Reference: IC-55414-G1J7

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **5 October 2021**

Public Authority: **Welsh Government**
Address: **freedom.ofinformation@gov.wales**

Decision (including any steps ordered)

1. The complainant requested various information in respect of a report produced by the Wales Animal Health and Welfare Framework Group and published in March 2020 concerning a review of the Animal Welfare (Dog Breeding) (Wales) Regulations 2014. The Welsh Government provided some information but refused to provide information in respect of vets on the basis of section 40(2) (third party personal information) of the FOIA. It further stated that any additional information falling within the scope of the request was not held by the Welsh Government but by a Task and Finish Group. Following the Commissioner's investigation the Welsh Government conceded that this information was held on its behalf, and whilst it provided redacted copies of some additional information it continued to rely on section 40(2) of the FOIA, and also cited section 38(1)(a) and (b) (health and safety) and section 43 (commercial interests) of the FOIA, to refuse the names of the veterinary practices where the vets who contributed to the research were employed.

2. The Commissioner's decision is that the Welsh Government has now complied with its obligations under section 1(1) of the FOIA, that it was entitled to rely on both section 40(2) and section 38(1)(a) and (b) of the FOIA. As she has concluded that section 38 is engaged, she has not gone on to consider the Welsh Government's reliance on section 43 of the FOIA. Due to the late disclosure of some relevant information, the Commissioner has also recorded a breach of section 10(1) of the FOIA.

3. The Commissioner does not require the Welsh Government to take any steps.

Request and response

4. On 12 March 2020 the complainant wrote to the Welsh Government and requested the following information:

*"This is a freedom of information request in relation to The Wales Animal Health and Welfare Framework Group's review of the Animal Welfare (Dog Breeding) (Wales) Regulations 2014 ('**the review**), dated December 2019 and reported as being first published 4th March 2020.*

1 The review states that it 'has been based on evidence provided by a broad spectrum of relevant stakeholders including local authorities, veterinary surgeons in a variety of roles, representatives of the animal welfare and dog breeding sectors'. On that basis:

(a) Which local authorities provided evidence? What evidence was specifically sought? Please provide copies of that evidence.

(b) How many veterinary surgeons provided evidence? What format did that evidence take? Please provide copies of that evidence where available. Where did they practice? What is the variety of roles referred too? Who were the individual concerned? How was it decided who to involve?

(c) Which representatives of the animal welfare and dog breeding sectors provided evidence? How was it decided who to ask for evidence? Please provide copies of that evidence.

(d) How many site visits to breeding establishments, both licensed and unlicensed, were undertaken by [named individual one]. [named individual two] and [named individual three], and when, for the preparation of this report? Which sites were visited?

(e) Please provide a blank copy of the 2 questionnaires referred to in paragraph 2.2 of the review as forwarded to puppy purchasers, and also copies of any completed questionniares.

(f) The review is silent on how evidence was collected from representatives of the dog breeding sector (see paragraph 2.2 of the review). How was any evidence collected? How was it decided who to approach? How many approaches were made, and to whom? Please provide a copy of the evidence.

(g) We have been advised by Carmarthenshire County Council animal health team that we are one of 18 breeders ready to enter the Carmarthenshire Buy with Confidence Scheme. Why were we not approached for our input into the review?

2 Were the authors aware of the 'Dog Breeding Establishments: Guidance for Local Authorities' published 17 April 2018? If so, why is there no reference to it in there view, given its relevance, particularly to the need for training council personnel? What qualifications and experience do such personnel need to be animal welfare officers?

3 Why does the review not fully address why local authorities have seen fit to license premises which clearly do not meet the current criteria required under the existing regulations in relation to the physical environment, dog socialisation and enrichment? What is the perceived barrier in relation to effective enforcement in relation to the physical environment? What are the perceived barriers to assessing dog socialisation and enrichment? Why are local authorities not to be held accountable for issuing licenses to substandard /non-compliant premises (considering the local compliance issues)? Where does accountability lie in relation to local authority shortcomings/breaches of their statutory duty?

