

To: Samantha Turnbull[samantha.turnbull@ofgem.gov.uk]
Cc: Russell Ogilvie[Russell.Ogilvie@ofgem.gov.uk]; Michael Knight[Michael.Knight@ofgem.gov.uk]; Karen Boyle[Karen.Boyle@ofgem.gov.uk]
From: John Jackson
Sent: 2016-10-31T12:08:12Z
Importance: Normal
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]
Received: 2016-10-31T12:08:16Z

Hi Samantha,

You are welcome to my help at any time, and please don't hesitate to contact me, if I can be of any further assistance in this matter.

John

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From: Samantha Turnbull
Sent: 31 October 2016 12:04
To: John Jackson
Cc: Russell Ogilvie; Michael Knight; Karen Boyle
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Fantastic, that sounds great.

Thank you for all of your help on this.

I'll keep you posted, Samantha

From: John Jackson
Sent: 31 October 2016 12:03
To: Samantha Turnbull
Cc: Russell Ogilvie; Michael Knight; Karen Boyle
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Hi Samantha,

With the benefit of the background information you've just supplied, I now have a better understanding of why it is you wish to share the audit report with PSNI. Nonetheless, I still feel, having regard to the nature of their request for information, that we shouldn't share it with them unless they ask for it. That said however, I don't see there would be any harm in us confirming that we have now completed our investigation, into the allegation the property is domestic, and that it concluded there isn't any cause for concern. It may well be, that once that message has been received by PSNI, they will conclude their own investigation, or, they may ask to see the report (audit report) that was generated by our investigation. For the time being therefore, I agree that you should just send them a copy of the application.

I hope this help you.

Best wishes

John

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From: Samantha Turnbull
Sent: 31 October 2016 11:00
To: John Jackson
Cc: Russell Ogilvie; Michael Knight; Karen Boyle
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Thanks John,

This is helpful. The police appear to have received (although we have not had sight of it) the same anonymous letter that we received, which sparked our investigation and audit. Therefore the reason for wanting to share the audit report (or at least the existence of the report) is that the police contacted us to see if we had already investigated the allegation that the property was domestic, to avoid the duplication of work. It would therefore be helpful for us to let them know that we have done this work and that we do not consider there to be cause for concern.

If there's any way to do this, that would be great. If not, I'll just send them the application.

Thank you, Samantha

From: John Jackson
Sent: 31 October 2016 10:54
To: Samantha Turnbull
Cc: Russell Ogilvie; Michael Knight
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Hi Samantha,

1. Your attention is drawn once again to paragraph 3 of my email to you of 28 October 2016, timed at 15:53, where I stated that:

“There doesn't appear to be anything arising from the audit report therefore, or our exchanges with Stephen Brimstone, that suggests he is engaged in fraudulent activity. Other than perhaps maybe, that the auditor found that the building described as being for agricultural purposes has the appearance of a large domestic garage (see paragraph 3.1.2.4 of the audit report)? Are you able to shed any light on why the PSNI are investigating Stephen Brimstone for fraud?”

I would be grateful therefore, if you would confirm:

- (i) what is in the audit report that you feel would add value to the PSNI investigation into Stephen Brimstone? And,
- (ii) the reason(s) (if known to you) why PSNI are investigating Stephen Brimstone for fraud?

2. Further, you will recall, that at paragraph 7 of my email to you of 27 October 2016 timed at 16:15, I advised that:

“All along, it has been assumed from the request (see paragraph 4 above), that the application details will be relevant to an investigation into alleged fraud, because the information in the applications will be determinative of the payment by Ofgem of RHI payments. However, the request for information could be strengthened further, by asking the PSNI if that is in fact the link they are making, between the alleged offence they are investigating and the information they are seeking. This is just an observation, and I will leave it to you to decide whether or not to take this up with the PSNI.”

3. Thus far, all that the PSNI have told us, is that they are conducting an investigation into Stephen Brimstone for fraud. However, they have not told us why they are investigating him. And therefore, whilst we should strive to assist them with their investigation, we should only do so if we are convinced that they have good reasons to be investigating him.

4. Leaving aside the fact that the PSNI have not submitted a formal request to see the audit report, as stated above, I cannot yet see what value its disclosure would add to their investigation. Further, I would be reticent about prompting them to request to see it, in the absence of an explanation as to why they are investigating Stephen Brimstone. Indeed, if PSNI are unwilling to explain why it is they are investigating him, then against that background, their request as to “whether or not the named individual [Stephen Brimstone] has made any applications in relation to the RHI scheme” could be viewed as being speculative, in that it was made in the hope that it might just throw something up.

