

LAWFULNESS / FAIRNESS TEST

DAERA/2019-286

FOI Act 2000 - Section 40(2)

Request Details:

A list of licensed riding establishments.

LAWFULNESS

Please identify the lawful bases for processing?

The lawful bases for processing are set out in Article 6 of the GDPR. At least one of these must apply whenever you process personal data:

- Consent:** the individual has given clear consent for you to process their personal data for a specific purpose.
- Contract:** the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.
- Legal obligation:** the processing is necessary for you to comply with the law (not including contractual obligations).
- Vital interests:** the processing is necessary to protect someone's life.
- Public task:** the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.
- Legitimate interests:** the processing is necessary for your legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)

FAIRNESS

Possible likely consequences of disclosure:

Releasing third party personal data could put the sole traders at risk of harm and/or negative publicity e.g. from animal activists or protesters who may wish to target these premises. DAERA may be seen as promoting or being associated with a certain product or business by releasing potential buyer information to a company.

The reasonable expectations of the individuals, taking into account expectations both at the time the information was collected and at the time of the request –

There is a reasonable expectation that third party personal details are maintained and protected under the regulations of the Data Protection Act 2018. Any further processing of the data could breach the second principle of the DPA. The persons have provided the information for obtaining a licence and were not advised at the time of any other use for their personal information. There is no section on the riding establishment licence application form that informs the applicant the information may be released for marketing purposes.

The nature of the information itself

Licence for riding establishments – the licence contains name and addresses of sole traders.

The circumstances in which the information was obtained

The information was obtained for the purpose of obtaining a licence through DAERA. The license application is only completed once, at the start of the licensing process. The privacy notice informing the applicant of DAERA's information handling protocol is only clearly presented to the license holder at the time of application. This information is not included in the annual licence renewal. Some licence application forms have been completed before the FOI Act and GDPR were in place. DAERA doesn't have clear consent from all license holders that personal info gathered may be used other than for auditing or crime prevention.

Whether the information has been or remains in the public domain –

This information is not in the public domain.

Any legitimate interests in the public having access to the information versus the rights of the data subject –

Information on licenced riding establishments should be available for the public to see, however in the cases of sole traders, DAERA has not explicit permission from the business owners to release this information. Advice from our Information Management Branch has said that we should not release this information for sole traders.

Conclusion

Having examined the Data Protection Act and completed the "Fairness Test", I would consider it unfair and unreasonable to disclose information relating to personal information of the third party without their knowledge. I consider it equally unfair to disclose information pertaining to a third party who has an expectation that their dealings with the department will remain confidential and in line with their own data protection rights. Only sole traders have been taken out of list but all other information has been provided for riding establishments that are currently licenced.