

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 July 2018

Public Authority: Warwickshire County Council

Address: Shire Hall
Warwick
Warwickshire
CV34 4RR

Decision (including any steps ordered)

1. The complainant requested information relating to the councils actions following a complaint made against a business. The council refused the request on the basis that section 30(1)(b) of the Act applies (investigations).
2. The Commissioner's decision is that the council was correct to apply the exemption and that the public interest rests in the exemption being maintained.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 8 September 2017, the complainant's wrote to the council and requested information in the following terms:

"In accordance with the Freedom of Information Act 2000, I request disclosure of the following information.

- 1. The date and time that Warwickshire Trading Standards visited the farm with APHA [the Animal and Plant Health Agency].*
- 2. Whether or not the owners and/or workers at [name of business redacted] were informed about the visit ahead of the visit taking place.*
- 3. If so, the date and time that the owners and/or workers were informed of the visit.*
- 4. Documents, emails or other communications relating to the outcome of the visit.*
- 5. Details of the Trading Standards visit to [name of business redacted] - which parts of the farm were inspected; which areas of concern raised by [name redacted] were addressed on that visit; whether the visit included an inspection of the live birds (and if so how many cages were inspected); the length of the visit.*
- 6. An explanation as to why no further action will be taken by Trading Standards.*
- 7. Whether Trading Standards will be making a return visit to the farm, and if so, an approximate date of when it will take place.*

Please note that I do not seek for any information which identifies individuals or third parties to be disclosed and agree for such to be redacted within reason."

5. The council responded on 14 September 2014. It responded to the majority of the request and these have not been the subject of the complaint to the Commissioner. However as regards parts 4 and 5 of the request it said that the information was exempt as section 30(1)(b) of the Act applied (investigations).
6. The complainant's wrote to the council and asked it to carry out a review on 3 November 2017. The council wrote to the complainant on 12 January 2018 with the outcome of the review. It upheld its initial decision to apply Section 30(1)(b) and also applied section 40(2). It provided a small amount of information to the complainants to demonstrate that no information was generated after the decision on the investigation had been reached.

7. The review also stated that the investigation had found that the complaints were '*without merit*', which added further information to its response to part 6 of the request which had initially only referred the complainant's to its policies.

Scope of the case

8. The complainant contacted the Commissioner on 30 January 2018 to complain about the way their request for information had been handled.
9. The complaint was that the council had either wrongly applied section 30(1)(b) to refuse at least parts of the request or that it had wrongly applied the public interest test required by the exemption to withhold the information.
10. The complainants did not complain about the application of section 40(2) to information and had, in any case sought to exclude 'reasonable redactions' on this basis from the scope of their request.
11. The Commissioner has not therefore found it necessary to consider the application of section 40(2) to the information further within this decision notice.

Reasons for decision

Background to the decision

12. The complainant's represent an animal rights group which monitors animal and plant welfare. One of their operations led to a complaint being made against a business to the trading standards department of the council. The subsequent request was made to find out what action had been taken in respect of that complaint. The complainant's believe that part of the information would have been generated following the investigation and would not therefore fall within the scope of the exemption. They also believe that the council's decision as regards the balance in the public interest test was incorrect, and therefore further information should have been disclosed in response to the request.

Section 30(1)(b)

13. Section 30(1)(b) of FOIA states that:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

(a) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, ..."

14. The council argues that trading standards and the APHA had carried out an investigation to assess whether there was any non-compliance issues at the business which had been complained about.
15. The investigation was carried out under powers conferred to the council under the Animal Welfare Act 2006 and subsequent regulations (which it provided details of to the Commissioner).
16. It said that no further information was held after the date of the decision on the investigation on 7 September 2017, the day before the request was received from the complainants. It clarified that a small amount of information had been disclosed to the complainant in response to their request for internal review with which the council sought to demonstrate that no further information had been generated following this date.
17. It said therefore that the complainant's argument is incorrect and that no information had been generated after the investigation had been completed. The council argues that all of the withheld information was generated as a result of the complaint, and during the investigation process, and that no further information was recorded following the decision on compliance being reached. It considers therefore that all of the information which it has withheld falls within the scope of the exemption.
18. It said that the withheld information was produced purely for the purposes of documenting its investigation findings and to assist in the decision making process as to whether further action was required.
19. The Commissioner has therefore considered the withheld information in respect of the application of section 31(1)(b) to it. The information was held as a result of an investigation being carried out by the council under powers provided to it by statute which could have led to criminal proceedings being undertaken by it against the business.
20. The withheld information was recorded purely as a result of that investigation, and no further information was generated once the investigation had been completed.