5. If you have any concerns about an application, or applications, made by Stephen Brimstone, if they are well founded, there are appropriate mechanisms for bringing them to the attention of the police. However, we would need to discuss them first.

I hope that this helps to clarify matters for you.

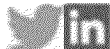
Best wishes

John

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From: Samantha Turnbull
Sent: 31 October 2016 09:12
To: John Jackson
Cc: Russell Ogilvie; Michael Knight
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Hi John,
Thank you for sending the below, it's really useful. I will send the police the application. Would it be possible to make reference to perhaps 'further work' that we've conducted, to prompt them to send another information request?
With kind regards,
Samantha

From: John Jackson
Sent: 28 October 2016 15:53
To: Samantha Turnbull
Cc: Russell Ogilvie; Michael Knight
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Hi Samantha,

1. I have read through the audit report, prepared by Ricardo on the site 'Stephen Brimstone', and note that it provides a rating of 'weak'. However, although it has identified a number of issues (hence the rating 'weak'), it does go on to say (on page 2) that there are:

“moderate issues with eligibility which can be rectified within a reasonable timescale.”
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Annotated by RHI Inquiry

2. I have also reviewed the correspondence passing between the Authority and Stephen Brimstone, which culminated in our letter to him of 23rd September 2016, in which it is stated that:

“Further to the information you have provided regarding the non-compliances associated with your installation, *we are satisfied that your installation is now compliant.*

Please continue to submit your periodic data readings to us as normal.”

3. There doesn't appear to be anything arising from the audit report therefore, or our exchanges with Stephen Brimstone, that suggests he is engaged in fraudulent activity. Other than perhaps maybe, that the auditor found that the building described as being for agricultural purposes has the appearance of a large domestic garage (see paragraph 3.1.2.4 of the audit report)? Are you able to shed any light on why the PSNI are investigating Stephen Brimstone for fraud?

4. The request for information that we have received from the PSNI states:

“I require the following information-

Whether or not the named individual [Stephen Brimstone] has made any applications in relation to the RHI scheme and if so what the particulars of these applications are.”

5. The answer to the question ‘Whether or not the named individual [Stephen Brimstone] has made any applications in relation to the RHI scheme’ must of course be ‘yes’.

6. In responding to the question ‘if so what the particulars of these applications are’, all that is required here, is for us to furnish the PSNI with a copy of any application(s) we have received from Stephen Brimstone.

7. There is a general restriction placed upon us, by section 105(1) of the Utilities Act 2000, which prevents us from disclosing information which relates to ‘the affairs of any individual or to any particular business’, without their consent. However, that restriction does not apply to any disclosure of information made ‘in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings’. And therefore, accepting that the request for information we have received from PSNI is in relation to a fraud investigation, we are at liberty to disclose the audit report and the exchange of correspondence that has passed between the Authority and Stephen Brimstone. However, we can only do so if, and only if, the PSNI make a formal request for those pieces of information under section 29(3) of the Data Protection Act 1998.

8. Having regard to the foregoing, my advice is that, at this juncture, we should (i) only confirm to the PSNI that we have received an application(s) from Stephen Brimstone, and (ii) furnish the PSNI with any application(s) we have received from Stephen Brimstone.

I hope that this helps, please do let me know if I can be of any further assistance to you.

Kind regards

John

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From: Samantha Turnbull
Sent: 28 October 2016 11:19
To: John Jackson
Cc: Russell Ogilvie
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Great thanks John- (i) and (ii) are in that folder- please just shout if you need anything else.

Thanks, Samantha

From: John Jackson
Sent: 28 October 2016 10:38
To: Samantha Turnbull; Teri Clifton
Cc: Karen Boyle; Counter Fraud; Michael Knight; James Robinson; Charles Hargreaves; Russell Ogilvie
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Hi Samantha,

At this stage, all I need to review are (i) the assessment, and (ii) the subsequent request for evidence. I don't need to review the audit report, or anything else at this juncture. The reasons I need to review the assessment, is to see whether there is anything in it that is covered by either (i) the original request for information, or (ii) the subsequent request for evidence. The reasons I would like to review the subsequent request for evidence are (i) I haven't seen it yet, and (ii) I do need to advise you on its form and content.

Kind regards

John

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From: Samantha Turnbull
Sent: 28 October 2016 09:06
To: John Jackson; Teri Clifton
Cc: Karen Boyle; Counter Fraud; Michael Knight; James Robinson; Charles Hargreaves; Russell Ogilvie
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Great, thanks John. Russell is kindly pulling together all of the documentation, so we will send you the audit report, subsequent information requests and evidence.

