

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2024

Public Authority: West Devon Borough Council
Address: Kilworthy Park
Drake Road
Tavistock
Devon
PL19 0BZ

Decision (including any steps ordered)

1. The complainant has requested all current dog breeders licenses issued by West Devon Borough Council ("the Council"). The Council disclosed the information, subject to some information being redacted under section 31(1)(a) (Law enforcement).
2. The Commissioner's decision is that the Council has correctly relied on section 31(1)(a) to withhold the information. However, the Council breached section 10(1) and section 17(1) by failing to respond to the request within the statutory period.
3. The Commissioner does not require further steps.

Request and response

4. On 2 August 2023, the complainant wrote to the Council and requested information in the following terms:

"Please provide me with copies of all current dog breeding licences issued by West Devon Council."

5. The Council responded on 13 October 2023. It stated that information was held. It disclosed this information – being current dog breeders licenses – but redacted the maximum number of animals allowed for each premises under section 31(1)(a).
6. Following an internal review the Council wrote to the complainant on 20 November 2023. It maintained the application of section 31(1)(a).

Reasons for decision

Section 31 – Law Enforcement

7. 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”

8. Section 31 is a prejudice 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.
9. 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 – i.e. ‘would be likely’ to result in prejudice or ‘would’ result in prejudice.

The applicable interests

10. 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.
11. The withheld information in this case is contained within dog breeding licences and represents the maximum number of animals allowed for each premises.
12. The Council argues that disclosure of this information may lead to criminal activity as it could lead individuals to 'steal to order'. The information reveals the maximum number of dogs each breeder could have on their premises at any one time, and could therefore be used to indicate which premises would be most worth targeting for theft. The Council argues that crime relating to dog theft has increased dramatically over recent years, and has referred the Commissioner to a reported case from Lincolnshire in 2018, where a dog breeder's premises was targeted in an organised way, with 15 King Charles spaniels being stolen¹.
13. The Commissioner has previously considered similar information in several decision notices in 2021 (IC-49650-Z2G6², IC50621-M0Y2³). In those decisions, which considered not only the number of dogs allowed for the premises, but also other information such as the layout and staffing, the Commissioner found that the section 31(1)(a) was engaged on the same basis as that argued by the Council here. That is, that the disclosure of the maximum number of dogs allowed on a breeder's premises would provide site specific detail that could enable criminals to target those premises with the most potential value. As noted and accepted by the Commissioner in the latter decision cited above, dog theft is now recognised as an emerging area of interest to organised criminal groups.
14. The complainant has argued that the information cannot relate to the prevention and detection of crime, as the Council has previously disclosed such information in response to an information request that they submitted in 2021. Whilst the Commission has noted this, he also notes that the Council is not bound by earlier responses it has issued,

¹ <https://www.bbc.co.uk/news/uk-england-lincolnshire-44398633>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619587/ic-49650-z2g6.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619953/ic-50621-m0y2.pdf>

The Council is entitled to issue a response to a request based on the circumstances present when it is made.

15. Having considered the above, the Commissioner is satisfied that the harm specified by the Council relates to the prevention and detection of crime.

The nature of the prejudice

16. 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.
17. The disclosure must at least be capable of harming the interest in some way. As outlined above, the Council considers that disclosure of the information would prejudice the prevention and detection of crime, as disclosure of the maximum number of dogs permitted on a premises could result in the targeting of the premises for theft.
18. Based on the Council's arguments, and the Commissioner's previous findings on similar information held by other local authorities, 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

19. 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.
20. The Council has confirmed that it considers the disclosure of the information 'would be likely' to result in harm to the applicable interest at section 31(1)(a), for the reasons outlined above.
21. The Commissioner has considered these reasons, in conjunction with his previous decisions on similar information – in which he found the likelihood of prejudice was valid – and accepts that disclosure of the information in this case could result in the targeting of specific dog breeders' premises for theft. He is therefore satisfied that section 31(1)(a) is engaged in respect of the withheld information.
22. As section 31 is a qualified exemption, the Commissioner 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

23. The Council acknowledges that there is a public interest in ensuring general openness and transparency by it, particularly in regard to its decision making processes, how public monies are spent, and how the Council fulfils its licensing function.
24. The Commissioner also recognises, as outlined in his previous decisions cited above, that there is an exceptionally strong public interest in the public being able to scrutinise the welfare and record keeping standards of dog breeding establishments. Transparency about dog breeding licenses can encourage and promote high standards by dog breeders, and support consumers when making a decision to purchase an animal from a breeder. Transparency about the maximum allowed number of dogs permitted on a premises would therefore enhance this.

Public interest arguments in favour of maintaining the exception

25. The Council argues that there is a strong public interest in maintaining the exception, which is demonstrated in the exemption being engaged in the first place. The Council has confirmed its position that disclosure of the information would have a detrimental effect on the prevention or detection of crime, and that it has a duty to licensees to properly handle such information.
26. The Commissioner is also aware that, with the exception of the maximum number of dogs allowed, there is already significant transparency about the licensees from the disclosure of the issued licenses. This includes the names and addresses of the licensees, what activities the licenses and for and for how long, and the rating given to the premises.
27. It is also reasonable for the Commissioner to accept that, as the relevant licensing authority under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018⁴ the Council is already satisfied that the establishments already conform to the required standards for a license to be granted. There is no evidence available to the Commissioner that suggests the Council is failing to fulfil its statutory duties in granting these licenses, and the Commissioner understands that any concerns by the public about a dog breeder should be referred to the Council as the licensing authority.

⁴<https://www.legislation.gov.uk/uksi/2018/486/contents/made>

The balance of the public interest test arguments

28. 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.
29. 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.
30. 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.
31. The Commissioner is, however, mindful that the Council has disclosed all current dog breeding licenses, albeit with the information in question redacted. The Commissioner considers that the public interest is already met in a significant way through the disclosure of the licenses, which not only allow the public to confirm that a dog breeder has met the required standards to be licensed, but also confirm their identity, address, and other relevant details.
32. Additionally, the Commissioner has no reason to believe that the Council's dog licensing process does not follow the required criteria, or is deficient in any way.
33. It is also evident to the Commissioner, based on the Council's comments regarding the risk of dog theft and the Commissioner's understanding of the wider context – as outlined in the earlier decision notices cited, that the risk of dog theft is real, actual and of substance. There is a strong and compelling public interest that information that would facilitate this is not placed in the public domain.
34. 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.

Procedural matters

35. The Council failed to disclose held information in response to the request within the statutory time period, the Commissioner has therefore found a breach of 10(1) of FOIA.
36. The Council failed to issue a refusal notice in response to the request within the statutory time period, the Commissioner has therefore found a breach of 17(1) of FOIA.

Right of appeal

37. 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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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