4 When and how will public consultation on the review be obtained? …"

5. The Welsh Government acknowledged the request on 1 April 2020 confirming that it had contacted its Task and Finish Group and confirmed that it would provide its full response on 9 April 2020.

6. On 29 April 2020, the Welsh Government provided a partial response to the complainant, informing him that it hoped to provide a full response by 15 May 2020.

7. The complainant contacted the Welsh Government on 1 May 2020 stating that the response did not provide the evidence on which the recommendations were made, nor details of the methodology used or involvement of the various parties. He added that in his opinion it misleads by stating that breeders were involved in the paper, yet the Welsh Government had now confirmed otherwise. He added that the response contained only a fraction of the evidence he would expect to support such a paper and queried the existence of the following information he had expected:

    - Minutes of meetings
    - Analysis of the questionnaires
    - Findings of field research
    - Criteria for selecting group/people for input
    - Basis of proposals

8. The Welsh Government sent its full response to the complainant on 24 June 2020. It confirmed that the only remaining information it held was the (enclosed) notes taken from the interviews with stakeholders who contributed to the review. It also confirmed that it was withholding the details of the vets who participated in the review on the basis of section 40(2) FOIA.

9. The complainant sent a detailed letter dated 15 July 2020 outlining his dissatisfaction with the response which can be summarised as follows:

    - Unacceptable to refuse evidence of the questions asked and notes obtained during face to face interviews.
    - The response does not state how many vets provided evidence, but merely states 10 were interviewed as part of the review process.
    - No evidence from any of the contributing vets and fails to identify any of the vets.
    - No evidence in respect of question 1(c) in respect of which representatives of the animal welfare and dog breeding sectors provided evidence.
    - No copies of the completed questionnaires from puppy purchasers, or details of how many questionnaires were sent out, the response rate or what the answers indicate.
    - The notes he had received were inadequate as formal evidence on which to base a report that feeds in to formal review of government policy. The complainant questioned whether there were other notes which had not been disclosed.
    - Many issues raised in the notes had not found their way into the review, and there are matters in the review that are not evidenced in anything disclosed to date.
    - It was not clear who made specific observations/comments.
    - The review is 109 pages in length so he was left wondering where the rest of the content came from. For example, he questioned where the evidence was recommending change of pen sizes.

10. Following an internal review the Welsh Government wrote to the complainant on 18 August 2020. It stated that it did not have access to the following information as it is held by the Task and Finish Group:

- Methodology used or list of questions asked.
- The completed questionnaires.
- The names and numbers of vets who provided evidence.
- Any other meeting notes as it appears not all of the meetings were minuted.

11. The Welsh Government did however inform the complainant that it thought 100 questionnaires were returned, but it did not know how many had been sent out. The internal review concluded that the Welsh Government had provided all the information it holds within the scope of the request to the complainant, stating that it was independently undertaken by members of the Wales Animal Health and Framework Group (not by Welsh Government officials), all of whom were publicly appointed. All the information provided by the Task and Finish Group was provided to the complainant.

12. Following the internal review, there was various correspondence between the parties which included the complainant asking for clarification of the relationship between the Task and Finish Group and the Welsh Government, and whether the former is required to provide the requested information to the latter. He also requested confirmation of the relationship between the Wales Animal Health and Framework Group and the Task & Finish Group and finally, the Welsh Government's contact details for the Task & Finish Group.

13. The Welsh Government confirmed that the Wales/Animal Health and Framework Group are a Ministerial publicly appointed group which advises the Minister, and members are not officials of the Welsh Government. It confirmed that the Task and Finish Group came from the above with the relationship therefore the same. The Welsh Government also confirmed that the individual within the Task and Finish Group was not happy for their contact details to be released.

