



Scottish Information
Commissioner

Decision 041/2007 Mr Jock Meikle and the Scottish Executive
<i>Request for names of recipients of Foot and Mouth Disease compensation payments</i>

Applicant: Mr Jock Meikle
Authority: Scottish Executive
Case No: 200502889
Decision Date: 6 March 2007

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Request for names of recipients of Foot and Mouth Disease compensation payments - withheld under section 38(1)(b) - whether information personal data - whether disclosure would breach the data protection principles – application of section 38(1)(b) upheld – Commissioner found that the Executive had partly failed to comply with FOISA

Facts

Mr Jock Meikle requested the names of recipients of Foot and Mouth Compensation payments. The Scottish Executive advised that it considered the disclosure of the information, without the consent of the individuals concerned, to be wrong and a breach of their privacy. Mr Meikle indicated that he was dissatisfied with this decision and sought a review. On review, the Executive indicated that the individuals' names (and addresses) were exempt under section 38(1)(b). Mr Meikle was dissatisfied with this response and applied to the Commissioner for a decision.

Outcome

The Commissioner found that the Scottish Executive (the Executive) had complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in withholding the names of the recipients of Foot and Mouth Disease payments together with the level of compensation received by each where the recipients were individuals or sole traders. The Commissioner found that the information was exempt under section 38(1)(b) of FOISA.

The Commissioner found that where the recipient was clearly a company then this information could be disclosed to Mr Meikle if he wished to receive it.



Appeal

Should either Mr Meikle or the Executive wish to appeal this decision, there is a right to appeal to the Court of Session on a point of only. Any appeal should be made within 42 days of receipt of this decision notice.

Background

1. On 19 August 2005 Mr Meikle wrote to the First Minister. Under the heading "Foot and Mouth compensation payments" Mr Meikle referred to the Executive's decision to publish the totals paid but without the name of the recipient and remarked on why they should be disclosed under FoI.
2. The Executive responded to this request on 2 September 2005. The Executive advised that it took its responsibilities under FOISA seriously but also had a duty to consider the position of the individuals concerned. It advised that after much consideration it had concluded that providing such information, without the consent of the individuals concerned, would be wrong and would breach their privacy.
3. The Executive advised that a majority of the recipients were individuals, and that their names and addresses were "personal data" by virtue of the Data Protection Act 1998 (DPA). The Executive advised that it would be unfair to disclose this information under the terms on which the information was obtained. The Executive also considered that the circumstances resulting in these payments being made were extremely traumatic for those concerned and that disclosure of recipients' details would be unfair and potentially damaging.
4. On 3 September 2005, Mr Meikle wrote again to the Executive. Mr Meikle indicated that he was unhappy with the refusal and asked that he be provided with the information requested. He indicated that the rationale was flawed and that as it was taxpayers' money the payments should be transparent. He also indicated that the equivalent information had been released in England. Mr Meikle requested an internal review of the Executive's decision under FOISA.



5. The Executive responded on 14 September 2005. It advised that it had understood Mr Meikle's initial letter to be a comment on the information published on the Executive's website rather than a formal request for information. The Executive apologised for this misunderstanding. It asked Mr Meikle to confirm that he was seeking the names and addresses of the individuals in receipt of FMD compensation payments together with the amounts.
6. The Executive advised that it had checked with its colleagues in the Department for the Environment, Food and Rural Affairs (DEFRA) and had been informed that no such release had been made. The Executive advised that each discrete payment had been published in the public domain. However, it advised that treating the names and addresses of individuals in the same manner without their consent would be unfair on the terms on which the information was obtained and breach their privacy. The Executive indicated that the majority of the recipients were individuals, and that their names and addresses were "personal data" in terms of the DPA.
7. The Executive confirmed that the release of such data would breach the first data protection principle by being unfair to the individuals concerned and was therefore exempt from disclosure by virtue of section 38(1)(b) of FOISA.
8. The Executive advised that it had noted Mr Meikle's request for review and subject to confirmation from him of the exact information he was seeking would carry out this review.
9. Mr Meikle responded on 20 September 2005. He advised that his request was for the release of the names of the farmers who received compensation payments for Foot and Mouth Disease. He indicated that the information he was seeking was a matter of record, part of the British government policy to support farmers in situations like those which occurred and a policy he, as an ordinary tax payer, supported. However, he objected to money being spent and refusing to say to whom it went.
10. The Executive responded to Mr Meikle's request for review on 13 October 2005. The Executive advised that the case had been looked at impartially, interviewing relevant officials and inspecting documentation. The Executive confirmed that individuals' names and addresses were regarded as "personal data" under the DPA. (It should be noted that the Executive considered the position of the addresses, despite the fact that Mr Meikle's request for review had only related to the names of the recipients.) The Executive confirmed that the information was exempt under section 38(1)(b) as disclosure of this data would contravene the data protection principles. The Executive indicated that the disclosure would be unfair in that payment recipients were given no choice over compliance with the culling policy and were given no indication that their personal data would be publicly disclosed.



