necessary so it could be seen where the animals were coming from. For example, although part of the postcode is provided this would apply to a very large area (for example BH24 contains 57 square miles). Farmers were likely to turn out animals into the New Forest close to the address where they are farming. The address of farmers will also reveal where animals are brought to the New Forest area from farmers based outside the area, or where there are absentee farmers.

25. The CPH number provides a greater degree of precision than a postcode. The CPH number was also important for controlling disease, and the Appellant also thought that some farmers with no CPH number were putting out animals into the New Forest. The Appellant was of the view that most farmers would consent to their address being disclosed.
26. In her skeleton argument for the hearing the Appellant has explained in detail the background to her case (and that of others) that the ‘public can have no confidence that the New Forest BPS has been administered competently and transparently’.
27. She identified the main legitimate interests of the public in the disclosure of the personal information requested as:-
 - (a) Knowing how agricultural subsidies involving large amounts of public funds have been spent (the *unique* methodology used to distribute New Forest common land subsidy was unlawful and changes were made for the 2021 scheme year).
 - (b) In the efficient and equitable distribution of public money.
 - (c) Accountability of those making the payments.
 - (d) Subsidies have a high profile and disclosure will inform debate about how shares of the common land and subsidy should be allocated in the future now that the BPS is coming to an end
 - (e) Allowing the public to understand the decision making process enhances transparency.
28. She also said that ‘disclosure of addresses and CPH numbers is appropriate in this case because the claimants are all acting in a business capacity, are in receipt of public funds

and are required to contribute positively to the environment as a condition of receipt of those funds’.

29. The Appellant pointed out that there was a ‘Personal Information Charter’ which related to those involved with the Rural Payments Agency (RPA). In relation to payment schemes it states that in relation to recipients: - (see A123 in the bundle)

The UK Coordinating Body (part of Defra) publish payment data for CAP scheme payments, both those funded by the EU and those UK-funded payments for schemes run under retained EU legislation via the CAP Payments Service (<https://cap-payments.defra.gov.uk/Search.aspx>).

This will include:

- your name
- your company name
- your postcode and county
- how much you were paid and reason for payment (for example, Basic Payment Scheme payments)

If you are paid €1,250 or less, the information will be anonymous.

30. The Appellant took us to some recitals from EU Regulation 1306/2013 (but not the Regulation itself) and argued that more information could be expected to be disclosed. She pointed out that recital 76 of Regulation 1306/2013 refers to “...the role played by civil society, including by the media and non-governmental organisations and their contribution to reinforcing the administrations’ control framework against fraud and any misuses of public funds, should be properly recognised”, and that Recital 84 of Regulation 1306/2013 states:-

Making that information accessible to the public, in combination with the general information to the public provided for in this Regulation, enhances transparency regarding the use of Union funds in the CAP, thus contributing to the visibility and better understanding of that policy.

31. However, we noted in the hearing that Recital 79 for example states that:-

...if the objective of the public control of the use of the money from the Funds is to be achieved, a certain level of information about beneficiaries needs to be brought to the attention of the public. That information should include data on the identity of the beneficiary, the amount awarded and the fund from which it comes and the purpose and the nature of the measure concerned. The publication of that information should be made in such a way as to cause less

interference with the beneficiaries' right to respect for their private life, in general, and to their right to protection of their personal data.

32. There was a discussion about the number of farmers who received the RPA (these are the people whose personal data is sought). The personal data is not available where the payments are less than £1250 (2022-23) or €1250 (2021-22), as these payments are anonymous. About 450 farmers applied for the RPA but only 265 received payments. There are about 600-700 farmers who have rights to put out animals who do not get payments. The Appellant said that within these 265 are many who put out a large number of animals. However, it is the case that two-thirds of the farmers do not get subsidies and therefore their personal data will not be within the scope of the request.
33. The Tribunal asked about the responsibility of other bodies responsible for the sustainability of the New Forest, including DEFRA and a body known as the Verderers. In the bundle (at A172) the Appellant had included an extract from the Countrywide Stewardship Scheme 2002 which was said to be an agreement between DEFRA and the Verderers. Under the heading 'Grazing in the Open Forest' is the following:-

Under traditional management systems there have been fluctuations in stock numbers on the Open Forest. The advice of English Nature is that stock numbers should not be allowed to fall below 3,500 or exceed 7,000. At these limits the mosaic of New Forest habitats would be destroyed or severely damaged and additionally, at the higher limit there would also be concern for animal welfare. English Nature also recommend a mix of cattle and pony grazing, with a minimum of at least 25% of either stock type. There is no ecological justification for supporting more than 5,000 cattle/ponies on the Open Forest.

