

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 October 2015

Public Authority: Medway Council

Address: Gun Wharf
Dock Road
Chatham
Kent ME4
4TR

Decision (including any steps ordered)

1. The complainant has requested details of dog grooming conducted at a specific property. Medway Council disclosed some information and stated that other information falling within the request scope was not held.
2. The Commissioner's decision is that Medway Council has correctly confirmed that it does not hold the requested information and that it complied with section 1 of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 13 July 2015, the complainant wrote to Medway Council (the "council") and requested information in the following terms:

"A copy of the written log of dogs groomed at 6 Bowman Close ME5 8LD under MC/14/0928 planning consent condition 3 between 1 January 2015 to 13 July 2015. Please include Date, Dog, Start Time, Finish time, Service for each dog groomed."

5. The council responded on 13 July 2015. It disclosed relevant information for the period 1 January 2015 to 5 January 2015. The council confirmed that no further information was held.
6. Following an internal review the council wrote to the complainant on 17 July 2015. It stated that the last log it had requested from the party in question covered the period July 2014 to 5 January 2015. It confirmed that it had not asked the individual to provide subsequent logs and so it did not, therefore, hold the information.

Scope of the case

7. On 17 July 2015 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly confirmed that it did not hold any additional information.

Reasons for decision

Section 1 – duty to provide information held

9. Under section 1(1) of the FOIA, public authorities have a duty to confirm or deny whether requested information is held and, where it is, to provide it to a requester.
10. Information retained by an authority in any recorded form is held for the purposes of the FOIA¹.
11. The council has explained that the request relates to a property owner's (the "groomer") retrospective application for a change of use for their dwelling to a dog grooming parlour. It confirmed that approval had been granted subject to a number of conditions, including restrictions over the hours of use and the maximum number of dogs. The groomer was also required to maintain a written log of all dogs groomed at the premises and to provide this to the council within 48 hours of it being requested.

¹ Except where, under section 3(2)(a), information is held by an authority on behalf of another person.

12. The complainant requested logs for the period 1 January 2015 to 13 July 2015. The council has stated that it had neither asked the groomer for nor obtained the grooming logs for the period 6 January 2015 to 13 July 2015. It, therefore, maintains that the information is not held.
13. The complainant has argued that, as the council has required the groomer to record the information and the council needs the information to establish whether the planning conditions have been satisfied, the information is, therefore, held by the groomer on behalf of the council.

Section 3(2) – when is information held?

14. Section 3(2)(b) of the FOIA clarifies that information is held by a public authority if “....it is held by another person on behalf of an authority.”
15. The Commissioner has considered whether the requested information is held by the groomer on behalf of the council.
16. The Commissioner’s guidance clarifies that there are a number of scenarios in which information is held by another party on behalf of a public authority (and therefore held by the authority for the purposes of the FOIA). These include situations where authorities use contracted document storage or local archives or record offices for the keeping of their records. Also, in cases where there is a contractual arrangement between an authority and a third party, the terms of the contract might indicate whether information held by the third party is held on the authority’s behalf².
17. In order to establish the relationship between the council and the groomer and to determine whether any of the scenarios identified in his guidance applied, the Commissioner asked the council whether it considered that the information was held on its behalf.
18. The council agreed that it was likely that the groomer had maintained some form of log, even if for its own accountancy purposes. It confirmed that, should the groomer submit an application in relation to the continuance of grooming on the premises, the council would ask for the log to be provided in consideration of the application. It also explained that, should the applicant continue the use but not submit an application then the council would require the log through the serving of

² The Commissioner’s guidance appears on the ICO website here:
https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

a planning contravention notice. The council also identified a further scenario, namely, if the use ceases then it would have no need for the log.

19. Whilst the council acknowledges that the log would assist in informing any future planning application or decision on enforcement action it maintains that the information is also likely to be kept by the applicant for other purposes such as accountancy or tax reasons or, possibly, animal welfare. In essence, until such time as the council decides that it needs the information in order to assist in fulfilling its role as a planning authority, the information is not held by the groomer on its behalf.
20. In reaching a decision in this matter the Commissioner has referred to a decision made by the Information Tribunal (Glen Marlow v the Information Commissioner, 2005).³ In this case the Tribunal considered the extent to which information in an online legal library was held by the local authority that subscribed to it.
21. The Tribunal differentiated between the information that the public authority had selected for use and all the other information held within the database. It found that information selected, downloaded and saved to the public authority's own computer was held, as was information printed off from the database. However, the remainder of the information on the database was not held by the public authority.
22. The Commissioner considers that the general principle here – namely that information to which an authority has potential access to does not become held until access is physically made is transposable to the current complaint under consideration. So, whilst the council may access the logs in question, it does not become held for its own purposes until it decides that they are required and seeks and obtains them.
23. Having considered the available evidence the Commissioner is satisfied that the grooming logs are not held by the groomer on the council's behalf and that, therefore, the council has correctly confirmed that it does not hold the requested information.

³ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i97/Marlow.pdf>

Right of appeal

24. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF