

To: Keith Avis[Keith.Avis@ofgem.gov.uk]
Cc: Michelle Murdoch[Michelle.Murdoch@ofgem.gov.uk]; Jacqueline Balian[Jacqueline.Balian@ofgem.gov.uk]; Morag Drummond[Morag.Drummond@ofgem.gov.uk]
From: Marcus Porter
Sent: 2013-01-15T15:42:22Z
Importance: Normal
Subject: RE: RHI Application form - privacy policy
Received: 2013-01-15T15:42:25Z

Keith

This information (name and address) supplied by a potential applicant when he asks us to supply a form, constitutes "personal data" for the purposes of the Data Protection Act 1998 – which for the most part extends to NI as well as GB.

As such, we as the "data processors" (those who may collect, handle and disclose information) for the purposes of that legislation) are obliged to comply with the obligations placed on processors by the Act, including the requirement to respect what are known as the "data protection principles".

If we fail to do so the Information Commissioner, who is appointed under the Act as its "watchdog" and whose task it is to ensure enforcement of the legislation, can criticise us privately and publicly and impose heavy financial penalties on us as specified in the Act. One of the most important of the principles is that personal data supplied to us by the "data subject" must be processed "fairly and lawfully" and only if certain specified requirements are satisfied.

The Act makes clear that, in determining whether processing is fair, regard is to be had to the method by which the data are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purposes for which the data are to be processed.

In asking for the form, the potential applicant of necessity has to supply to us his name and address and his natural expectation, presumably, is that they will be utilised by us for the purpose for which he provided it, namely as above and for no other purpose and that it will not be shared by us with anyone else, including another Government Department.

If we nevertheless do so then in my view we would be in breach of the above data protection principle.

The privacy policy to which Joanne refers does not get us off the hook here:

The purpose of the policy, as with similar policies maintained by other Government Departments and organisations, is to try to ensure that we comply with the above principle: If suitably worded it should leave an applicant in no doubt as to how his data will be used and, as he is deemed, simply by applying, to accept its terms, it should be possible for us to rebut any argument to the effect that we have processed data unfairly by dint of doing something which the policy informs the applicant we may do.

It is supplied as part of the NI RHI (and GB) application form and is not, therefore, relevant in relation to the *earlier* stage when all a person has done is to make himself a *potential* applicant by asking to be sent an application form. At that point he has not seen the policy at all and, even when he does see it, it won't be relevant to him until such time as he decides to apply.

A related point is that, in any event, the privacy policy included in the NI application form needs some adjustment: It is somewhat less comprehensive than the GB version, which was modified last year following discussion regarding it that took place between Legal and the GB Ops team with a view to ensuring that the above data protection principle would be met.

I will send out later a proposed revised version and it goes without saying that it needs to be included with all application forms, whether on paper or online.

As to the applicant who has just applied, they will need to be informed of the revised version and asked, before we process their application, to confirm that they are content.

When others apply later they will be taken, as the application form makes clear, to have agreed as part of that process to the terms of the privacy policy.

Marcus

From: Keith Avis
Sent: 15 January 2013 12:42
To: Marcus Porter
Cc: Michelle Murdoch; Jacqueline Balian
Subject: FW: RHI Application form - privacy policy

Marcus

I am assuming that as your proposed privacy policy statement is more detailed, the privacy policy in the application form, as detailed below, does not give us the ability to pass on specific applicant details to DETI. Grateful for your views so that I can go back to DETI.

Thanks

Keith

From: McCutcheon, Joanne [mailto:Joanne.McCutcheon@detini.gov.uk]
Sent: 15 January 2013 12:21
To: Keith Avis
Re: RHI Application Form OFGEM on 18.10.2017
Annotated by RHI Inquiry

Cc: Lindsay Goater; Gregor Stenhouse; Jacqueline Balian; Mary Smith; Hutchinson, Peter; Hepper, Fiona; Marcus Pons; The Hon. M. Caroch

Subject: FW: RHI Application form - privacy policy

Keith

Further to our discussion.

The application form (attached) already includes a Privacy Policy on pg 37, detailed below. Does this not already cover you to release the details of the person who has applied?

Joanne

Privacy Policy

The information you give to us in this form and any documents you provide will be used by Ofgem to process your application for accreditation for the Renewable Heat Incentive Scheme. This information will be held and processed in accordance with the Data Protection Act 1998. The Data Controller is Ofgem and the nominated representative is the Head of Information Management.

We must protect the public funds we handle, so we may use the information you have given us to prevent and detect fraud. As part of this process, your information may be supplied to a Credit Reference Agency to make sure the information you have given us is correct. We may also share this information, for the same reasons, with other government organisations involved in the prevention and detection of crime.

