

From: [Redacted]

30th June 2017

To: ITECS SLT

Purpose

1. To make you aware of some privacy risks associated with the planned online publication of Freedom of Information (FOI) and Environmental Information Regulations (EIRs) releases and actions being taken to mitigate them.

Priority

2. Priority is **routine**.

Background

3. To support the First Minister's ambition to further increase transparency and accountability, all Freedom of Information (FOI) and Environmental Information Regulations (EIRs) releases, will be published on the [gov.scot beta site](#) from 3 July 2017.

4. The FOI Unit supported by Corporate Communications will be responsible for the publication.

5. This initiative has been announced publically and work is on-going to ensure a robust process is put in place to support implementation. IA&R Data Protection team are feeding into that process.

Discussion

6. While we support this initiative, we also acknowledge and have highlighted the potential associated privacy risks.

7. The majority of releases will be limited to business information, but we are aware that in some previous cases personal data has been released in responses – usually the personal data of the requester. This can happen in cases where the requester has asked for information which contains some of their own data. Subsequent publication of those responses would breach our data protection obligations. For example, I have included, at Annex A, an extract of a response by RPID which included the personal data of the requester. The attachments included details of the complaint and related documents.

8. Whilst we acknowledge that this may only relate to a limited number of cases, we feel that the potential impact of a disclosure could be significant given the public/press interest in FOI.

9. It is our view that the UK Information Commissioner would be likely to be very critical of any personal data breach through publication, and it could result in a financial penalty in addition to reputational damage to the Scottish Government.

Actions underway

10. The FOI Unit and Corporate Communications are raising awareness of the initiative. They are preparing guidance specific to this role, which will include reference to the DPIA guidance detailing how to identify personal data.

11. The DPIA team has discussed our concerns about the privacy risks associated with this initiative with FOI Unit and Head of Constitution and UK Relations Division (CUKR). We have also advised that they complete a PIA. We will continue to provide guidance and support as required.

12. For information the potential privacy risks and proposed mitigation are detailed at Annex B.

Conclusion

I ask you:

13. To be aware of the publication of all Freedom of Information (FOI) and Environmental Information Regulations (EIRs) releases and the potential privacy implications associated with this initiative.

Annex A

Our ref: FOI/17/00659
15 May 2017

Dear Mr

Thank you for your request dated 21/03/2017 under the Freedom of Information (Scotland) Act 2002 (FOISA). I apologise that this response has been delayed. You asked for information about the handling of your complaint and for information relating to other applicants affected, as below:

- *the original report written by [Redacted], dated September 2016*
- *all iterations of the report between then and 23 February 2017*
- *copies of all communication regarding my complaint, including changes to the report especially emails - within SGRPID. This will include [Redacted]; [Redacted] and [Redacted] (SGRPID SAO, Inverness) , the Chief Agricultural Officer and possibly others*
- *a copy of the internal approval of the report, as I have been told it was signed off by senior management.*
- *how many other applicants for Basic Payment Scheme have suffered the same problem I have, and have received reduced or no payments due to ticking the wrong boxes for entitlement allocation on the Rural Payments on-line website?*
- *out of those applicants who have received their full entitlement to BPS by using a combination of one or more of the three routes to new entitlement in 2015 - how many used a professional agent, and how many applied themselves?*
- *was separate or additional guidance given to professional advisers on how to access new BPS entitlement for their clients?*

I enclose a copy of some of the information you requested.....

ANNEX B – Risks identified and appropriate solutions or mitigation actions proposed

Risk	Solution or mitigation
Staff publishing responses are not appropriately trained in data protection	<ul style="list-style-type: none"> • All staff to complete data protection e-learning. DPIA team to provide additional post specific training if required. Privacy issues and handling forming a key part of staff training.
Personal data of the applicant inappropriately published in either the response letter or information released	<ul style="list-style-type: none"> • FOI Unit and Corporate Communications are preparing job specific guidance in addition to the existing data protection and FOI unit guidance and established good practice • Initial Corporate Communications check of all drafts prior to publication • Appropriate training provided to allow staff to identify high risk cases and additional checks put in place for these cases • Publications limited to 2MB per attached document
Personal data of a third party inappropriately published in either the response letter or information released	<ul style="list-style-type: none"> • FOI Unit and Corporate Communications are preparing job specific guidance in addition to the existing data protection and FOI unit guidance and established good practice • Initial Corporate Communications check of all drafts prior to publication • Appropriate training provided to allow staff to identify high risk cases and additional checks put in place for these cases • Publications limited to 2MB per attached document
Personal data released in error due to maladministration during the process of publication e.g. Incorrect documents attached etc.	<ul style="list-style-type: none"> • Initial Corporate Communications check of all drafts prior to publication • Staff appropriately training to effectively manage process
Officials names and contact details published within the response letter or information released.	<ul style="list-style-type: none"> • Established risk based approach to publication of information relating to officials acting in their official capacity.