Scope of the case

14. The complainant contacted the Commissioner on 6 September 2020 to complain about the way his request for information had been handled. He was not happy with the Welsh Government's procedural handling of his request, referring to an "*inordinately protracted timescale*" for responses. He has also expressed concern with the amount of information provided, stating that the responses were vague with many issues remaining unanswered.

15. The complainant also expressed dissatisfaction with the Welsh Government's refusal to provide some information on the basis of section 40(2) of the FOIA stating that the information could be redacted and the evidence still disclosed.

16. Additionally, the complainant does not accept the Welsh Government's position that it does not hold the information as it is held by the Task and Finish Group, adding that where the Welsh Government has a relationship with another body, it could request information from that body to fulfil an FOIA request.

17. During the course of the Commissioner's investigation, the Welsh Government accepted that although it did not physically hold the information, it was held on its behalf by the Task and Finish Group and obtained further information relevant to the complainant's request which it subsequently provided to the complainant.

18. It also provided answers to other parts of his request and some additional information during the latter stages of the Commissioner's investigation.

19. However, the Welsh Government maintained that it was continuing to rely on section 40(2) FOIA in respect of the vets' names and contact details and was withholding the names of the veterinary practices on the basis of section 43 (Commercial interests) and section 38(1)(a) and (b) (Health and Safety) of the FOIA.

20. The scope of the Commissioner's investigation is therefore to consider whether the Welsh Government has complied with its obligations under section 1(1) of the FOIA and whether it was entitled to refuse to provide the information on the basis of the exemptions specified. As she has concluded that it correctly refused the part of the request in reliance on section 38(1)(a) and (b) of the FOIA, it was not necessary to go on to also consider section 43 of the FOIA.

Reasons for decision

Section 1 – General right of access to information held

21. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.

22. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following

23. the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

24. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.

25. In this case, the complainant does not accept that the Welsh Government has identified and provided all information falling within the scope of his request, and in particular, the complainant is not satisfied that the Welsh Government does not hold information in respect of the following parts of his request:

- List of face to face questions asked at the interviews.
- All notes of interviews with stakeholders.
- Number of vets who provided evidence as opposed to the number interviewed.
- Evidence from the representatives of animal welfare and dog breeders sectors including all evidence from the Kennel Club.
- Number of questionnaires sent out.
- Stakeholder groups who attended the meeting.
- Evidence which led to the recommendations to change pen sizes and staffing levels.
- Number of individuals attending meetings.
- Whether all attendees were given the opportunity to comment on the notes/minutes.

List of face to face questions

26. The Commissioner queried whether Welsh Government held the list of face to face questions and its response has been reproduced below:

"This information was not part of the original request…We have interpreted the request as a request for evidence gathered and not a request for the questions asked in face to face interviews, which are not themselves evidence from veterinary surgeons.

We have not previously searched for such information (which would be held by our external consultants if it has been retained).

27. The Commissioner considers that the list of face to face questions is part of the evidence used as the questions asked are pertinent to the research itself and would have helped shape the report. Having asked the Welsh Government to confirm whether the consultant held these questions, they were subsequently provided to the complainant with a copy to the Commissioner for her records.

28. As the information has now been provided, the Commissioner is satisfied that the WG has complied with section 1(1) of the FOIA in respect of this particular part of the complainant's request.

Notes of interviews with all stakeholders

29. In its response to the complainant dated 24 June 2020, the WG attached *"notes taken from a variety of interviews with stakeholders who contributed to the review"*

30. The Welsh Government initially confirmed to the Commissioner that all notes/minutes of meetings were provided to the complainant in its response of 24 June 2020.

31. However, in response to the Commissioner's queries regarding the notes of the interviews with the veterinary surgeons, the Welsh Government informed the Commissioner that the handwritten notes were omitted due to a misunderstanding and misplacement of the notes. Redacted copies of these notes have since been provided to the complainant with the redactions considered in the exemption analysis discussed later in this notice.

32. The Welsh Government further informed the Commissioner that having spoken to both contractors it had been:

    "…assured that this is all the handwritten material that has been retained and there is nothing else."

33. Whilst the Commissioner has concerns about the Welsh Government's record keeping in respect of this information, she accepts that on the balance of probabilities, no further notes or minutes are held and that the Welsh Government has therefore complied with its obligations under section 1(1) of the FOIA.

Number of vets who provided evidence as opposed to the number interviewed.

34. In its response dated 29 April 2020, the Welsh Government informed the complainant that 10 veterinary surgeons were interviewed as part of the review process, and following the Commissioner's queries stated that:

    "Eight vets provided evidence and three were interviewed."

35. The Commissioner queried this with the Welsh Government which confirmed:

    "…the figure of 10 related to the number of practices approached but 2 declined to respond. The three vets who were interviewed were in addition, and are not aligned with veterinary practices (being a vet working on behalf of a local authority, a vet for the Kennel Club and a vet for the Dog's Trust"

36. As this information has now been communicated to the complainant, the Commissioner is satisfied that the Welsh Government has complied with its obligations under section 1(1) of the FOIA.

Evidence from the representatives of animal welfare and dog breeders sectors including all evidence from the Kennel Club

37. The Welsh Government informed the complainant in its response dated 29 April 2020, that the Kennel Club was invited as a stakeholder representative organisation from the dog breeding sector and the Animal Welfare Network Wales and the Companion Animal Welfare Group Wales represented the welfare sector. It also confirmed that evidence was provided through face to face interviews.

38. The Commissioner notes that the Welsh Government attached notes of face to face interviews in its response of 24 June 2020.

39. During the course of the Commissioner's investigation, the Welsh Government confirmed that its subsequent conversations with the contractor revealed that the Kennel Club submitted its previously published report "*Collaboration is Key: The Way Forward for Breeding Regulations"* and their press release, "*The Impact of Updated Breeding Licensing Regulations on Dog Breeders"* for consideration of this matter.

40. Having asked the contractor why it had not previously sent this information with its response, the contractor informed the Welsh Government that it was due to it being published information whereas the Welsh Government had requested evidence they had gathered themselves.

41. The Welsh Government has further stated that had it been aware that this information was used as evidence in part of the review it would have made the complainant aware of its existence. However, as it is publicly available, it would have cited section 21 (Information accessible to the applicant by other means) and let him know where it could be found.

42. The Commissioner notes that the links to this information have recently been provided to the complainant and has concluded that the Welsh Government has now complied with its obligations under section 1(1) of the FOIA in respect of this item of the request.

Number of questionnaires sent out

43. In his request for an internal review, the complainant pointed out to the Welsh Government that its response did not provide details of how many questionnaires were sent out, what the response rate was and what the answers indicate.

44. In its latest response to the Commissioner, the Welsh Government has confirmed that it does not hold this information as the questionnaires were distributed through veterinary practices and it holds no record of how many were distributed, only the number returned.

45. The Commissioner considers that the Welsh Government's response is reasonable and by definition, this would also mean it cannot provide information in respect of the response rate. The Commissioner would also point out that the Welsh Government has provided copies of the puppy purchaser questionnaires which would allow the complainant to see for himself what the answers indicate. She has therefore concluded that the Welsh Government has complied with its obligations under section 1(1) of the FOIA in respect of this aspect of the complainant's request.

The stakeholder groups who attended the meeting

46. In response to the Commissioner's query in respect of the above, the Welsh Government informed the Commissioner that this information was provided in its initial response on 24 June 2020.

47. The Commissioner notes that the only reference to the stakeholder groups in this correspondence is the Welsh Government's confirmation that it had enclosed a copy of the notes taken from a variety of interviews with stakeholders who contributed to the review, but did not specify the groups themselves. However, the Welsh Government did specify a number of groups in its response of 29 April 2020 as discussed in paragraph 28 of this notice. The Commissioner has therefore

concluded that the Welsh Government has complied with its obligations under section 1(1) of the FOIA in respect of this part of the request.