11. Mr Meikle was dissatisfied with this response and on 17 October 2005 he applied to my Office for a decision. He indicated that he supported state compensation but considered that any taxpayer funded payment should be transparent, and available for inspection.
12. The case was allocated to an investigating officer

Investigation

13. Mr Meikle's application was validated by establishing that he had applied to me only after making an information request to a Scottish public authority and asking the authority to review its decision.
14. On 14 November 2005 the investigating officer contacted the Executive advising it that an application from Mr Meikle had been received and inviting its comments on the matters raised by the application. The investigating officer sought certain information from the Executive to assist with the investigation.
15. The Executive responded on 28 November 2005. It supplied the information requested and also set out its position on the matters raised by the application.

The Executive' submissions

16. The Executive advised that Mr Meikle's request had been made in response to the publication on the Executive's website of an anonymised list of payments made for compulsory slaughter of suspect livestock. This publication followed earlier FOI requests where the information was withheld but was accompanied by an offer to publish anonymised information. The Executive confirmed its view that the information was exempt under section 38(1)(b).



Executive's submissions on personal data

17. The Executive indicated that the list of compensation recipients comprised a mix of individuals, sole traders, partnerships and businesses. The Executive indicated that whilst it was aware that the information relating to businesses did not qualify as "personal information" the list of recipients did not include any distinction between the different types. The Executive advised that this was not relevant to the purposes - or the situation - in which the data was recorded. The Executive indicated that whilst a judgement could possibly be made on the basis of the title of the recipient concerned, this would not always be an accurate reflection of the true nature of the business and would in a number of places require a subjective decision to be taken.
18. The Executive indicated that legal advice it had obtained in respect of similar FOI requests for details of recipients of farming subsidies clarified that legal precedent established that personal data could include business information. The Executive advised that textbooks confirm that if an individual is a sole trader then information about that trader is likely to relate to him. The Executive indicated that the textbooks also confirmed that if an individual is a partner in a partnership, then partnership data might relate to that individual, although this might depend on the size and complexity of the partnership.
19. The Executive indicated that there were drawbacks in practically distinguishing between companies and other farmers, that is, in making the distinction reliant on an often artificial legal fiction which might or might not represent the reality of the farmer on the ground, highlighting the real difficulties in looking beyond the applicant's name. The Executive advised that there would be considerable work involved in establishing the exact nature of each of the 2,000 recipients. The Executive indicated that it therefore took the view that the information, of necessity, would have to be viewed in a holistic fashion as personal data.
20. The Executive advised that an estimate of the proportion of each type of business had been calculated in respect of the recipients of farming subsidy payments; in that case it had been considered that around 45% were likely to be sole traders, 45% partnerships and 10% Limited Companies, indicating that there was a small proportion whose information was not likely to constitute personal information.