21. Section 31(1)(b) is a class based exemption. It applies to all information held in respect of a relevant investigation.
22. Given the above the Commissioner has decided that the council was correct that section 31(1)(b) was engaged by the withheld information.

The public interest

23. As the council was correct to apply section 31(1)(b), section 2 of the Act requires that a public interest test is carried out to determine whether the information should be disclosed in spite of the exemption being engaged. The test is whether, *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"*.

The public interest in the information being disclosed

24. The council recognised that there is a strong public interest in local authorities being open and transparent in order to achieve the appropriate level of public scrutiny, particularly in matters which attract public interest such as non-compliance with animal welfare legislation.
25. It said however that it considers that the interest is primarily in scrutinising the process that the local authority follows and how a decision is reached in such cases. In this case it disclosed that it had carried out an unannounced visit to the business premises and had reached a decision that, on the evidence it had found, no further action was to be taken based on this complaint.
26. It argues that whilst others might disagree with a decision which the council reaches on a complaint this does not mean that there is a cause to suspect that the process has not been conducted appropriately and that the public interest in disclosure is increased.
27. The council recognised that a disclosure of this sort of information would aid in understanding how decisions are made, and satisfy the public that investigations are carried out appropriately and properly. It considered however that it was important that this is balanced against the possibility of 'trial by media', particularly in emotive cases such as where animal welfare complaints were concerned.
28. For their part, the complainant's argue that the council has not correctly balanced the factors in the public interest test in reaching their decision that the public interest rests in the exemption being maintained. They argue that there are very strong reasons why the public interest rests in disclosure in this case, and said that they had submitted the following

arguments in their request for review but the council had still failed to give adequate weight to these points:

"the public interest in favour of disclosure in this case is far stronger than acknowledged in the FOI response, and extends beyond a general public interest in openness and transparency to the substantial public interest in preventing animal cruelty generally, the significance of the subject matter of this investigation particularly, as well as what the information may reveal about the probity or integrity of the Council's processes.

As is acknowledged by the Information Commissioner, "it is important that the public have confidence in those public authorities tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance..." (paragraph 57). In this case, the visit of the Council was prompted by multiple allegations, supported by evidence, of cruelty to animals, contraventions of the Animal Welfare Act 2006 and the Animal By-Products Regulations 2005 (and therefore potential illegal behaviour), breaches of the Code of Practice for the Welfare of Gamebirds Reared for sporting Purposes (such complaints are enclosed for ease of reference).

Such allegations are extremely serious and strengthen the public interest in disclosure on their own."

29. They note that the Court of Appeal has very recently emphasised the need for public authorities to properly analyse and explain their public interest analysis and that the council had failed to do this in their response or their review of the requested information.
30. They also argue that the council is seeking to use diametrically opposed arguments to support varying aspects of their response. They argued that the council was effectively seeking to 'have their cake and eat it'. They said that the council has sought to argue that, on one side, the complaint which was made was 'without merit', and yet on the counter side that a disclosure of the information might result in 'trial by media' and result in further allegations being made against the business.
31. The complainant's argue that if the allegations did have merit this creates a very strong public interest in the disclosure of the information on the council's decision not to take a further action.

The public interest in the exemption being maintained.

32. The council argues that the purpose of such investigations is to establish whether any criminal activities have, or are being committed or not. There is therefore a significant public interest in protecting the ability of

the council and third party organisations such as the APHA to conduct investigations of this nature.