Evidence which led to recommendations to change pen sizes and staffing levels

48. The Welsh Government has recently informed the Commissioner that the recommendation for the change of pen size came from the author of the report, and at this stage, no evidence is held, or expected to be held in respect of this part of the request. It added that the report is not a Welsh Government recommendation. Additionally, if it were minded to suggest changes to pen sizes there would need to be a full public consultation and evidence sought.

49. Further, the Welsh Government confirmed it is currently consulting on wider changes to the guidance and given the complexities of this particular issue a working group is being developed to discuss this, with the complainant having been invited to be involved. It has explained that it is in this working group, and during the public consultation phases, that evidence will be sought.

50. Based on the above, the Commissioner considers that the Welsh Government has complied with its obligations under section 1(1) of the FOIA in respect of the request regarding pen sizes.

Number of individuals attending meetings and whether all attendees of meetings were given the opportunity to comment on the notes/minutes

51. The Commissioner does not consider that these questions fall within the scope of the request that the complainant made as they do not constitute evidence. However, the Welsh Government has confirmed to the Commissioner that the numbers in attendance at the meeting were not recorded and that attendees were not asked to comment on the notes.

Conclusion

52. The Commissioner is concerned that the Welsh Government's record keeping resulted in the piecemeal disclosure of information to the complainant during her investigation. However, having considered each item separately, the Commissioner is satisfied based on the balance of probabilities, that all information falling within the scope of the request which has not been refused on the basis of one or more of the exemptions cited, has now been disclosed to the complainant. She has therefore concluded that the Welsh Government has complied with its obligations under section 1(1) of the FOIA and has now gone on to consider whether it was entitled to rely on the exemptions cited.

Section 40 – personal information

53. 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.

54. 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').

55. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (the 'DPA'). If it is not personal data then section 40 FOIA cannot apply.

56. 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.

Is the information personal data?

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

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

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

59. 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.

60. 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.

61. The information being withheld under section 40(2) of the FOIA is the names of the vets who contributed to the review. The Commissioner is

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

satisfied that this information falls within the definition of 'personal data' in section 3(2) of the DPA.

62. The fact that information constitutes the personal data of identifiable living individuals 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.

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

Would disclosure contravene principle (a)?

64. 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*".

65. 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.

66. 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

67. 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.

68. The Commissioner considers that the lawful basis most applicable is basis 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].

[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*".

69. 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;
    iii) **Balancing test**: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

70. 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

71. 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.

72. 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.

73. The Commissioner notes that the complainant's request included the names of the vets who contributed to the review.

74. The Commissioner notes that the complainant's occupation (dog breeder) gives him a personal interest in the evidence collected as part of this review and therefore accepts that the complainant has a legitimate interest in seeing the requested information. She has

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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*".

therefore gone on to consider whether this is necessary in order to meet his legitimate interest.

Is disclosure necessary?

75. '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.

76. The Commissioner notes that the complainant has been provided with redacted copies of the vets' responses which form part of the evidence used in the review and more recently, redacted copies of the handwritten fact to face interview notes with the vets . In light of this disclosure, she considers that the disclosure of the names of the vets is not necessary in order to meet the legitimate interest in providing scrutiny of the review process and demonstrating that accepted practices have been followed.

77. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, 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 38 health and safety

78. Section 38(1) of the FOIA provides that:

"Information is exempt information if its disclosure under this Act would, or would be likely to –

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual."

79. The Commissioner's guidance '*Health and Safety- section 38*'[3] states '*In section 38 the word "endanger" is used rather than the word "prejudice"'* and '*The use of the phrase "any individual" in section 38*

[3] Section 38 – Health and safety | ICO

includes any specific individuals, any member of the public, or groups within society.'

80. In the Commissioner's view, three criteria must be met in order to engage section 38:

    • Firstly, 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;

    • Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the endangerment which the exemption is designed to protect. Furthermore, the resultant endangerment which is alleged must be real, actual or of substance; and,

    • Thirdly, it is necessary to establish whether the level of likelihood of endangerment being relied upon by the public authority is met – ie disclosure 'would be likely' to result in endangerment or disclosure 'would' result in endangerment.

81. Consideration of the exemption at section 38 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

The applicable interest

82. As section 38 of the FOIA provides that information relating to the endangerment of the health and safety of an individual can be withheld, the prejudice involved in the disclosure of the requested information must therefore relate specifically to the health and safety of one or more individuals.

83. In this case, the requested information is for the name and addresses of veterinary practices where the individual vets provided evidence for the review or collated the completed questionnaires from the puppy purchasers. The Welsh Government considers that the applicable interests in this case are the staff members employed by those practices and their families.

The nature of the endangerment

84. The Commissioner must now consider if there is a causal link between the names of the veterinary practices being disclosed and the endangerment that section 38(1)(a)and (b) is designed to protect.

85. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of this causal link, as the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would lead to endangerment; there must be a logical connection between the disclosure and the endangerment in order to engage the exemption.

86. The Welsh Government has provided evidence from the vets that they believe that disclosure of the practices would be likely to lead to staff members being subject to harassment and in some cases, physically assaulted in their place of work. Additionally, the Welsh Government has argued that veterinarians are already under considerable stress and there is concern that any additional stress could have a serious detrimental impact on the wellbeing of the staff from each of these practices.

87. In support of this, the Welsh Government provided evidence from the veterinary surgeons who have stated they have been attacked verbally, and in some cases through damage to their property by members of the public as a result of views they have either expressed or been deemed to have expressed. The Commissioner has seen evidence from the vets that they fear direct verbal attacks, or attacks communicated electronically through social media are very likely to occur and she has included some typical examples below:

    Veterinary surgeon 1

    "Given the emotive topic and what we see in our business on other similar issues we believe there to be a high likelihood of trolling, social media abuse, verbal, and physical abuse against both the individual, their family and colleagues as well as the threat of civil claims and reports to the RCVS the professional body. All of these can result in significant harms to the health and wellbeing of the targeted individual, their family and colleagues and business."

    Veterinary surgeon 2

    "I was involved in a programme on the same subject matter (dog breeding) which contributed to the Welsh Government announcing a review of dog breeding in Wales and the subsequent Dog Breeding Review report discussed here. My involvement in that programme led to a significant backlash some 9 months later both personally and

professionally by an individual representing a wider group. This had a marked impact on my personal wellbeing …"

88. The Commissioner is satisfied there is a causal link between the names of the veterinary practices being disclosed and the endangerment that section 38(1)(a) and (b) is designed to protect

The likelihood of prejudice

89. The Commissioner's duty in this case is to consider whether disclosure of the requested information would be likely to pose a risk to the health and safety of the staff members of the various veterinary practices. The Tribunal, in the case of *John Connor Press Associates Limited v Information Commissioner (EA/2005/0005),* stated that *"the chance of prejudice being suffered should be more than a hypothetical possibility, there must have been a real and significant risk"* (Paragraph 15).

90. The Commissioner has interpreted this to mean that, in order for a public authority to satisfy her that disclosure of the requested information would be likely to endanger the health and safety of individuals, it must demonstrate that the risk of prejudice is substantially more than remote, but need not be more likely than not.

91. The Commissioner acknowledges that the subject of dog breeding is a very emotive issue and likely to generate strong feelings directed towards those involved in the review. She is mindful of the concerns outlined by the individual vets and the very real possibility that staff members employed in the various veterinary practices and their families could be vulnerable to harassment (either in person or via social media), threats or even physical assaults by individuals or a group discovering the whereabouts of the various veterinary practices.