Executive's submissions on the data protection principles

21. The Executive advised that it had also given consideration to whether release of this information would be fair for the purposes of meeting the data protection principles. It indicated that an assessment of the fairness or otherwise of disclosure included consideration of several factors; how the information was obtained, the likely expectations of the data subjects concerned, the effect disclosure was likely to have on the subjects, the content of the information concerned, and the public interest in disclosure.
22. The Executive advised that compensation was not awarded through application by farmers themselves, but that payments were made in response to the compulsory slaughter of animals. The information was therefore collated by the State Veterinary Service for the purposes of the distribution of compensation.
23. Compensation payments were not made with any indication to the recipients that information about the payment was likely to be made public. The Executive indicated that there was therefore no expectation on their behalf of anything other than confidentiality.
24. The Executive submitted that the provision of compensation to farmers in respect of their losses during the Foot and Mouth Disease outbreak was, and remains, a particularly distressing and emotive issue. The Executive indicated that there was some division within communities where the awarding or otherwise of compensation was considered by some to be unfair. The Executive explained that this was in a context where compensation was paid to those whose herd or flocks were culled, and not to those who retained their stock but endured additional costs through movement restrictions and were unable to send stock to market. Release of the details, the Executive indicated, would exacerbate these problems and in some instances re-open old wounds.
25. The Executive submitted that the financial nature of the information gave a clear indication of the value of the stock owned by each farmer and therefore the valuation of the farm business. The Executive argued that this could be sensitive information for those who were considering selling their business.
26. The Executive indicated that it had recognised the public interest in the payment of compensation to farmers by releasing information about the amounts of payments; it did not consider that there would be any further public interest in releasing details about individual recipients. Additionally, release of the information might be to the detriment of future data-gathering exercises if farmers lost confidence in the Executive's handling of their information and were subsequently unwilling to provide it.



Commissioner's analysis and findings

Scope of information requested

27. The Executive has treated Mr Meikle's request as a request for both the names and addresses of the recipients of Foot and Mouth Disease (FMD) compensation payments. However, in his original request and in his request for review Mr Meikle requested only the names of the recipients and this was confirmed in his letter of 20 September 2005 to the Executive. When an individual applies to my office under section 47(1) of FOISA I am only permitted to consider the information requested on review; the actual information requested cannot be expanded. Therefore for the purposes of this application I have only considered whether the names of the recipients can be released.

Background to information request

28. Mr Meikle has requested the names of recipients together with the amount of compensation received. Information about the individual payments made has been published in an anonymised form on the Executive's website. Mr Meikle objects to the names of recipients being kept confidential and considers that this information, because it concerns the use of public funds, should be transparent. In particular, he wishes to know who received these payments.
29. I consider it helpful to provide some background to the information being sought by Mr Meikle. Legislation provides for payment of compensation to farmers for the compulsory slaughter of animals at risk of FMD. The Animal Health Act 1981 requires the payment of compensation at the value of the animal immediately before the time it was affected with FMD or, for animals not showing clinical signs, the value at the time of slaughter.
30. In most cases, valuation is undertaken by a professional valuer prior to slaughter of the animals. During the 2001 FMD outbreak, values of animals tended to rise as more and more were slaughtered. Although Standard Valuations were introduced in an effort to speed up valuation and slaughter process, livestock owners retained the option of having individual valuation.



31. The Executive has advised that the names (and addresses) of recipients are being withheld on the basis that the information primarily relates to individuals and that therefore this information constitutes their personal data. It has argued that release of this information would be in breach of the first data protection principle in that it would be unfair. As a result, it has submitted that this information is exempt by virtue of section 38(1)(b) which states, in conjunction with section 38(2)(a)(i) of FOISA, that information is exempt information if it constitutes personal data and disclosure of the information to a member of the public otherwise than under FOISA would contravene any of the data protection principles.
32. In essence, section 38(1)(b) (read in conjunction with section 38(2)(a)(i)) has two components. An authority must first demonstrate that the information is personal data and, if it is, that disclosure of the information would contravene any of the data protection principles. Therefore I must first consider whether the information requested by Mr Meikle is personal information. Only if I consider that it is, am I obliged to consider whether the release of the information would contravene any of the data protection principles.

Does the information requested constitute personal data?

33. Section 38(5) of FOISA states that “personal data” has the meaning assigned to it by section 1(1) of DPA. That is:

“data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”
34. The Executive has advised that the list of compensation recipients comprises a mix of individuals, sole traders, partnerships and businesses. It advised that the list does not include any distinction between the different types of recipients. The Executive indicated that this was not relevant to the purposes, or the situation, in which the data was recorded.



35. The Executive has submitted that it is not possible to determine the identity or status of the recipient from the information held. The Executive advised that it would take an extensive amount of work to determine whether each recipient constituted a sole trader, a company or a partnership. During the investigation, I asked the Executive to indicate whether the status of the recipients could be determined by internal enquiries within the Executive or whether it would require external enquiries to be made. In the former case the Executive would be considered to hold the information for the purposes of FOISA and could only refuse to comply with the request under section 12(1) of FOISA if it could demonstrate that the supply of the information exceeded the prescribed limit of £600.
36. The Executive indicated that it would have to make external enquiries to establish the status of the recipients. It anticipated that this would probably entail writing to each of the recipients of the compensation payments asking them to indicate what the exact status of their business was at the time that the payments were made to them. Alternatively, the Executive indicated it would be obliged to search Company House records.
37. At my request, the Executive supplied me with a copy of the valuation form. This form was completed by the person providing the valuation of the livestock, the State Veterinary Service or SEERAD official and finally the farmer who was required to confirm that he accepted the valuation of his livestock. The completed form provides the value of the animals slaughtered in respect of each recipient and the name and address of that recipient. It does not seek information about the nature of the business; that is, whether it is a sole trader, partnership or company.
38. It is clear that the Executive does not hold information about the individual business status of the recipients in a reliable and accurate format.
39. As mentioned above, the Executive has advised that, on the basis of information it holds in respect of subsidies, it believes that the list comprises 45% individuals, 45% partnerships and 10% companies.

What information is being sought by the applicant?

40. Before I go on to consider whether the information requested by the applicant constitutes personal data, I consider it helpful to confirm the information being sought by the applicant. If I order the disclosure of this information members of the public will learn:
 - The names of farmers who had livestock slaughtered as a result of the 2001 FMD outbreak
 - The names of farmers who received compensation as a result of the compulsory culling policy



- The amount of compensation received by each farmer

Does information relating to partnerships constitute personal data?

41. The Executive has estimated that 10% of recipients are companies and 45% are partnerships. The Executive has indicated that it accepts that information relating to companies does not constitute personal data. The Executive submitted, however, that if an individual is a partner in a partnership then partnership data might relate to that individual although this might depend on the size and complexity of the partnership. The Executive has referred to “textbooks” in support of this contention but has not cited the specific source.
42. The Executive further submitted that it did not know from the information it held whether a payment made to a business was in fact paid to an individual. It argued that the fact that a business has a title such as “A Smith and Sons” did not in any way indicate how many individuals might be involved in the business and whether there might just be a single individual or any number of partners involved in such a business. As a result, it argued that it was not possible to say that payments to the business would not count as personal data. The Executive did not provide further submissions on how a compensation payment made to a partnership might relate to an individual partner.
43. I understand that the Executive is arguing that it cannot determine whether a particular recipient is a partnership or a sole trader or the number of partners within a partnership.
44. I can foresee that there may be cases where information about a partner in a partnership might constitute that individual's personal data; the salary an individual partner receives, for example. It seems to me, however, that a compensation payment made in respect of the business of the partnership will be made to the partnership as a whole rather than to an individual partner.
45. The definition of “personal data” requires two questions to be considered in this case:
 - Can a living individual be identified from the data held by the Executive or from that data and other information which is in possession of, or is likely to come into the possession of the Executive?
 - Does the data relate to a living individual?



46. In terms of the first question it is not possible to state the precise information that is in, or is likely to come into, the possession of the Executive regarding individual partners in partnerships who received these payments. It would be possible to find out who the partners were from public record (in the case of limited partnerships) and from details on the partnership's letters/communications. I also accept that if the partnership uses the names of the individual partners in the firm then it will be possible to identify living individuals from this information. To this extent, I accept that the individual partners might be identifiable from information held by the Executive or likely to come into its possession.
47. However, I also have to be satisfied that the information "relates" to a living individual. In the decision of *Durant v the Financial Services Authority* [2003] EWCA Civ 1746 (*Durant*) the English Court of Appeal took the view that for information to relate to an individual it had to be about him. In this case, where the payment has been made to the partnership, it is the partnership – not the individual partners – that receive the money. The money is a partnership asset to be dealt with in accordance with the terms of the partnership agreement and the laws of partnership generally. I take the view that details of payments made to a partnership are information about the partnership and, therefore, "relates" to the partnership rather than to the individual partners. As a result, I do not accept that details of FMD compensation payments made in respect of partnerships constitute personal data.

Does information about sole traders amount to their personal data?

48. The Executive indicated that it believed around 45% of the recipients to be sole traders. I understand that in using the term "sole trader" the Executive was indicating that in respect of these individuals the animals were retained in a business rather than in a domestic capacity. I also note from the Inland Revenue's website that all farming should be treated as the carrying on of a trade whether or not there is commercial motivation. For example, people who breed horses as a hobby are usually treated as farming and are therefore carrying on a trade, even though the badges of trade may, on balance, point to no trade existing.
49. The Information Commissioner, who has responsibility for data protection matters throughout the UK, has taken the view that data about sole traders is capable of being personal data, and details of agricultural subsidies to them can be interpreted as personal data under section 1(1) of the DPA because the data will relate to an identifiable living individual.



50. On the other hand, in decision 052/2005 I cited the case of Mr AAZ and the Department of Enterprise, Trade and Employment Case Number 98073, 2 OIC. 42, 47-48 (1999) in which the Irish Commissioner stated that “as a general proposition, I accept that much information about the business affairs of a sole trader will not constitute personal information about the individual concerned.” He noted some exceptions, however, where that information disclosed the individual’s income.
51. It is worth noting that in this case the payment received was not income but was rather a capital transfer.
52. I have also taken into account guidance I received from the Information Commissioner in respect of agricultural subsidies. The Information Commissioner is of the view that in considering whether the processing was fair the interests of individuals should be balanced against the public interest in disclosing payments made out of public funds, for example, to ensure they have been made correctly. A distinction can be drawn between matters which relate to a person’s business circumstances and those which are intrinsically personal. In this instance, the Commissioner felt that details of a subsidy from public funds paid to a person operating in a business capacity may be justified given these counter balancing concerns.
53. The distress caused to farmers as a result of the 2001 FMD outbreak has been much publicised and I am naturally all too aware that the outbreak was traumatic for those involved not only because of the financial harm suffered by many farmers but also because it necessitated the culling of livestock. Nonetheless, I am obliged to note that for the farmers livestock are business assets and that the information requested relates to a business activity carried out by the recipients.
54. While I consider that information relating to a business asset will not normally amount to an individual’s personal data I have taken into account the special circumstances surrounding the payments made in this case.
55. In the decision of Durant the Court of Appeal held that if information is to be viewed as personal data, the information has to be biographical in a significant sense, i.e. go beyond the recording of the individual’s involvement in a matter or event that has no personal connotations. The individual also has to be the focus of the information, rather than some other person with whom that individual may have been involved. The Court of Appeal summarised these two aspects as information affecting a person’s privacy whether in his personal or family life, business or professional capacity.
56. In all the circumstances of this particular case, I am satisfied that the names of the recipients of FMD payments together with the amounts received constitute personal data where this information relates to a sole trader.



57. Personal data is exempt from release under section 38(1)(b) of FOISA (read in conjunction with section 38(2)(a)(i)) only if the disclosure of the information to a member of the public would contravene any of the data protection principles contained in the DPA. Therefore I will go on to consider whether disclosure of this personal data would breach any of the data protection principles.

Consideration of the data protection principles

58. The Executive has submitted that disclosure of this information would be in contravention of the first data protection principle.
59. The first data protection principle states that personal data must be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met. (I have considered the definition of “sensitive personal data” in section 2 of the DPA and do not consider that the information sought by Mr Meikle falls into this category.)
60. The Executive indicated that the disclosure would be unfair in that payment recipients were given no choice over compliance with the culling policy and were given no indication that their personal data would be publicly disclosed. The Executive submitted that, in addition, none of the conditions in Schedule 2 of the DPA would be met and that, as a result, the processing of the personal data would breach the first data protection principle.
61. The Executive made a number of submissions as to why disclosure would breach the first data protection principle and I will address each of these in turn.
62. The Executive pointed out that compensation was not awarded through application by farmers themselves, but payments were made in response to the compulsory slaughter of animals. The information was therefore collated by the State Veterinary Service for the purposes of the distribution of compensation.
63. I accept that the farmers did not apply for compensation in this case but were rather awarded it as a result of compulsory slaughter. However, I do not consider that this in itself would make disclosure unfair. It seems to me that where significant public funds have been used to compensate businesses there would normally be an expectation that information about the amount awarded and the identities of the recipients would be made known to the public. However, I do accept that a distinction can be made between compensatory payments made as a result of government action over which the recipients had no control and funding applied for by the individuals themselves.



64. The Executive argued that compensation payments were not made with any indication to the recipients that information about the payment was likely to be made public. The Executive indicated that there was therefore no expectation on their behalf of anything other than confidentiality.
65. I have considered the valuation form supplied to me by the Executive. It contains no reference to the DPA and use of the data provided nor does it provide assurances of confidentiality in respect of the information supplied. I accept, however, that in these circumstances it could also be argued that in the absence of an indication to the contrary the recipients would have expected confidentiality.
66. I am of the view that in assessing the expectations of the recipients it is necessary to consider the publicity and media attention that accompanied the outbreak, the implementation of the compulsory culling policy and the compensation payments.
67. Given the high profile nature of the epidemic and the subsequent culling I find it likely that members of the public were aware of the farms in their locality affected by the epidemic and therefore those that had received compensation. Further, some media reports identified individual farmers and the amounts that they had been awarded as a result of the compulsory culling.
68. However, I accept that even where members of the public were aware of the affected farms in their locality it does not follow that those farmers would have expected the value of their culled cattle to be disclosed (and therefore the amount of compensation.) Further it is not clear whether the reports in the media of individual amounts received are based on conjecture or as a result of voluntary disclosure. I am of the view that simply because certain individual amounts have been disclosed it does not follow that all recipients would have expected the exact amount of compensation received in each case to be disclosed.
69. The Executive has submitted that the financial nature of the information gives a clear indication of the value of the stock owned by each farmer and therefore the valuation of the farm business. I am not persuaded by this argument for a number of reasons. Firstly, while this figure might arguably reveal the valuation of the livestock at the time compensation was paid, that is in 2001, it is unlikely to represent the situation in August 2005 when Mr Meikle's request for information was received.
70. Secondly, the value of the farm business will, it seems to me, amount to more than the value of the livestock but will include other aspects such as the value of the land, etc.



71. The Executive has argued that the provision of compensation to farmers in respect of their losses during the Foot and Mouth outbreak was, and remains, a particularly distressing and emotive issue. It advised that there was some division within communities where the awarding or otherwise of compensation was considered by some to be unfair. The Executive explained that this was in a context where compensation was paid to those whose herd or flocks were culled, and not to those who retained their stock but endured additional costs through movement restrictions and were unable to send stock to market. Release of the details, the Executive indicated, would exacerbate these problems and in some instances re-open old wounds.
72. In considering this matter, I have taken into account the various reports into the 2001 FMD outbreak and the way it was handled by government. The *Lessons Learned Inquiry into Foot and Mouth Disease Outbreak of 2001(2002)* and the *National Audit Office Report (2002)*, in particular, revealed serious problems in the system of compensation for slaughtered livestock. This payment amounted to the largest single cost to the taxpayer at £1.2 billion.
73. DEFRA reported that by April 2002, it had received a total of 1,430 complaints and disputes about valuations. The disputes were generally from farmers who complained that their valuations were low when compared to those obtained by their neighbours for similar types of animal.
74. It seems to me that the Executive's argument could, in fact, support disclosure of this information. Given the considerable public debate about the issue of compensation and its alleged inequity it could be argued that there is a need for transparency in this matter. Currently, the amount of compensation received by some farmers is a matter of speculation. It could be argued that such speculation will not be alleviated by simple refusal to disclose the information and that disclosure might allow for informed public debate.
75. The Executive has argued that release of this information would simply re-open old wounds. If I were to accept this argument, it is difficult to foresee when this information could be released. Likewise I suspect that if FOISA had been in force at the time when the compensation payments were made, the Executive would have argued that the information should not be disclosed on the grounds that the information was at its most sensitive.
76. The Executive has argued that farmers may not provide information for future data-gathering exercise if farmers have lost confidence in the Executive's handling of their information and are subsequently unwilling to provide it. However, in this case, farmers were obliged to provide the data in order to receive compensation. I do not see how disclosure in this case would affect future data-gathering exercises given that the payment of compensation was dependent on the supply of data.



77. There has been a high level of public interest in the payments made to farmers as a result of the 2001 FMD outbreak. The issue is still of public interest reflected in the Executive's recent decision to publish individual amounts in an anonymised form. I have considered carefully the arguments for and against release of this information discussed in paragraphs 60 to 76 above. I consider a number of points to be particularly pertinent. I am satisfied that at the time the compensation payments were made the recipients would not have expected details of the amounts received to be made public. Likewise I am satisfied that the passage of time would not have altered these expectations. In spite of the subsequent publicity surrounding the management of the outbreak and the administration of payments I accept that recipients would not have expected the individual amount of compensation received by each identifiable individual to be disclosed.
78. I also consider that compensation awarded as a result of compulsory slaughter can be distinguished from cases where farmers choose to apply for government subsidies.
79. Finally, I am aware that the FMD outbreak was a distressing and emotive event for the farmers involved and remains so. I have considered carefully the need for transparency in relation to the FMD outbreak and also, it seems to me, the public interest in disclosure of information relating to the administration of FMD payments. However, while there might arguably be an interest in the identities of the recipients of the highest awards I do not accept that the need for transparency extends to the identities of all individual recipients and their respective compensation. The public benefit in disclosing this information must be balanced against the interests of the farmers. In this case, the focus of the information is not on the government's handling of the outbreak or the administration of the payments but rather on the individual recipients.
80. In all the circumstances, I am satisfied that disclosure of the personal data requested by Mr Meikle would be unfair and therefore in breach of the first data protection principle.
81. As I have found that disclosure would be unfair I have not gone on to consider whether any of the conditions in Schedule 2 can be met.



Conclusion

82. It will be recalled that I have only accepted that information relating to individual sole traders is personal data. Information relating to those recipients that are companies is not personal data and I do not consider that the Executive has demonstrated why compensation awarded in this case would amount to the personal data of individual partners in a partnership. Therefore the application of section 38(1)(b) applies only to sole traders and not to information relating to partnerships or companies.
83. I have accepted the Executive's submission that it does not hold information which accurately identifies the precise legal status of each recipient. However, from the information which was provided to me during the investigation, it is clear that a small number of the recipients are companies, given the fact that the word "plc", "Ltd." or "limited" is included in their descriptions. In the circumstances, I see no reason for this information not to be provided to Mr Meikle, given that it is clearly not exempt in terms of section 38(1)(b). However, I am unable to order the release of information relating to the partnerships and the companies where their status is not clear to the Executive.
84. I recognise this to be unsatisfactory conclusion but in the circumstances I am unable to conclude differently. I would suggest, however, that in future it would be good practice for the Executive to amend its valuations forms, application forms etc. to clearly show whether an applicant for funding etc. is a sole trader, partnership or limited company.

Decision

I find that the Scottish Executive complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by withholding the names of the individuals and sole traders who were recipients of Foot and Mouth Disease payments together with the level of compensation received by each.

However, I find that the Executive failed to comply with Part 1 of FOISA in withholding the names of those companies where it is clear from their titles that the recipients are a company. In refusing to release this information in terms of section 38(1)(b), I find that the Executive failed to comply with section 1(1) of FOISA. As noted above, it is clear that only a small number of the recipients are companies and it may be that Mr Meikle will consider that this information is of no interest to him.



I therefore require the Executive to contact Mr Meikle within 45 days of receipt of this decision notice to provide him with the number of recipients with the words “plc”, “ltd.” or “limited” in their title and to ask him whether he wishes the names of these companies and the level of compensation paid to each to be released to him. If Mr Meikle contacts the Executive within a further month to confirm that he wishes to receive this information, the Executive shall release it to Mr Meikle within a further two weeks.

I also find that the Executive did not comply with Part 1 of FOISA in withholding the names of partnerships and companies whose status is unclear from their names. In refusing to release this information in terms of section 38(1)(b), I find that the Executive failed to comply with section 1(1) of FOISA. However, given the lack of clarity as to their status, I do not require the Executive to release any information in relation to this breach.

Kevin Dunion
Scottish Information Commissioner
6 March 2007