

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2021

Public Authority: Pembrokeshire County Council

Address: foi@pembrokeshire.gov.uk

Decision (including any steps ordered)

1. The complainant has requested various information in respect of dog breeders licenses from Pembrokeshire County Council. The Council cited section 21 for part of the request and refused the remainder on the basis of section 31(1)(a) of the FOIA. Following the Commissioner's investigation, the Council provided redacted copies of the requested documents but continued to rely on section 31(1)(a) in respect of a small amount of information. It also informed the Commissioner that it was now relying on section 40(2) to redact the personal information within the documents. The Commissioner's decision is that Pembrokeshire County Council has correctly relied on section 31(1)(a) and section 40(2) to refuse the remainder of the information. However, the Council has also breached section 10(1) of the FOIA in failing to provide the information to the complainant within the time specified by the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 4 December 2018, the complainant wrote to Pembrokeshire County Council and requested the following information in respect of dog breeders licenses:

"...list/table of all current licensed dog breeders, with their location, post code and breeder reference number.

...copies of all inspections of the licensed dog breeders and pet shops in your local authority area from 1 January 2017 to 31 December 2018.

...any appendices, such as enhancement and enrichment plans; socialisation plans, vet reports/annual health checks; or any other documentation referred to in the inspection report."

3. The Council responded on 18 January 2019. It refused part one of the request on the basis of section 21 and cited section 31(1)(a) to refuse the remainder (parts two and three).
4. Following an internal review the Council wrote to the complainant on 4 March 2019. It confirmed that it was continuing to rely on section 31(1)(a) to withhold the information in respect of parts two and three of the request.

Scope of the case

5. The complainant contacted the Commissioner 28 March 2019 to complain about the way his request for information had been handled. He was not satisfied with the Council's reliance on section 31(1)(a) of the FOIA to refuse the request.
6. As stated above, the Council amended its response during the Commissioner's investigation and send redacted copies of the information to the complainant. It further informed the Commissioner it was now also relying on section 40(2) to refuse the personal information within the documents.
7. The Commissioner's investigation will focus on the remaining withheld information and consider whether the Council appropriately withheld the information under section 31(1)(a) and section 40(2) of the FOIA. She has not considered the Council's reliance on section 21 of the FOIA as this has not been complained about.

Reasons for decision

Section 31 – Law Enforcement

8. Section 31(1) states:

"information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime,

9. Section 31 is a prejudiced based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.
10. In order to be engaged, the following criteria must be met:
 - the actual harm which the public authority alleges would, or would be likely to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, the prevention or detection of crime);
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the alleged resultant prejudice must be real, actual or of substance; and;
 - it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie 'would be likely' to result in prejudice or 'would' result in prejudice.
11. The withheld information in this case consists of words/sentences redacted from the following documents in respect of dog breeding establishments:
 - Inspection Reports
 - Vet Reports
 - Socialisation Forms/Plans
 - Enrichment/Forms/Reports
12. The Council has provided copies of the reports to the Commissioner and has stated that they are standard forms populated by the relevant inspector or vet at the time of their inspection. It has redacted similar information from each document which it has summarised as:

"...the number of breeding bitches, the number of puppies, whether a home location, type of kennel and whether the owners/breeders were resident at the address."
- The applicable interests*
13. The Commissioner must first consider whether the arguments provided by the Council relate to the relevant applicable interests, namely the prevention and detection of crime.

14. The Council considers that disclosure of the withheld information could lead to crime as it could allow individuals to 'steal to order' if it was public knowledge whether dogs are kept in inside or outside kennels, the numbers of breeding bitches and their litters. It has further stated that it contacted the dog breeders/owners with a previous similar request to ascertain their views regarding the disclosure of the above type of information. It added that those who responded were not in favour of such a disclosure with one dog breeder confirming that she had already been targeted by thieves and called the police to her property on one occasion.
15. The Council has further stated that one breeder who has been targeted by thieves felt threatened as she works from her own accommodation and has a disabled daughter, and another is the sole breeder of a particular breed of dog which is worth a considerable amount of money.
16. Additionally, one of the dog breeders has installed CCTV at the premises because they are concerned about theft and another one informed the Council that there were two vans outside its premises recently and they called the police. When the van was opened there were two dogs in the back.
17. The Council confirmed that it has considered this request on an individual basis but felt the identified harm remained a real risk.
18. The Council also referred to a particular case dating back to June 2018 where a gang of four were tried in Lincolnshire Crown Court for stealing 15 Cavalier King Charles Spaniels from a Lincolnshire breeder. Only one of the dogs was later recovered and reunited with its owner, having been thrown from a moving vehicle. All four of the accused pleaded guilty to theft, and the gang members received suspended sentences ranging between 12 and 16 months.
19. The Council has further argued that disclosure of the withheld information could also result in the breeders being targeted by animal rights activists if they suspect there is cruelty as the inspection reports detail whether the puppies are housed within the family home or separate kennels and how many adults are at the property.
20. The complainant, however, does not agree with the Council's arguments and considers that information about the addresses and numbers of dogs at each premises is already publicly available on the Council's website.
21. He has added that many of the nine dog breeding establishments within the Council's boundaries also advertise on public websites in which details of dog breeds are prominently advertised, which is particularly true for the most expensive dogs as they tend to be Kennel Club

Registered. He has argued that the information on breeders is therefore publicly available as this is how consumers find them.

22. He further considers that almost all other information in the inspection reports and related documents could not be useful to criminals, as the inspection report looks at the quality of record keeping, kennel sizes and conditions, storage of food and isolation facilities, adding that information which may fall under section 31(1)(a) such as site maps, staff living on site or microchip numbers could be redacted.
23. The complainant has further stated that most other local authorities in Wales publish the information including Ceredigion, Carmarthenshire and Powys – all of which are served by the same police force that serves Pembrokeshire. He added, that if it was a legitimate concern that this information could lead to dog theft, Dyfed Powys Police would have advised these local authorities not to publish this information.
24. In response to the complainant's comments that information about the addresses and numbers of dogs is already available on its website, the Council has stated that the link provided by the complainant details name and address of the breeder only with no additional information provided.
25. In respect of the complainant's arguments that the dog breeders themselves advertise on public websites, the Council has stated that it is not up to the Council to determine the level to which the breeder wishes to be in the public domain and that the information it collects as part of the licensing process is very detailed.
26. In relation to the complainant's comments regarding the approach of neighbouring local authorities, the Council stated that it undertook several searches and found no evidence that they were publishing the requested information.
27. Having considered the above arguments, whilst the Commissioner accepts that the dog breeding establishments may choose to publish certain information, that is their choice, and it does not release the Council from its obligation to consider the information it holds in the course of the licensing process within the requirements of the FOI legislation. Additionally, these comments were made at the time the Council was withholding whole documents as opposed to the limited redactions it has now made, and notes that there is information in the reports that by the complainant's own admission would be useful to people intent on making money by 'stealing to order'. She is therefore satisfied that they properly relate to the exemption cited, ie the prevention and detection of crime.

The nature of the prejudice

28. Having concluded that the harm specified by the Council properly relates to the exemption specified, consideration of whether there is a causal relationship between the disclosure of the withheld information and the prejudice that section 31(1)(a) is designed to protect is also necessary.
29. The disclosure must at least be capable of harming the interest in some way. As outlined previously, the Council considers that disclosure of the remaining requested information would prejudice the prevention and detection of crime as disclosure of details regarding the number and breed of puppies at an establishment, their kennels, and the premises themselves would result in the targeting of the dog breeder's establishments for theft.
30. Based on the Council's arguments and her own research, the Commissioner is satisfied that this prejudice is real and of substance, and that there is a causal relationship between the disclosure of the withheld information and the prejudice which the exemption is designed to protect.

Likelihood of prejudice

31. It is not sufficient for the information to merely relate to an interest protected by section 31(1)(a). Disclosure must also be likely to prejudice those interests with the onus being on the public authority to explain how the prejudice would arise and why it is likely to occur.
32. The Council has confirmed that it considers that the disclosure of the remaining information 'would' as opposed to 'would be likely' to result in harm to the applicable interest at section 31(1)(a).
33. The Commissioner considers that disclosure of the requested information has the potential to risk the targeting of the dog breeders' premises for theft and considers the evidence previously cited by the Council supports this view. She is therefore satisfied that section 31(1)(a) is engaged in respect of the remaining withheld information. As section 31 is a qualified exemption, she must now consider whether in all circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

34. The Council acknowledges that there is a public interest in good decision-making by public bodies in upholding standards of integrity, in ensuring justice and fair treatment for all.

35. The complainant considers that there is an exceptionally strong public interest in the public being able to scrutinise welfare and record keeping standards of dog breeding establishments in Wales, particularly in this information being available to consumers who are at risk of purchasing dogs with disease, hereditary conditions or behavioural problems.
36. He has further stated that he does not consider it to be the case that establishments are refused licenses when issues are identified through the licensing process, but that they are asked to improve and given the licenses anyway on condition the improvements are made in subsequent months. He has further argued that knowing that a breeding establishment has a license is not enough information to adequately protect consumers or to allow for any level of effective public scrutiny of dog breeding establishments.

Public interest arguments in favour of maintaining the exception

37. The Council appreciates the strong case for dog breeders to be licensed & checked and confirmed that this is undertaken by professional licensing officers. It argued that it would not issue a license if the breeders did not reach the required criteria, adding that the legislation is set and is followed with an enforcement process in place with fully trained inspection officers.
38. It considers that this in itself should satisfy the public that the breeders are licensed, adding that both the Welsh Government and APHA (Animal and Plant Health Agency) can challenge if its procedure or inspections did not conform with the required standards. It further stated that any concerns in respect of dog breeders would be followed up and investigated by its Public Protection team.
39. The Council initially considered that its list of dog breeding establishments was sufficient evidence that an establishment conforms to the required welfare standards. However, as stated elsewhere in this notice, it has subsequently provided redacted versions of the documents and is now withholding a small amount of information.

