

Re-use of Public Sector Information Regulations 2015 (RPSI)

Decision notice

Date: 23 March 2023

Public Authority: Department for Levelling Up, Housing and Communities

Address: Fry Building
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested from the Department for Levelling Up, Housing and Communities ('the DLUHC'), permission under the RPSI for to re-use its Energy Performance of Buildings Data. The DLUHC responded addressing his rights and obligations to re-use information under the open government licence. The complainant therefore argues that the DLUHC has failed to provide him with an adequate response to his request under the RPSI.
2. The Commissioner's decision is that the DLUHC did not comply with the requirements of the RPSI.
3. The Commissioner requires the DLUHC to take the following steps to ensure compliance with the legislation.
 - To respond to the complainant's request as required by the RPSI.
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.

Request and response

5. On 18 April 2022, the complainant wrote to the DLUHC and requested information in the following terms:

"I am requesting DLUHC's permission to re-use the Energy Performance of Buildings Data for the purpose of combining it with data from other open public datasets and making the outputs available to others in a re-usable electronic form under an open licence. Given my intended use, any more restrictive licensing terms would be likely to "unnecessarily restrict" the way in which the information can be re-used, contrary to Regulation 12 of the Re-use of Public Sector Information Regulations 2015.

I understand that this permission will not apply to the address and postcode fields in the data, and that permission to re-use the data under the CC-BY licence will not affect any obligations to comply with data protection law when processing the data.."

6. The DLUHC responded on 6 May 2022. It said that the Open Government Licence did not apply to address data, and that it was not able to provide data protection advice in response to his request. It also clarified that the Royal Mail and Ordnance Survey own the address data published on its website.
7. The complainant wrote back to the DLUHC on the same date. He pointed out that his request was under the RPSI, not under the Open Government Licence rules. He also clarified that his request did not ask the DLUHC to permit him to re-use the address data. He therefore requested that the DLUHC provide a response under the RPSI.
8. Following an internal review DLUHC wrote to the complainant on 17 May 2022. It again stated that it is not able to provide legal advice on the use of the information in terms of the Data Protection Act 2018.

Scope of the case

9. The complainant contacted the Commissioner on 24 May 2022 to complain about the way his request for re-use had been handled.
10. He argued that the DLUHC's response was not compliant with the requirements of the RPSI; it neither made the Energy Performance of Buildings Data available to him for re-use, refused his request for re-use, nor provided conditions under which re-use is permitted.

11. The Commissioner therefore considers that the scope of his investigation is to determine whether the DLUHC's response complied with its obligations under the RPSI.

Reasons for decision

12. Regulation 6 of the RPSI provides that:

"A person who wishes to make a request for re-use must ensure that the request—

(a) is in writing;

(b) states the name of the applicant and an address for correspondence;

(c) specifies the document requested; and

(d) states the purpose for which the document is to be re-used."

13. The complainant's request met the requirements of Regulation 6 of the RPSI. It was therefore a valid request for re-use under the RPSI.

14. As the request was a valid request for re-use under the RPSI, the DLUHC was required to respond to it as required by the RPSI.

15. The Commissioner has therefore considered whether the DLUHC's response was compliant with its obligations, and the complainant's rights, under the RPSI.

16. Amongst other things, Regulation 8(4) clarifies the definitions of a 'response' to a re-use request under the RPSI:

"(4) In this regulation, responding to a request for re-use means—

(a) refusing the request for re-use;

(b) making the requested document available to the applicant for re-use; or

(c) where conditions are to be imposed on re-use under regulation 12, finalising the offer to the applicant of the conditions on which re-use will be permitted”.

17. The DHLUC was therefore under a duty to either confirm to the complainant that he could re-use of the data, and provide any conditions which were applicable to that re-use, or it was required to issue a notification of refusal as required by Regulation 9 in order to refuse the re-use request.

Did the DLUHC permit the re-use of the data under the RPSI?

18. Regulation 7 of the RPSI states:

“Permitting re-use

7.—(1) Subject to paragraph (2), a public sector body must permit re-use where it receives a request made in accordance with regulation 6.

(2) A public sector body which is a library (including a university library), museum or archive holding intellectual property rights in a document may permit re-use of that document.

(3) Where a public sector body permits re-use, it must do so in accordance with regulations 11 to 16.”

19. The DLUHC’s response did not state that it permitted the complainant to re-use the data under the RPSI. It also did not set out any conditions under which the data may be re-used under the RPSI. Instead, its response referred to rights under the open government licence.
20. The Commissioner has therefore considered whether the DLUHC’s response met the requirements for an appropriate refusal of the re-use of the request.

Did the DLUHC’s response provide a compliant refusal notification to the request to re-use the data under the RPSI?

21. In order to refuse a request under the RPSI Regulation 9 provides that an authority must:

“Notification of refusal

“9.—(1) Subject to paragraph (2), where a public sector body refuses a request for re-use, it must notify the applicant in writing of the reasons for refusal.

(2) Where a public sector body refuses a request for re-use because these Regulations do not apply to the document by virtue of regulation 5(3) it shall not be obliged to comply with regulation 8(1) or paragraph (1) of this regulation.

(3) A notification under paragraph (1) must contain a reference to the means of redress available to the applicant.

(4) Subject to paragraphs (5) and (6), where a request for re-use is refused because these Regulations do not apply to the document by virtue of regulation 5(1)(b), the notification under paragraph (1) must identify, where known, the name of the person—

- (a) who owns the relevant intellectual property rights; or
- (b) from whom the public sector body obtained the document.

(5) The obligation in paragraph (4) does not apply where complying with it would contravene the 1998 Act.”

22. The DLUHC’s response did not state that it was refusing the complainant's request to re-use the data. It did not specify the reasons why it was refusing the re-use request, as required by Regulation 9(1).

The Commissioner's conclusions

23. Under the RPSI, the DLUHC was required to either:

- a) Permit the re-use of the information requested, and state any conditions it was applying to the re-use, or
- b) Provide a notificataion of refusal to permit the re-use, and provide its reasons for that refusal.

24. The DLUHC sought to provide its response by highlighting the complainant's right to use the information under the open government licence, and clarify the data protection obligations which apply to parts of the information. However, it did not specifically respond to the request which the complainant had made in accordance with its obligations, and the complainant's rights, under the RPSI.

25. The DLUHC neither provided the complainant with permission to re-use the data under Regulation 7, nor did it specifically refuse the request for re-use under the RPSI, as required by Regulation 9.

26. The Commissioner therefore requires the DLUHC to reconsider the request for information and to respond to the complainant, as required by the RPSI.

Right of appeal

27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.

29. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF