

To: Teri Clifton[teri.clifton@ofgem.gov.uk]
From: Karen Wood
Sent: 2013-10-07T11:56:21Z
Importance: Normal
Subject: RE: DETI Data Protection issues
Received: 2013-10-07T11:56:23Z

Hi Teri

I had a look at some previous emails on this subject matter and thanks for forwarding Paul's views on this which were helpful. Apologies for the late response I had planned to have this with you before you returned from leave.

I have seen legal's original advice prior to DETI's more detailed recent request for additional information. The key concerns then were that questions were being asked about who was the data controller and legal disagreement (that may be a little strong!) about the status of DETI and GEMA in relation to the NI RHI and ownership of the information. Ofgem legal acknowledged that DETI should be provided with information and that any request for information should be compatible with the DPA. At that time it was considered that routinely providing names and addresses may be considered unfair, referencing the privacy policy which did not specify how data on names and addresses would be used. It was however acknowledged that if a legitimate reason was provided for requiring the information that should be considered rather than as legal put it, '*satisfying Departmental curiosity as to the identity of applicants*'. (Suggest that last part is not shared with DETI.)

The privacy policy that all applicants have to sign up to includes in its list of uses of data provided that data could be used '*to meet our legal obligations in relation to periodic provision of information to the Department of Enterprise, Trade and Investment*'. The policy does not specify what information provided by the applicant will or will not be provided but acknowledges further that: '*We may also be required to disclose information, including information on installations or participants and other personal information we hold, to DETI upon request by them or to comply with legal obligations relating to the periodic provision of information to them. Where such information is provided to DETI in respect of large undertakings, details such as names, aid amount and intensity may also be passed onto the European Commission and published on their website.*'

Reviewing the reason that DETI are requesting this information is one that should be considered. They are responsible for providing other funding and being able to check this against other funding and RHI records seems a legitimate concern. However I do think that we will need to pass this by legal and I can compose an email to this effect on the basis of the latest request and Paul's advice. Is there any other information they are requesting that falls outside of the usual reporting information we provide that should be considered? Although the arrangements are different I know that there are currently discussions between DECC and Ofgem about providing full postcode information so I suspect that this could become another sticking point but I do not know enough about the progress of that piece of work to understand whether this has or has not yet been considered and any legal objections to this.

Happy to discuss and let me know how I can help further.

Karen

From: Teri Clifton
Sent: 07 October 2013 12:10
To: Karen Wood
Subject: FW: DETI Data Protection issues
Importance: High

Hi Karen

Do you have an update on this for me. I'm speaking to DETI at 2pm today and they will be asking

Thanks

Teri

From: Teri Clifton
Sent: 17 September 2013 10:30
To: Karen Wood
Subject: FW: DETI Data Protection issues
Importance: High

Hi Karen

I don't know if you've managed to get much further with legal on DETI being allowed data. I've been speaking to our DP expert and it seems to be going in circles.

Please can you let me know if you have a potential way forward.

If there is any chance you could come back to me today, that would be great as I'm away for the next 10 days.

Thanks

Teri

From: Paul Kitcher
Sent: 05 September 2013 10:34
To: Teri Clifton
Received from OFGEM on 11.05.2017
Annotated by RHI Inquiry

Subject: RE: DETI Data Protection issues

Yep they'd be holding a set of personal data of a specific type if we hand them the info so would have to be a data controller in their own right for this information. You need to check with legal if we have the right (or requirement) in law to give them the information. I'm not an expert on the RHI legislation so it's that which determines if we have to give them the data (or not).

p

From: Teri Clifton

Sent: 05 September 2013 10:28

To: Paul Kitcher

Subject: RE: DETI Data Protection issues

Thanks Paul

What they really want is the information at the very bottom – see below.

This is the information they are asking for on a regular basis:

The additional details that we would like access to are - name of applicant, postcode of applicant and the Standard Industrial Classification (SIC code) of business if held. The purposes for which we require the information are (i) to enable us to coordinate the RHI with other NI Department's funding initiatives to ensure there is no double funding (ii) monitoring take up in relation to our other projects e.g. gas extension and (iii) for the briefing of our Minister – Northern Ireland is a small place and our Minister regularly asks about individual companies

Do you think from a DP point of view as the main data controller we would be able to give them this or does that then kick off the separate data controller issue?

Thanks

Teri

From: Paul Kitcher

Sent: 30 August 2013 09:31

To: Teri Clifton

Subject: RE: DETI Data Protection issues

Hi Teri, answers in red below. I would however run this past our lawyers.

Paul Kitcher

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From: Teri Clifton

Sent: 29 August 2013 16:34

To: Paul Kitcher

Subject: DETI Data Protection issues

Hi Paul

I'm hoping you can help. We have been speaking to DETI about ownership of data and they have come back and asked the following, based on information they've had from their solicitors:

As regards the sharing of data, the Solicitors have asked whether GEMA is registered with the Information Commissioner's Office for the purposes of the NI RHI scheme – perhaps you could clarify this for us?

Not specifically for the NI Scheme no, however a generic registration is in place for RHI which I think would cover this data.

They also raise the possibility of two data controllers – any views?

Once any data copied to them then my view is it becomes their data. They would then need to have their own data registration.

In any case, it is their view that even were GEMA the sole data controller there is no impediment within the Data Protection Act 1998 which would prevent you sharing applicants details with DETI.

No there isn't however, if we remain the sole controller we'd want to put in place a data sharing agreement that set out the agreed responsibilities that were borne by both parties in data transfer and storage. This means that we are both confident that data is moved around securely and that DETI have at least the same security arrangements in place once we transfer the data to them.

With regard to the assessment of fairness they refer to

- (a) para 1.24 of the Guidance which clearly envisages GEMA sharing personal data with DETI for the purposes of monitoring – applicants could not be said to possess any expectation that their details were not liable (at some stage) to be disclosed to DETI.

Fine

- (b) The fact that no one has been misled or deceived as to DETI's involvement with the scheme when the information was collected

Fine Received from OFGEM on 11.05.2017

Annotated by RHI Inquiry