The balance of the public interest test arguments

40. When balancing the opposing public interests, the Commissioner must decide whether it serves the public interests better to disclose the requested information or to withhold it. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
41. The Commissioner accepts that there is a presumption running through the FOIA that openness is in itself, to be regarded as something which is

in the public interest. Transparency and accountability of public authorities is an essential component of democracy.

42. The Commissioner also recognises the importance of the public having confidence that public authorities tasked with the issuing of licenses for dog breeders are following the required regulations so that only dog breeding establishments which comply with the required welfare standards are granted licenses.
43. The Commissioner is, however, mindful that the Council routinely discloses its list of licensed dog breeders and has subsequently disclosed all requested documents with limited redactions. Additionally, she has no reason to believe that the Council's dog licensing process does not follow the required criteria. Based on the Council's comments regarding the risk of dog theft and her own research, she also considers that the risk of dog theft is real, actual and of substance.
44. Having given due consideration to all the arguments set out above, the Commissioner has concluded that the balance of the public interest is weighted in favour of maintaining the exemption.

Section 40 – personal information

45. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3) or 40(4) is satisfied.
46. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
47. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the DPA 2018. If it is not personal data, then section 40 FOIA cannot apply.
48. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

Is the information personal data?

49. Section 3(2) of the DPA 2018 defines personal data as:-

"any information relating to an identified or identifiable living individual".

50. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

51. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

52. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

53. The Commissioner has viewed the information withheld under section 40(2) of the FOIA and notes that it consists of the names and signatures of the vets and inspectors, the name of one dog breeder and the contact details of all dog breeders in the following four items:

- *Inspection Reports*
- *Enhancement Reports*
- *Socialisation Plans*
- *Vet Report*

54. The Commissioner is satisfied that it constitutes the personal information of those individuals specified in paragraph 53 as defined by section 3(2) of the DPA 2018.

55. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

56. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

57. Article 5(1)(a) GDPR states that:-

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

58. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair, and transparent.
59. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing, It must also be generally lawful.

Lawful processing: Article 6(1)(f) GDPR

60. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the"* bases for processing listed in the Article applies.
61. The Commissioner considers that the lawful bases most applicable is bases 6(1)(f) which states:-

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child ².

62. In considering the application of Article 6(1)(f) GDPR in the context of a request for information under FOIA it is necessary to consider the following three-part test:-
 - i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

63. The Commissioner considers that the test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

64. In considering any legitimate interest(s) in the disclosure of the requested information to the public under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
65. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
66. The Commissioner notes that the Council considers there is no legitimate interest in the disclosure of any of the withheld information referred to in paragraph 53 above. It considers that sharing this type of information serves no purpose and in the case of the signatures of the vets and inspectors, may result in increased fraud.
67. Whilst the Commissioner accepts that the legitimate interest is not compelling, she would not go as far as saying there are no legitimate interests in the disclosure of the withheld information as the complainant clearly has an interest.

Is disclosure necessary?

68. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
69. The Commissioner notes that the Council has argued that disclosure of the withheld information is not necessary on the basis that it holds no relevance to the requested information and disclosure therefore serves no purpose. With respect to the vet and inspectors signatures the Council as further stated that disclosure would be unfair.

70. The Commissioner would point out that during the course of her investigation, the Council has disclosed redacted versions of the requested information and that the disclosure of the names and signatures of the inspectors and vets, and the contact details of the dog breeders makes no material difference to the content of the reports themselves. She has therefore concluded that disclosure of this information is not necessary.
71. As the Commissioner has decided in this disclosure is not necessary to meet the legitimate interest in this case, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).

Section 10(1) – time for compliance with request

72. Section 10 of the FOIA states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
73. The Commissioner notes that the complainant was not provided with redacted copies of the information until her investigation of this complaint was underway, some considerable time outside of the twenty working day requirement. The Council therefore breached section 10(1) of the FOIA in its handling of this request for information.

Other matters

Redaction of documents

74. The Commissioner notes that the Council initially refused whole documents as opposed to sending the complainant redacted copies of the requested documents. During the Commissioner's investigation, the Council informed the Commissioner that it had initially:

"...withheld the reports in full as it was our understanding that if we couldn't provide all of the information we couldn't provide the remainder...However, if FOIA allows a part release of the information requested...we will be able to do this."

75. The Commissioner is concerned that a public authority of the size and FOI experience of the Council should have been so unfamiliar with the legislation.

Right of appeal

76. 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@justice.gov.uk

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

77. 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.
78. 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

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