

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2012

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant requested details of all licensed dog breeders in the Carmarthenshire area. Carmarthenshire County Council ('the Council') confirmed the number of licensed breeders but withheld the names and addresses of breeders under section 40(2) of the FOIA. The Commissioner's decision is that the Council correctly applied section 40(2) to the list of licensed dog breeders. He does not require any steps to be taken.

Request and response

2. On 17 October 2011, the complainant wrote to the Council and requested information in the following terms:

"Please could you advise me which department is responsible for licensing puppy farming in Carmarthenshire?

And would it be possible to send me a list of those premises which are licensed".
3. The Council's Animal Health Department responded on 27 October 2011 stating that it currently had 88 establishments licensed under the Breeding of Dogs Act 1973 in Carmarthenshire. It advised that, in relation to the request for a list of licensed premises, the request would need to be sent to the FOI department within the Council.
4. On 27 October 2011, the complainant submitted an information request to the FOI department of the Council for:

“Please be kind enough to provide me with details under the freedom of information act. I would like a current/up to date list of licensed dog breeders in the Carmarthenshire County. Or, those who have been licensed by Carmarthenshire LA”.

5. The Council responded on 14 November 2011 confirming it held the requested information but considered it exempt under section 40(2) of the FOIA.
6. On 21 December 2011 the complainant asked for an internal review of the Council's handling of her request.
7. The Council provided the outcome of its internal review on 23 January 2012 and upheld its decision that the requested information was exempt under section 40(2) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider whether the information she requested should be disclosed.
9. The Commissioner considers the scope of this complaint to be whether the list of licensed dog breeders in the Carmarthenshire area should be disclosed, or whether the Council correctly withheld this information under section 40 of the FOIA.

Reasons for decision

Section 40 – personal information

10. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the DPA.
11. In this case, the Council argue that the requested information is the personal data of the dog breeders and that disclosure under the FOIA would breach the first data protection principle.

Is the requested information personal data?

12. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
- from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
13. The withheld information in this case comprises a list of all licensed dog breeding establishments in the Carmarthenshire area, showing the name and address of the licensee. The Commissioner accepts that a living individual can be identified from their name and address and is satisfied that the withheld information clearly constitutes personal data.

Would disclosure breach one of the data protection principles?

14. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
- personal data shall be processed fairly and lawfully; and
 - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

15. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability and transparency as well as any legitimate interests which arise from the specific circumstances of the case.

Expectations of the individuals concerned

16. The Commissioner has considered the reasonable expectations of the individuals in terms of what would happen to their personal data. These

expectations can be shaped by factors such as the individuals' general expectation of privacy and also the purpose for which they provided their personal data.

17. When considering what information third parties should expect to have disclosed about them, the Commissioner considers that a distinction should be drawn as to whether the information relates to the third party's public or private life. The Commissioner's view is that information which relates to an individual's private life (i.e. their home, family, social life or finances) will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).
18. The Council argue that whilst the withheld information is connected to the individuals' business activities, given that the dog breeding is carried out at their home addresses, the information also relates to their private lives. The Council confirm that there is no requirement under dog breeding legislation for it to hold a public register of licensed dog breeders. There is a legal requirement for the holder of a dog breeding licence to display a copy of that licence at the premises to which it relates (and the licence contains the name and address of the licence holder). The Council is of the view that a dog breeder would expect the licence to be made available to persons visiting its premises but believes this is different to disclosure of a complete list of licensed dog breeders, essentially into the public domain. Further, the Council understand that some dog breeders have been advised by the local police force not to display their licences too prominently due to previous incidents involving threats and acts of criminal damage and violence to dog breeding establishments in the area. The Council also advise that, to the best of its knowledge, very few of the dog breeders sell directly to the public and they generally trade via dealers.

Consequences of disclosure

19. The Council acknowledge that the welfare of animals, particularly dogs is an emotive subject which in an unfortunate minority of cases results in threats and acts of criminal damage and violence. The Council is aware from discussions with the Police that a number of incidents have occurred in Carmarthenshire county in recent years where properties of individuals engaged in dog breeding have been specifically targeted by activists resulting in criminal damage and a risk to public safety.
20. In 2008, following a spate of animal welfare extremist activity in the county, the Council introduced a policy not to publish names and addresses of licensed dog breeders. The policy was introduced in response to acts of criminal damage to property, threats of violence and trespass affecting licensed dog breeding establishments. The decision

not to publish information about licensed dog breeders was taken as the Council has a duty under section 17 of the Crime and Disorder Act 1998 to "exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area". The Council confirmed that it keeps the policy under annual review to take account of any change in circumstances.

21. During the course of the Commissioner's investigation, the Council held a meeting to review the policy to ascertain whether it should still be applied or changed. The Council also undertook an exercise to consult with licensed breeders to ascertain their views on disclosure of their names and addresses.
22. The Council has one of the highest numbers of licensed dog breeders across the whole of the UK. Unlike neighbouring and other local authorities, the Council believes there is significant evidence to suggest that the area continues to be a key target for animal welfare extremist activity. The Council is of the view that the objective of animal welfare extremists is to ban commercial dog breeding in all its forms. Significant evidence on various websites and social networking sites make reference to "puppy farming in Carmarthenshire" and suggest there has been no reduction in recent activity to achieve this aim. With the exception of a few references to one or two other local authorities and a specific dog dealer, the Council believe the evidence is clear that Carmarthenshire is being singled out by animal welfare activists. The ferocity of some comments posted on the internet continues to cause concern to the Council. The Council is also aware of activists having travelled from all parts of the UK to make undercover visits to licensed dog breeders in Carmarthenshire.
23. The consultation exercise which the Council undertook with licensed dog breeders to ascertain their views produced a high response rate (around 60% of dog breeders responded within three weeks of being consulted). Of the responses received, 93% indicated clearly that they did not want their names and addresses disclosed into the public domain. The Council provided the Commissioner with a sample of the comments it received from respondents.
24. It is clear to the Commissioner that there is significant evidence, both on the internet and provided by the Council to suggest that the issue of dog breeding in the Carmarthenshire area is a highly sensitive, emotive and contentious issue, and one which has received a significant amount of interest from various campaign groups, animal welfare activists and the media.

25. The Commissioner accepts that the comments the Council received from licensed dog breeders as a result of the consultation exercise it undertook indicate there is a very real concern from the individuals that they would suffer significant adverse consequences if their details were to be disclosed. A number of the individuals refer to specific examples of previous incidents to support their concerns, anxiety and fears for the safety of themselves, their families, their animals and property.
26. The Commissioner has undertaken some research about the issue of dog breeding, particularly in relation to Carmarthenshire. The Commissioner notes that there is significant reference on various internet sites to "puppy farms" in the Carmarthenshire area. There is clear evidence that there is strong opposition to the issue of commercial dog breeding, and concerns about the welfare of the animals. As a local authority with one of the highest number of licensed dog breeders in the UK there is extensive information referencing matters associated with Carmarthenshire specifically, including named breeding establishments in the area. The comments that the Council received from individuals when consulted about disclosure suggest that there have been a number of incidents whereby individuals have been targeted by certain groups. Some of the comments make reference to instances of damage to property, trespass, intimidating visitors, surveillance and phonecalls, and theft of animals.
27. Whilst it is difficult to determine with any degree of certainty whether disclosure would result in an increase in animal welfare extremist activity against the individuals in question, the Commissioner is satisfied that the Council has provided sufficient evidence to support its view that disclosure could lead to increased activity by such groups, resulting in adverse consequences for the dog breeders. The Commissioner also accepts that disclosure of the withheld information would certainly increase the fears and concerns felt by the dog breeders. The Commissioner is satisfied that release of the withheld information could potentially cause unnecessary and unjustified damage and distress to the individuals in this case.

General principles of accountability and transparency

28. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling legitimate interest in disclosure.
29. The complainant pointed out that there is great public concern about the welfare standards of dog breeders and significant evidence of poor welfare of dogs in some establishments. These concerns are reflected in major national campaigns for improved standards in dog breeding, for

example by the RSPCA and the Dog's Trust. In Wales specifically significant evidence of poor welfare in many breeding establishments was determined by a Government funded programme over two years (the 'Companion Animal Welfare Enhancement Scheme, CAWES' project). This project provided the evidential basis that resulted in the Welsh Government proposing new welfare regulations for dog breeding¹. The consultation documents make explicit reference to widespread welfare problems in dog breeding in Wales.

30. The complainant advised that the licensing process by local authorities is designed to assure certain minimum standards by inspection according to relevant dog breeding legislation². Dog breeders sell puppies through newspapers, cards in shop windows, and via the internet. In many cases information about whether the breeder is licensed is seldom provided, and in some cases breeders imply they are licensed when they are not. Further, whilst licensing is designed to ensure appropriate minimum standards, the complainant is of the view that certain authorities may not be undertaking their responsibilities properly. This is borne out by information coming to light of premises, which have been granted a license, failing to meet published licensing conditions, or reasonable criteria defined in official guidance on dog breeding. The complainant feels that it is important that the public be able to examine licence reports produced by an authority, and be able to raise questions about the licensing process in individual cases. Disclosure of the information requested will provide opportunities for such public scrutiny.
31. The complainant provided evidence to the Commissioner that other public authorities she had contacted had disclosed lists of licensed dog breeders in their area. She does not believe that the Council has provided any significant evidence that there is any existing risk of substantial adverse consequences to the dog breeders in Carmarthenshire by animal welfare extremists, or that disclosure would be likely to increase any risks or threats.
32. The Commissioner notes that a number of other local authorities across the UK have either disclosed a list of licensed dog breeders in their area in response to an information request, published the information on their website, or indicated that they will provide copies of the

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<http://wales.gov.uk/topics/environmentcountryside/ahw/animalwelfare/pets/breedingofdogs/?lang=en>

² <http://www.legislation.gov.uk/ukpga/1973/60>,
<http://www.legislation.gov.uk/ukpga/1999/11/contents>

information if requested. However, this does not mean that the withheld information in this case should be disclosed. The Commissioner considers each request for information on its own merits, and takes into account the specific circumstances associated with each request.

33. The Commissioner has undertaken some research of publicly available information on the website, both in respect of information about licensed breeders and animal welfare and animal extremist activities. The Commissioner has identified that there is some publicly available information about the identity of licensed dog breeders, for example, some breeders advertise their products and services on the internet. The Commissioner has also found a number of media articles and references on other animal welfare related websites which refer to specific dog breeding premises.
34. The Council and the Commissioner accept that there is clearly a legitimate public interest in knowing that dog breeding establishments are properly regulated. There is also a very strong public interest in ensuring that animals are treated and cared for properly and in ensuring high standards of welfare are maintained at dog breeding establishments.
35. In balancing the expectations of the individuals and the consequences of disclosure against the legitimate interest in disclosure, the Commissioner believes that in this case, it is finely balanced. Whilst there is a strong legitimate public interest in disclosure, the consequences of disclosure, and the evidence of these adverse consequences provided by the Council is also significant. However, on balance, the Commissioner does not believe that the legitimate interest of the public in accessing the withheld information would outweigh the potential damage and distress caused by disclosure of that information.

Right of appeal

36. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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

Anne Jones
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