

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2022

Public Authority: Cheshire East Council
Address: C/O Municipal Buildings
Earle Steet
Crewe
CW1 2BJ

Decision (including any steps ordered)

1. The complainant has requested information relating to a dog breeder.
2. Cheshire East Council refused to comply with the request, citing section 14(1) (vexatious requests) of FOIA.
3. The Commissioner's decision is that the request was vexatious and therefore the Council was entitled to rely upon section 14(1) to refuse it. The Commissioner has also determined that the Council failed to comply with its section 16 (advice and assistance) obligations.
4. The Commissioner does not require the public authority to take any steps.

Background information

5. On 7 February 2021 the complainant made a request for information relating to a dog breeder (dog breeder 1). Due to the length of the request it is outlined in an annex to this notice.
6. The Council responded on 3 March 2021, disclosing some information within the scope of the request. It confirmed that it did hold further information that fell within the scope of the request but was refusing it under section 14(1) (vexatious requests) because further compliance would impose a grossly oppressive burden.

7. On 8 April 2021 the complainant made a request for information relating to another dog breeder (dog breeder 2).
8. The Council responded on 3 June 2021 and explained that it was aggregating this request with the previous one. The Council explained that 'we no longer consider that section 14(1) applies to your request at this time' but confirmed that it was aggregating both requests under section 12(4) and refusing them under section 12(1) (cost of compliance exceeds appropriate limit).
9. The complainant was dissatisfied with the Council's handling of these two requests and so brought a complaint to the Commissioner who investigated this matter.¹ The outcome of the Commissioner's decision was that the Council was entitled to aggregate the requests but not to refuse them under section 12(1). The Commissioner ordered the Council to provide fresh responses, to both requests, that did not rely upon section 12(1).

Request and response

10. The Council provided a fresh response to request 1 on 14 July 2022. It went back to relying upon section 14(1) because complying with the request, in full, would impose a grossly oppressive burden. The Council advised the complainant to study its FOI disclosure log, as it had dealt with multiple requests for information relating to dog breeder 1, and these requests might assist them in their enquiries.
11. The complainant requested an internal review on 1 August 2022. They noted the Council's disclosure log did not provide the information they were requesting.
12. The Council instructed the complainant to bring a complaint to the Commissioner, stating they did not consider an internal review was necessary. By this stage, the request had been considered at length by the Council.

¹ [IC-112399-S6W6](#)

Reasons for decision

Section 14(1) – Vexatious requests

13. The 'Other matters' section of decision notice IC-112399-S6W6 discusses the application of section 14(1). It allows a public authority to refuse to comply with a request if doing so would impose a grossly oppressive burden upon the public authority. Unlike section 12, when applying section 14(1) in this way a public authority can take into account the cost and effort of considering exemptions or redacting exempt information.
14. The Commissioner considers that section 14(1) is most likely to apply when:
 - The requester has asked for a substantial volume of information, and
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO, and
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
15. In its refusal notice, the Council explained to the complainant that their request relates to an 'extensive investigation and there is a significant volume of recorded information within scope of this request. There are over 500 documents in the investigation file alone, consisting of various records, emails, photographs, inspection reports, requests for information, police information and legal advice. We have also identified hundreds of other documents which may come under the scope of your request but do not form part of the formal investigation file.'

16. It also explained that it envisaged the following exemptions would apply:
 - “Legal Professional Privilege (section 42) - This may apply to legal advice that the Council received from its internal legal advisers. This information relates to the decision to the extension of the and the circumstances leading to the extension of the licence.
 - Information provided in confidence (section 41) - The Council considers that this may apply to various documents provided by third parties.
 - Personal Data (section 40) - it is highly likely the requested information will include the personal data of council officers and third parties outside the Council.”
17. The complainant themselves stated in their internal review request, having studied the Council’s disclosure log, it “confirms my suspicion that the council holds a substantial amount of information in relation to the trading of [dog breeder 1] and the use of `breeding arrangements.”
18. The Commissioner is satisfied also that, as dog breeder 1 appears to have been the subject of an investigation from the Council in relation to its breeding license, section 42, section 41 and section 40(2) are all likely to apply to parts of the information.
19. The Commissioner is also mindful that the Council has already provided some of the requested information, as discussed in paragraph 6. The Council has confirmed to the complainant that “The collation and preliminary review of the information has so far taken in excess of 18 hours. Whilst it is not possible to provide an accurate estimation of how further [sic] time would be required to review each document, including the consideration of exemptions, even allowing 2 minutes per page would take a further 16 hours.”
20. Having looked at the disclosure that has already been provided in relation to dog breeder 1, the Commissioner is satisfied that the exempt information is scattered through the requested material and is not easily isolated.
21. When refusing a request under section 14(1) in this way, a public authority must weigh up the burden that compliance would cause with any value or serious purpose that the request represents. The Council has explained to the complainant that “There is likely to be limited new information of any value coming into the public domain as a result of the

disclosure of the material sought, and this would not justify the disproportionate effort and redirection of limited specialist resources and attention of specialist staff away from their core functions.”

22. The Council has estimated that compliance with the request would take a minimum of 30 hours. The Commissioner is satisfied that this is a conservative estimate based the Council’s explanation is paragraph 15. Furthermore, the Commissioner is satisfied that this estimate is based on cogent evidence since the Council has already undertaken 18 hours of work in relation to the request.
23. Whilst 30 hours might be on the lower end of the scale of what the Commissioner considers ‘grossly oppressive’, the Commissioner is satisfied that the request is vexatious and therefore the Council was entitled to rely upon section 14(1) to refuse it.

Section 16 – advice and assistance

24. The Commissioner considers that, when a public authority is applying section 14(1) on the basis that compliance with a request would impose too great a burden, it should offer relevant advice and assistance to the complainant before doing so. The objective when providing advice and assistance is simply to enable the complainant to submit a request that wouldn’t be too burdensome to comply with.
25. In the Council’s refusal notice it directed the complainant to its disclosure log and the Commissioner’s guidance on making a request. It advised that, in the future, they may wish to focus their requests on the information that is most important to them. However, if the aim of section 16 is to allow the complainant to submit a less burdensome request, this advice and assistance is not specific enough. Therefore the Council breached section 16.
26. What the Council should have done is provided the complainant with specific advice and assistance, aimed at making the request less burdensome. For example, telling the complainant what parts of the request could be dealt with, or advising them to reduce the timeframe. If no meaningful advice and assistance can be offered, the public authority must explain this to the complainant.
27. The Commissioner recognises that, in this case, the Council has partially complied with the request. Therefore, he doesn’t believe it’s proportionate to instruct the Council to consider providing any further

advice or assistance because the complainant has already received all the information the Council can provide.

28. The Council essentially worked up to the prescribed limit as outlined in section 12(1) and provided what it could within 18 hours. Whilst the Commissioner accepts this was done with the intention of being helpful, it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit. In the future, if the Council believes that either section 12(1) or section 14(1) (grossly oppressive burden) applies, it should provide the advice and assistance discussed in paragraph 26, rather than partly complying with the request. This will mitigate the chances that a similar complaint is brought to the Commissioner in the future.

Right of appeal

29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

30. 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.
31. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

"1. A list of all variations and periods of suspension relating to dog breeding licence CE/DB10/311220 made between 10 April 2018 and 31 January 2021 (please also see question 4 re extension of licence as there may be some overlap between these issues).

When responding to the above question please confirm in relation to each variation and suspension which of the following applies

Part 2

Paragraph 9(a) variation on application of licence holder

Paragraph 9(b) on the initiative of the council with the consent of the licence holder

Part 3

Paragraph 15(a) the licence conditions are not being complied with

Paragraph 15(b) there has been a breach of these regulations

Paragraph 15(c) information supplied by the licence holder is false or misleading, or

Paragraph 15(d) it is necessary to protect the welfare of an animal

2. A copy of dog breeding licence CE/DB10/311220 in its original form when issued on 10 April 2018 and the the (sic) relevant inspection report and/or risk assessment detailing how the applicant achieved a four star rating. If it is not explicit from the inspection report and/or risk assessment please confirm which of the higher standards were achieved by the licence holder in order to obtain the four star rating.

3. A copy of all further inspection reports in relation to [Redacted] since the granting of the original licence on 10 April 2018. For the avoidance of doubt I do not believe that any information relating to the licence holders ought to be redacted. It is a matter of public record that the business has been subject to investigation, the licence was downgraded and was suspended for a period of time. I do agree that it would be appropriate to redact any personal data relating to council employees, the licence holder's employees or any vet or other professional engaged by the council in relation to any inspection.

4. The copy dog breeding licence CE/DB10/311220 provided on 20 October 2020 in response to an earlier FOI request had an expiry date of 31 December 2020. At some point it appears that that licence was extended 31 January 2021. If the details of the extension of the licence have not been included in response to question 1 above please confirm when the extension was granted and the circumstances leading to the extension of the licence. Was the extension requested by the licence holder? What were the grounds for extending the licence? When deciding to extend the licence what weight did the council attach to the history of this particular licence holder and the number of complaints received about the licence holder?

5. If it is not explicit from the information provided in answer to questions 1 to 4 above please confirm exactly what "breeding arrangements" were put in place by the licence holder. I would draw your attention to the fact that the licence holder put the fact that there were "breeding arrangements" in place in the public domain when responding to concerns raised on social media. The licence holder also states on the website

"We use to have external breeding arrangements in place with other breeders, but we don't offer this any more, it is only our own dogs. Since we re-commenced breeding after the closed period we had during Covid, we only breed from our own dogs and we do not offer the breeding arrangements any longer."

On the basis that licence holder is the one who put the existence of the "breeding arrangements" in the public domain, and has acknowledged use of the arrangements on the business website, it does not appear to me that there are any data protection issues preventing the council from disclosing details of the arrangements. In relation to the licence holders use of "breeding arrangements" please confirm

A. Where the puppies were born

B. Who owned the bitch

C. Where was the bitch normally was resident

D. Who planned and arranged the mating's

E. Did the arrangement involve the change of ownership and/or transportation of pregnant bitches

F. Who were the "other breeders" were referred to by the licence holder? Where the "other breeders" were licensed breeders please confirm who their licensing authority was

G. How many puppies were sold by the licence holder using the "breeding arrangement" since the licence commenced on 10 April 2018

H. Confirmation of whether or not it is the view of Cheshire East Council that the breeding arrangements put in place by the licence holder were in compliance with the regulations."