

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 September 2013

**Public Authority:** Forest of Dean District Council  
**Address:** High Street, Coleford  
Gloucestershire  
GL15 4AA

#### Decision (including any steps ordered)

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1. The complainant requested copies of inspection reports for a dog breeding establishment. The inspections were carried out pursuant to renewing the establishment's licence under the Breeding of Dogs Act 1973. The public authority withheld the reports on the basis of the exemption at section 40(2) FOIA.
2. The Commissioner's decision is that the public authority was entitled to withhold the inspection reports on the basis of section 40(2).
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 15 April 2013, the complainant wrote to the public authority and requested information in the following terms:  
*'I should be grateful if you would supply copies of each of the last three license reports in relation to Hagloe House farm dog breeding establishment. These to include the most recent 're-inspection' report, the earlier inspection undertaken by the newly appointed veterinary practitioner in late February/early March 2013 and the previous last licensing inspection – presumably undertaken during 2012...'*
5. The public authority responded on 2 May 2013. It claimed that the information requested was exempt on the basis of section 40(2) FOIA.

6. The complainant requested an internal review on 10 May 2013. On 31 May 2013 the public authority wrote to the complainant with details of the outcome of the internal review.

### **Scope of the case**

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7. On 12 June 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He challenged the application of section 40(2) on a number of grounds which are reproduced further below.
8. The scope of the investigation therefore was to determine whether the public authority was entitled to withhold the information requested<sup>1</sup> on the basis of the exemption at section 40(2).

### **Reasons for decision**

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#### **The Disputed Information**

9. The disputed information consists of three inspection reports following inspections by the public authority's Veterinary Licensing Team on Hagloe House Farm in February 2012, February 2013 and April 2013.
10. The public authority explained that because the planning application made by the couple who own Hagloe House for their buildings to be converted to dog kennels is on its website, the public is largely aware of who the owner/occupier of the premises is and that the premises is operated as a dog breeding establishment. The complainant also explained that the premises has been licensed by the public authority under the Breeding of Dogs Act 1973 for a number of years, and that the planning application (in 2013) was a retrospective one for conversion of agricultural buildings to dog kennels.
11. What the public is however not privy to is the information contained in the inspection reports which informed the public authority's decision on whether the data subjects (i.e. the couple who own Hagloe House) dog breeding licence should be renewed.

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<sup>1</sup> Hereinafter referred to interchangeably as 'the disputed information'

## Section 40(2)

12. Information is exempt from disclosure on the basis of section 40(2) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

13. Personal data is defined in section 1 of the DPA as follows:

*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual.'*

### Is the disputed information personal data?

14. The public authority submitted that the disputed information is personal data because living individuals (i.e. the couple who own Hagloe House) can be identified from it.

15. The public authority further submitted that the disputed information relates to Hagloe House and the practices carried on by the data subjects on the premises. It is therefore also their personal data for that reason.

16. The Commissioner considers that the disputed information is the personal data of the couple who own Hagloe House because it clearly identifies them. It is also their personal data because the premises is linked to them by virtue of them being its owners. The inspection reports contain information about the structure of the premises and the practices on the premises in relation to its suitability or otherwise for dog breeding. That information relates to them as owners of Hagloe House. The Commissioner therefore finds that the disputed information is the personal data of the data subjects within the meaning in section 1 of the DPA.

17. The complainant did not challenge the public authority's position that the disputed information is the personal data of the data subjects.

### Would the disclosure of the withheld information contravene any of the data protection principles?

18. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

19. The public authority is of the view that disclosure would contravene the first data protection principle. The reasons it gave for its position are reproduced further below.

20. The first data protection principle states:

*'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –*

*At least one of the conditions in schedule 2 [DPA] is met....'*

#### *Public authority's arguments*

21. The data subjects have held a dog breeding establishment licence since 2007. The licence is annual and subject to a yearly renewal application and a veterinary inspection. It is also subject to ad-hoc inspections by the public authority's officials throughout the year. Until this year (2013), the public authority has never been called upon to release copies of the veterinary reports or provide any detailed information in relation to the operation of the breeding establishment. As such the data subjects would hold a reasonable expectation that the disputed information is for the public authority's use only and is not disclosed to third parties. That would be a legitimate expectation for the data subjects to hold in the circumstances.
22. The data subjects have not consented to the disclosure of the disputed information. They are in fact of the opinion that the inspection reports are confidential between themselves and the public authority and were indeed advised that it would not be shared with third parties.
23. There is however a legitimate public interest in understanding how and why the public authority makes decisions. It is also accepted that there is a public interest in the regulation of dog breeding establishments. However, the disputed information relates to the private affairs of the individuals concerned and this requires greater protection than if the data subjects were carrying out a function of a public nature.
24. Against that is the legitimate public interest in the public authority being transparent and accountable in conducting its dog breeding licensing function. However, the public interest in the regulation of dog breeding establishments is already adequately protected by the fact that there is a requirement for a licence and that there are various checks and balances that must be satisfied before a licence can be issued. As such the public interest in disclosing the disputed information does not outweigh the potential adverse consequences to, or expectation of privacy of, the data subjects.

25. Disclosing the disputed information would be unfair in view of the above reasons. In effect, disclosure would contravene the first data protection principle.

*Complainant's arguments*

26. The complainant challenged the public authority's claim that disclosing the disputed information would be unfair and therefore in contravention of the first data protection principle. The relevant parts of his arguments (i.e. in so far as the fairness element of the first data protection principle is concerned) are reproduced below.
27. The planning application strongly indicated inadequate facilities to meet the needs of the dogs kept.
28. *'There has been considerable concern raised about the adequacy with which licensing inspections of the dog breeding establishment at Hagloe House Farm have been conducted by the authority in recent years. These concerns were raised by a newly appointed veterinary practitioner who, I understand, found the conditions unsuitable for the keeping of dogs for breeding.....recommendations were made for a series of improvements for the premises to continue to be licensed. These required improvements, based on information provided in emails and in telephone conversations with licensing officials and management....were understood to be substantial.'*
29. *'.....a follow-up inspection took place after which the authority asserted that licensing conditions were now being met. (Though this was surprising in light of previous statements from the authority that a series of planned improvements over a longer timescale would be required.)'*
30. The request was made with a view to assessing the previous adequacy of licensing overview of the premises by the public authority. There is legitimate public interest in determining how an authority has conducted inspections and reported these.
31. The licensing process is one which relates to the business/professional activity of a breeder. This reduces arguments for non-disclosure based on personal privacy. The public have a right to see that appropriate standards are being upheld and to scrutinise these most particularly where concerns have been raised. It is not obvious that any significant prejudice would arise for the breeder by disclosure.
32. *'A formal complaint has been made to the authority concerning past failures in licensing standards with respect to Hagloe House Farm.....The complaint was pursued to 'Stage 3' (ie the highest level) within the authority.....the complaint was rejected.'*

*Commissioner's assessment*

33. The Commissioner agrees with the public authority that in the circumstances, the data subjects would have a reasonable expectation that the inspection reports would only be used to inform the public authority's decisions about whether or not to renew their dog breeding licence. They would not expect, quite reasonably, in the circumstances that it would be disclosed to the public. Any perceived negative comments/findings in the report could be construed in a manner not intended by the licensing authorities who ultimately have the expertise to decide whether or not a licence should be issued or renewed. It would be detrimental to the data subjects' business for that to happen. In that sense, it is irrelevant that the disputed information relates to their professional activity rather than private lives per se. That is why they would reasonably expect that the disputed information is shared only with those who need to see it in order to make a decision about the renewal of their licence.
34. The next determination the Commissioner has to make in the context of the fairness element of the first data protection principle is whether the legitimate interests in the public having access to the disputed information outweighs the rights and freedoms of the data subjects. The Commissioner has carefully considered the complainant's arguments in this regard. He has also carefully considered the disputed information to assist him in making a determination as to where the balance lies.
35. The fact that a follow-up inspection was carried out on Hagloe House in April 2013 clearly indicates that the complainant's concerns should not be dismissed. However, the Commissioner believes that in order to find that the rights of data subjects to conduct their business in private (under the supervision of the licensing authority which ensures that they meet the required standards) should be set aside, he has to be satisfied from the disputed information that the actions of the public authority (i.e. the licensing authority) require public scrutiny. Although the complainant clearly does not believe that the data subjects could have met the conditions of their licence in April 2013, soon after the inspection February 2013, he has not provided any compelling evidence to show that was indeed the case. He would instead like to scrutinise the inspection reports for himself following disclosure under the FOIA to ensure that the inspections were adequate.
36. Given the effect of disclosure under the FOIA – i.e. to the public at large, the Commissioner does not consider that it would be the most appropriate way for the complainant to assess the adequacy of the inspections. As mentioned, the privacy rights of the data subjects also have to be protected.

37. Importantly, the Commissioner does not consider that the inspection reports contain any information which leads him to find that the legitimate interests of the public in accessing the reports outweigh the rights and freedoms of the data subjects. The Commissioner cannot go into details as to why he believes this to be case because to do would reveal some of the contents of the inspection reports and that would defeat the purpose of relying on the exemption in the first place.
38. In view of the above reasons, the Commissioner accepts that disclosing the disputed information would be unfair to the data subjects and consequently in contravention of the first data protection principle.
39. The Commissioner therefore finds that the public authority was entitled to withhold the disputed information on the basis of the exemption at section 40(2).

## Right of appeal

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40. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

41. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
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