Is the exemption engaged

92. Since the Commissioner is satisfied that the three criteria required to engage the exemption have been met, she considers the exemption properly engaged. She has therefore gone on to consider the public interest test. Even though the section 38 exemption is engaged, the Commissioner may still require the Welsh Government to release the requested information if the public interest in disclosure outweighs the public interest in maintaining the exemption.

Public interest factors in favour of disclosure

93. The Welsh Government acknowledges the general public interest in openness and transparency in the disclosure of information held by public authorities.

94. The Welsh Government also recognises the public interest in the scrutiny of evidence collated and used as a basis for public policy.

95. The Welsh Government acknowledges that there is a public interest in knowing who was interviewed, particularly in knowing whether those interviewed had the appropriate expertise to speak on the matter, and whether there was any systematic bias on the part of the interviewer in choosing who to interview based on a pre-existing knowledge of their views.

Public interest factors in favour of maintaining the exemption

96. However, the Welsh Government has stated that some of the vets were acting entirely in an administrative capacity as a distribution and collation point for the questionnaires. Their identity had no further input to the final report and no bearing on any policy development, and it could identify no further public interest in releasing this specific information beyond the general principles of openness and accountability, and certainly none that would outweigh the perceived harm.

97. It further informed the Commissioner that it has been made very clear to them that the vets who acted merely in an administrative capacity, on a voluntary basis, believe it is quite unacceptable that they be put at risk of harm for doing such. Many have expressed the view that they would not have participated if their names and names of their veterinary practices were to be disclosed into the public domain.

98. In relation to the vets who were interviewed, the Welsh Government considers that the public interest in this information has been satisfied by the release of the comments themselves and can find no additional public interest in identifying the practices they originated from.

99. Additionally, as discussed earlier, the Welsh Government has reason to believe that disclosure of this information would be likely to put practice staff at an increased level of risk in the form of harm or harassment as a result of views expressed in their professional capacity on an emotive subject.

The balance of the public interest test

100. The Commissioner acknowledges the public interest in the general accountability and transparency of public authorities.

101. The Commissioner also considers that there is a public interest in the disclosure of the names of the veterinary practices where the vets who gave evidence are employed, so that the public is aware of the geographical and sectoral representation of the evidence which formed the basis of the review.

102. However, the Commissioner is mindful that disclosure would be likely to pose a real and significant threat to the health and safety of the staff and families of the various veterinary practices involved in the research, regardless of the extent of their involvement. Furthermore, she considers the evidence provided by the veterinary surgeons in support of this exemption, with some reproduced in this notice is compelling.

103. The Commissioner has balanced the public interest arguments in favour of disclosure, and does not consider that the disclosure of information to demonstrate the transparency and accountability of the Welsh Government's decision making and expenditure, as well as the geographical and sectoral spread of the veterinary practices, justifies the risk to the health and safety of the individuals specified above. The Commissioner considers that the public interest in the maintenance of the exemption outweighs the public interest in the disclosure of the information in question. The Commissioner has therefore decided that the Welsh Government was entitled to rely on section 38(1)(a) and (b) of the FOIA in respect of the names of the veterinary practices that participated in the review.

Section 10(1) – time for compliance with request

104. 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.

105. The Commissioner notes that the complainant's original request was dated 12 March 2020, yet he did not receive any information relevant to his request until 29 April 2020 which is clearly in excess of the time stipulated in paragraph 104 of this notice.

106. Further, and as discussed throughout this notice, following the Commissioner's investigation the Welsh Government accepted that information held by the Task and Finish Group was in fact held on its behalf and provided various information relevant to the complainant's request throughout the course of the Commissioner's investigation. She has therefore recorded a breach of section 10(1) of the FOIA.

Right of appeal

107. 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

108. 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.

109. 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 .....

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