When I spoke to the police officer, she was keen to understand if we had done any investigations, in order to prevent the duplication of work, so I think the audit report and subsequent documents will be critical to them.

Thanks, Samantha

From: John Jackson
Sent: 27 October 2016 17:19
To: Samantha Turnbull; Teri Clifton
Cc: Karen Boyle; Counter Fraud; Michael Knight; James Robinson
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Hi Samantha,

1. The information request only covers (i) whether or not any applications have been made in relation to the RHI scheme, and (ii) particulars of any such applications. Therefore, although it might not seem right to withhold the audit report and the compliance team's assessment, if we were to furnish them with the audit report, in my view, to do so would go beyond the scope of the actual request.

2. Before I advise you on whether or not you should disclose the compliance team's assessment, I should be made aware of what is in the assessment, and what conclusions it has reached? Further, you state that you believe the assessment includes subsequent evidence *which was requested*. When and how was the subsequent evidence requested? It would be helpful if you would forward to me a copy of the subsequent request for evidence.

Kind regards

Received from OFGEM on 18.10.2017
John

Annotated by RHI Inquiry

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Follow us:



From: Samantha Turnbull
Sent: 27 October 2016 16:22
To: John Jackson; Teri Clifton
Cc: Karen Boyle; Counter Fraud; Michael Knight; James Robinson
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Thanks John,

This is really useful. Teri and I have spoken to Gareth about this request from the police, but I will email him now (cc'ing you), to ensure he is comfortable with us releasing:

1. the application
2. audit report
3. the compliance team's assessment of this (which I believe includes subsequent evidence which was requested).

Just to be doubly sure, please could you confirm that we're okay to release all of the above, as the DPA request only requests the application, but obviously it wouldn't seem right to withhold 2) and 3)?

Thanks again, Samantha

From: John Jackson
Sent: 27 October 2016 16:15
To: Samantha Turnbull; Teri Clifton
Cc: Karen Boyle; Counter Fraud; Michael Knight; James Robinson
Subject: RE: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Hi Samantha,

I have discussed this information request with Michael, and my advice is set out below.

Section 29 of the Data Protection Act 1998

1. I note that the PSNI is relying on the section 29 non-disclosure provisions. Section 29 only applies to the extent that the prevention / detection of crime etc. would be prejudiced by the application of the data protection principles. So before assessing whether section 29 is in play we need to assess what the answer to this would be on an ordinary application of Data Protection Principle 1 (DPP1). In that regard, we need to consider (i) the lawfulness of the request, (ii) the fairness of the request, and (iii) the purpose and nature of the information requested.

Lawfulness

2. The information requested is environmental information within the meaning of the EIR, and the EIR obligation to disclose provides a lawful basis for doing so. In addition, there should be good arguments available to us here, that a proposed disclosure, made for the purpose of a police service investigating whether a criminal act has been committed, in connection with the financial benefits available under the scheme, is within the scope of any implied power / the UA 2000 ancillary power. There is a very good argument, that if we made disclosure, in accordance with the request, it would therefore be lawful.

Fairness

3. Fairness is concerned (but not exclusively) with the reasonable expectations of the data subject. The following considerations, which address both process and substance, are relevant to making this assessment.

a. Method of obtaining information

The method by which information is obtained is relevant to establishing fairness. If data subjects are deceived or misled in relation to the use that Ofgem may make of their information then a disclosure is unlikely to be regarded as fair. Applicants to the NI NDRHI are provided with statements by Ofgem in relation to how their information will be used. They include statements in relation to the provision of information to third party government agencies for the purpose of preventing crime. The main Ofgem website terms and conditions (referenced in the NI NDRHI terms and conditions) make specific mention of police services. And, although it is not as clear as it perhaps could be, because it involves moving between, and cross referencing several different sets of conditions, it should be enough to manage the expectations of participants in relation to the disclosure of their information to the police. In that regard, would you (NI NDRHI / counterfraud) please check to confirm that the statements, particularly in relation to the provision of information to third party government agencies for the purpose of preventing crime, were in the same or similar terms when the data subject applied?

b. Expectation

I also believe that there is an expectation, from people applying for public money, that their information may be shared between public bodies for purposes which include preventing and detecting crime (including fraud) associated with public money.

c. Impact on the data subject

In assessing whether a disclosure of information is fair, it is appropriate for public authorities to take account of the effect of the disclosure on the data subject. In this respect, the impact of the disclosure of the information, on the data subject, to the PSNI is potentially significant. However, as long as the privacy statements are the same or similar to those that we (legal) have advised you on in the past, we are on good grounds in respect of fairness.

Information Requested

4. In accordance with schedule 2 and 3 conditions. The PSNI say in the "form 81" document that the disclosure is required for the purpose of investigating an allegation of fraud in connection with the RHI. The information requested, is whether the data subject has made any applications to the RHI scheme, and if so, what the particulars of those applications are. It is reasonable for us to take these statements at face value, and on that basis any or all of schedule 2 conditions 5(a), (d), 6(1) and schedule 3 conditions 7 and 7A are met in respect of the application of DPP1 referred to in paragraph 1 above.

Advice

5. Based on (and subject to) what is stated above, there are strong arguments, that the disclosure to it, of the information requested by the PSNI, would be consistent with the DPA 1998.

6. You should communicate our reasons for the decision to disclose the information to the PSNI, briefly along the lines that having received their request, and having regard to their statement that the information is required for the purpose of investigating an allegation of fraud in connection with the NI NDRHI, we have decided that the release would be consistent with the requirements of the DPA.

7. All along, it has been assumed from the request (see paragraph 4 above), that the application details will be relevant to an investigation into alleged fraud, because the information in the applications will be determinative of the payment by Ofgem of RHI payments. However, the request for information could be strengthened further, by asking the PSNI if that is in fact the link they are making, between the alleged offence they are investigating and the information they are seeking.

This is just an observation, and I will leave it to you to decide whether or not to take this up with the

PSNI.

8. You have indicated in your email below, that this is a sensitive case, and it is important therefore that we have a full audit trail leading up to any disclosure to the PSNI. And, that relevant senior managers are aware of any disclosure decision. In that regard, I note that although Gareth John was mentioned in the email exchanges he has not been copied in to them. I think this matter is something he should be made aware of. Please confirm that the matter has or will be brought to Gareth's attention.

I hope that this helps. But should you require further clarification, please do not hesitate to contact me.

Kind regards

John

John Jackson

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Follow us:



From: Samantha Turnbull

Sent: 27 October 2016 08:52

To: Teri Clifton; John Jackson

Cc: Karen Boyle; Counter Fraud

Subject: Northern Ireland Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Importance: High

Hi John,

Sorry to chase, given the sensitivities around NI, would you have a chance to have a look at this today?

Thanks, Samantha

From: Samantha Turnbull

Sent: 26 October 2016 08:51

To: Teri Clifton; John Jackson

Cc: Karen Boyle; Counter Fraud

Subject: Police Data Protection Request [OFFICIAL-SENSITIVE Internal Only]

Morning both,

Please see attached the DPA request from the Northern Irish police.

John- as discussed, this is in relation to NI NRHI, so is high profile in itself, but doubly so because the participant is the Special Adviser to the First Minister. Alongside the application, we also have an audit report and I think we'd want to provide the compliance team's assessment of this (which I believe includes subsequent evidence which was requested). Please could you confirm you're happy for us to release this info? Teri, are you and Gareth also happy for us to proceed if John is satisfied?

Thanks, Samantha

Samantha Turnbull

Counter Fraud Senior Manager

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From: Personal information redacted by the RHI Inquiry

Sent: 26 October 2016 08:43

To: Samantha Turnbull
Personal information redacted by the RHI Inquiry

Cc: Personal information redacted by the RHI Inquiry

Subject: OFFICIAL [PARTNERS]: FW: OFFICIAL [PSNI ONLY]: FW: RHI information

This e-mail has been marked OFFICIAL [PARTNERS]

Samantha

Please see the attached request that I have approved.

Thanks

Personal information redacted by the RHI Inquiry

Ballymena CID

From: Personal information redacted by the RHI Inquiry

Sent: 25 October 2016 14:53

To: Personal information redacted by the RHI Inquiry

Subject: OFFICIAL [PSNI ONLY]: FW: RHI information

This e-mail has been marked OFFICIAL [PSNI ONLY]

Personal information redacted by the RHI Inquiry

Would you please authorise the attached Form 81 and forward to Samantha. This relates to the RHI Fraud,

Regards

Personal information redacted by the RHI Inquiry

From: Samantha Turnbull [mailto:samantha.turnbull@ofgem.gov.uk]

Sent: 25 October 2016 14:25

To: Personal information redacted by the RHI Inquiry

Cc: Counter Fraud

Subject: RHI information

Hello Personal information redacted by the RHI Inquiry

I hope all's well. I'm sorry for the delay and about the red tape, but our legal team have asked that you make a DPA request to allow us to release any information. Would it be possible for you to let us know statutory basis for the request?

With kind regards,

Samantha

Samantha Turnbull

Counter Fraud Senior Manager

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