By signing this agreement, the Verderers agree to use their powers, both legislative and financial, to manage stock levels on the Open Forest within the above limits and to maintain the existing diversity and quality of the New Forest habitat.

34. The Appellant accepted that the Verderers had powers and responsibilities in relation to the sustainability issues with which she is concerned, but was not of the view that they discharged these functions effectively.
35. The Appellant agreed that the current scheme for payments, which she opposes, will be completely phased out by 2027.

36. The Appellant drew our attention to the case of *DH v Information Commissioner & Anor* [2016] UKUT 139 (AAC), where the Upper Tribunal held that a FTT had erred in finding that the name of a councillor who had not paid his council tax should be exempt from disclosure under FOIA, and submitted that those in receipt of public subsidies should expect to have their personal data disclosed.

DISCUSSION

37. It was clear in the hearing that the Appellant has a long-standing and deep commitment to a sustainable future for the New Forest (where she lives and farms) that has led to her to take issue with the running of the BPS system by the RPA. This has led to freedom of information requests and complaints to the Commissioner, and judicial review applications, and we understand that the present system is indeed to come to an end in 2027. We have no doubt that the interest of the Appellant behind these requests is a motivation to change the present way subsidies are paid to farmers in the New Forest, to increase accountability in relation to the expenditure of public money, and the sustainability of the New Forest.

38. However, it is not the role of this Tribunal to pass judgment on the way the processes have been administered in the past or to pass comment on the need for change in the future. Our role is only to decide whether the relevant exemption in the FOIA claimed has been correctly applied.

39. As both parties agree, it is not in dispute that the requested information constitutes personal data within the definition of s3(2) DPA, and our sole role is to decide whether the statutory framework requires the disclosure of this personal data to the Appellant.

40. Therefore, the task of the Tribunal is to apply the three-part test for the application of Article 6(1)(f) of the UK GDPR as set out above.

Legitimate interest test: whether a legitimate interest is being pursued in the request for information;

41. As noted above the Commissioner concluded that as the Appellant 'is concerned with changes to the ways that basic payment scheme monies are calculated in relation to New Forest common land' that this 'is a valid legitimate interest' for the Appellant. The Appellant expanded on this issue in her skeleton argument as set out above and before us, the Appellant broadened out her interest to say that her concern was for a sustainable future for the New Forest, which we think can include the interest identified by the Commissioner, and the matters set out in the skeleton argument, and which in our view is a legitimate interest.

Necessity test: whether disclosure of the information is necessary to meet the legitimate interest in question.

42. In relation to whether disclosure is necessary for that legitimate interest, as recorded above, the Commissioner said that information had been disclosed to the Appellant showing the number of animals each applicant has, as well as the allocated area of land and in which area of the New Forest the applicant is based. The names of the applicants for BPS and the amounts received have also been disclosed. However, the Commissioner concluded that:-

32. ...if the complainant is concerned that the methodology for distributing monies is flawed, the Commissioner accepts the complainant might wish to scrutinise each individual application further and to do so will require disclosure of the withheld information. Therefore, since this information isn't in the public domain, disclosure is necessary to meet this legitimate interest.

43. We note that the Commissioner does not explain why the Appellant would need to see each individual application to pursue her concern that 'the methodology for distributing monies is flawed'. The Appellant was able to tell us that the amounts recorded as being paid to her under the scheme were wrong, but it is not explained whether she would be able to make the same deductions if the withheld information was disclosed. In any event, she already knows the name of each recipient and how much money was received, all she does not know is the address of each applicant and their CPH number. As noted above, from the information now disclosed by RPA, the Appellant also knows how many animals each applicant has. It does seem to us that if the Appellant wanted to know if other recipients were being paid the wrong amounts, it would be relatively easy to contact them (as she already has their names).

44. It may be of course that other recipients would not want the Appellant to 'scrutinise' whether the right amounts have been paid and would be content to pursue the issue themselves with the RPA if they think there has been an error.

45. Before us the Appellant declared a more general interest in finding out as much as possible about the operation of the system and this included information about the exact locations of farms from which animals originated. But as noted above, the information now withheld would not necessarily assist greatly in that endeavour as only about a third of farmers receive subsidies, and so if the information were disclosed then she would only be receiving part of the information she says she needs.

46. The question then arises as to whether there are other ways to meet the Appellant's legitimate interests other than requiring the disclosure of personal data. It is clear that the Appellant has a deep felt and sincere concern about the sustainable future of the New Forest, and does not believe that the correct systems have been in place to protect it. The Appellant has had some success in challenging the payments system in place by way of judicial review. However, as explored with the Appellant there are other bodies who have responsibility for the New Forest which include DEFRA and the Verderers. It seems to us that those bodies are better placed to provide the protection the New Forest needs and (at least in the case of DEFRA) will have access to a broad range of information to fulfil their roles.

47. Having taken those matters into account, it did not seem to the Tribunal that disclosure of the information sought was 'necessary' to meet the legitimate interests identified by the Appellant for the following reasons:-

- (a) There was no certainty or even likelihood that disclosure of addresses and/or CPH numbers would allow the Appellant 'to scrutinise each individual application further' (as the Commissioner thought) as such scrutiny would require the co-operation of the farmers whose addresses were disclosed.
- (b) Details of the addresses to where the RPA made payments would not provide the Appellant with the overall information she wanted to identify the numbers of animals put out by farmers, because most farmers who put out animals do not, in fact, receive a payment from the RPA (or the payment is a low one made on an anonymous basis, as explained above).

- (c) In any event the current system of payments is about to come to an end and a new system will shortly be in place.
- (d) Although the Appellant is clearly passionate about the New Forest and its sustainability, there are bodies such as the Verderers and DEFRA who have overall responsibility for these issues, rather than the role of individuals such as the Appellant who are unlikely to have the same overview of all the issues. Therefore, the legitimate interests of the Appellant can be met by other means than the disclosure of personal data.

Balancing test: whether the above interests override the fundamental rights and freedoms of the data subject.

48. The Tribunal having reached the conclusion on the necessity of disclosure, it is not required to go on to consider the third part of the test, but as the Commissioner reached this stage in the decision notice, we will review what the Commissioner and the Appellant have said on the issue.

49. The Commissioner noted that the RPA had contacted a number of the data subjects about disclosing the information sought to the Appellant and none of them consented to the disclosure of their addresses and CPH numbers. The Commissioner also noted that the RPA said that ‘The requested information was collected for the purposes of RPA’s public tasks under Basic Payment Scheme processing’ and that, in the view of the RPA the data subjects would not reasonably expect their personal data to be processed for purposes other than those for which it was initially collected.

50. The Appellant wanted to emphasise the overall importance of creating a sustainable future for the New Forest and was of the view that the data subjects would support that aim and understand the need for disclosure of their addresses and CPH numbers for that purpose.

51. However, although the Tribunal can see that disclosure of the information might assist the Appellant in pursuing her aims, it is our view that there is a strong expectation that the disclosure of residential addresses (which is not provided for in the RPA Personal Information Charter) would not occur without the consent of the data subjects. We do

not agree that this case is analogous to that of *DH v Information Commissioner* set out above. There is no indication of any wrong-doing by the applicants for BPS and in any event their names are in the public domain already. There is nothing in the recitals of Regulation No 1306/2013 provided to us by the Appellant which suggests that more personal information than that provided for in the Charter should be disclosed.

52. The Tribunal has already expressed its doubts about the usefulness of the information in any event for the legitimate interests of the Appellant and pointed out the other means by which those interests can be protected.

53. If the Commissioner is correct that disclosure is necessary to meet legitimate interests then the Tribunal agrees with the Commissioner's conclusions that legitimate interest in the personal data requested does not outweigh the rights and freedoms of the data subjects concerned, not to have that personal data disclosed.

54. Having reached our view above we have also considered, as we must, the presumption in favour of disclosure set out in regulation 2(2) EIR. As was stated in *Vesco v Information Commissioner* [2019] UKUT 247 (AAC), paragraph 19, the purposes served by the presumption are (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations.

55. In this appeal, in our view the interests are not evenly balanced (and are clearly in favour of non-disclosure) and therefore applying the presumption does not affect our conclusions, and considering the presumption reassures us that we have reached the correct decision.

56. On that basis, this appeal is dismissed.

Recorder Stephen Cragg KC, sitting as a Tribunal Judge

Date: 20 June 2024