In addition, we may use your information, or disclose it to our agents, representatives or successors, or to other public bodies or third parties, for the following purposes:

- to carry out Ofgem's administrative functions in relation to the Renewable Heat Incentive Scheme;
- to enable us to inform you about, or provide literature or services about renewable heat and/or the Renewable Heat Incentive Scheme;
- to carry out statistical analysis or research and development in relation to the Renewable Heat Incentive Scheme;
- to provide information or data in relation to the Renewable Heat Incentive Scheme on an aggregated or non-attributable basis; and
- for any of the purposes permitted by the Data Protection Act 1998.

Details of an accredited installation, including its location, technology type, installation capacity, accreditation date and payments received will be freely available to the general public. All other information provided to Ofgem, including your account security information (user name and password) will be kept confidential.

By agreeing to these Terms and Conditions and (where applicable) using the website, you are consenting to the processing of any information provided for these purposes and to the publication of certain information as set out above.

Peter Hutchinson

Renewable Heat

Department of Enterprise, Trade & Investment

Netherleigh

Massey Avenue

Belfast, BT4 2JP

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Web: www.detini.gov.uk

The new website for the European Sustainable Competitiveness Programme for NI is now available - visit www.eucompni.gov.uk

Please consider the environment - do you really need to print this e-mail?

To: Keith Avis[Keith.Avis@ofgem.gov.uk]; Marcus Porter[Marcus.Porter@ofgem.gov.uk]; Michelle Murdoch[Michelle.Murdoch@ofgem.gov.uk]
Cc: Lindsay Goater[Lindsay.Goater@ofgem.gov.uk]; Jacqueline Balian[Jacqueline.Balian@ofgem.gov.uk]; Mary Smith[Mary.Smith@ofgem.gov.uk]
From: Morag Drummond
Sent: 2013-01-16T10:17:08Z
Importance: Normal
Subject: RE: RHI-P2-CR0068 (Privacy Policy)
Received: 2013-01-16T10:17:13Z

Marcus et al,
 I am happy with the proposed DETI changes in the text.
 Regards
 Morag

From: Keith Avis
Sent: 16 January 2013 08:56
To: Marcus Porter; Michelle Murdoch
Cc: Lindsay Goater; Jacqueline Balian; Mary Smith; Morag Drummond
Subject: RE: RHI-P2-CR0068 (Privacy Policy)

Marcus and as above

Key thing is that this provides us with the ability to provide applicant details to DETI, as this is what they will be asking from us moving forward. I am not sure if this would set an unhelpful precedent for Morag in supplying GB details to DECC, but DETI will certainly be pushing to see this.

There is a danger that in sharing the text with DETI we will get involved in protracted discussions on data ownership, but I think so long as we can be clear with some short supplementary commentary in the covering email then we should be able to move this forward quickly. The other question is one of clearance within Ofgem, and grateful for a steer from Mary and Jacqueline as to whether they would be happy for this to be sent to DETI or whether we need to go through Matthew first.

Rgds
 Keith

From: Marcus Porter
Sent: 15 January 2013 17:06
To: Michelle Murdoch
Cc: Keith Avis; Lindsay Goater; Jacqueline Balian; Mary Smith; Morag Drummond
Subject: RE: RHI-P2-CR0068 (Privacy Policy)

Michelle

Further to my email to Keith earlier today, I attach a revised version of our privacy policy showing what it seems to me are appropriate changes for DETI's purposes (NI privacy doc). The other document (NIprivacy2) is a clean copy.

Can you please discuss with Morag ASAP before going back to DETI with our proposed text and could she or you me know if she is content? Assuming she is, it is doc 2 that should be shared with DETI.

Morag: in the course of looking at this, I have come to conclusion that there are a couple of lines in our own privacy policy that need slight revision and I'll email separately about this.

Marcus

From: Michelle Murdoch
Sent: 14 January 2013 14:40
To: Marcus Porter
Cc: Keith Avis; Lindsay Goater; Jacqueline Balian; Gregor Stenhouse; Mary Smith
Subject: FW: RHI-P2-CR0068 (Privacy Policy)
Importance: High

Dear Marcus,

Hope you are well. I have a query regarding the NIRHI and Ofgem privacy policy. Joanne at DETI is looking for me to provide her with a list of those who have requested application forms for the NIRHI.

I have spoken to Morag who explained that unless they have a privacy policy with us like DECC do (attached), then we cannot furnish them with this information. Neither I nor Keith think we have. Could you please explain the situation re NIRHI in this respect? If at this point we cannot furnish this info – can we use the same privacy policy and replace DECC with DETI and if so, how long would it take to sort?

I look forward to your reply at your earliest convenience.

Kind Regards

Michelle

Received from OFGEM on 18.10.2017

Annotated by RHI Inquiry