33. It argues that investigations such as this often rely upon the goodwill and co-operation of business owners and that this might be put at risk if information on investigations of this nature were publically disclosed, regardless of whether the investigation found that the allegations were found to be correct or not (for the reasons outlined above regarding trial by media).
34. It argued that it was important that a disclosure of details of an investigation does not result in the council providing fuel to allegations that have been found to be without merit following a full and proper investigation. It said that the result of such allegations could be damage to the reputation of a business, to the extent that the business could be destroyed through unfounded allegations. It argues therefore that the public interest in disclosure is weakened by the potential for the misuse of the information which might then damage the businesses concerned.
35. The council further argues that if disclosure of information from such investigations became more general, there is a risk that land and business owners would become less co-operative because they would fear that information they were providing to the investigation might subsequently be disclosed. It argues that cooperation is of great assistance to those investigating, and that one of the main reasons that businesses are currently willing to cooperate is because they are aware that the information gathered by the council will be treated confidentially.
36. It argues that if businesses refuse to cooperate in the future this might increase the possibility that cases of animal cruelty would increase, or that they could not be addressed effectively.
37. The complainant's argue that the council has extensive powers of search, seizure and inspection under the Animal Welfare Act 1996. In addition, they argue that the Freedom of Information Act has been in force for over 12 years. Accordingly both the expectation of non-cooperation on the part of WCC and the presumed expectation of absolute confidentiality on the part of those it regulates are unsustainable, particularly where the investigation has concluded.
38. In response to this the council argues that the complainant's argument does not recognise the principle that legal action should be a last resort and far more can be achieved through co-operation between parties. For instance, the council noted that business and landowners may sometimes use such investigations as a way of seeking advice, and they

may be dissuaded from doing so by the possibility of disclosure if information of this sort were disclosed more generally.

Conclusions

39. In *Alan Digby-Cameron v the Information Commissioner and Bedfordshire Police and Hertfordshire Police (EA/2008/0023 and 0025 26 January 2009)* the First-tier Tribunal summed up the factors necessary to consider as part of the public interest test as follows,

"in assessing where the public interest balance lies in section 30(1) case relevant matters are therefore likely to include (a) the stage a particular investigation or prosecution has reached, (b) whether and to what extent the information is already in the public domain, (c) the significance or sensitivity of the information requested and (d) whether there is any evidence that an investigation or prosecution has not been carried out properly which may be disclosed by the information."

40. The Commissioner has noted that the investigation which was carried out had been completed by the time that the request for information was received, and that a decision that no further action should be taken had been made. Therefore the potential for a disclosure of the information to affect the ability to prejudice this particular investigation had waned.
41. The Commissioner has seen no evidence to suggest that the investigation was carried out improperly. Both the council and the APHA were involved in the process.
42. The Commissioner notes the council's argument that in cases where animal welfare is concerned there is a risk of trial by media. She also notes the potential that some individuals could make use of information gathered as part of an investigation, which is subsequently made public, to make false or distorted allegations in order to disrupt and damage businesses. It would be a potential fear of this that might lead land or business owners to be less cooperative with investigations in the future.
43. The Commissioner recognises that some individual's views may be coloured by ethical beliefs about the treatment of animals for commercial purposes rather than any specific identifiable non-compliance issues with animal welfare laws. She also recognises that a disclosure of information on any animal welfare issues may lead to a negative portrayal of a business in some elements of the media. The publication of the evidence by the complainant's has already led to some coverage by the media in this respect.

44. The nature of the business in this case could potentially lead to those with ethical concerns about the use of animals for commercial purposes such as this making false allegations in order to damage the business' reputation. This could result in damage to businesses which are acting legally and who are following the necessary legislation and guidelines relevant to their business.
45. The information therefore retains a significant degree of sensitivity. However the Commissioner recognises that the publication of the allegations made by the complainants raises this prospect to a degree in any event.
46. The Commissioner notes that the complainants in this case represent a well-known and respected organisation supporting animal rights, and that the complaint they made was based on evidence (which they provided to the council) following undercover information gathering. There is no suggestion that the complaint which led to this investigation was in any way malicious or misleading.
47. The allegations made by the complainant's have been published by the complainants, including the evidence which was provided to the council as part of its complaint. Therefore details of the complaint which was made, if not the findings of the investigation, are already in the public domain. The council has also disclosed its decision not to take further action based upon the outcome of its investigation.
48. The Commissioner recognises that greater public awareness of the actions taken as a result of complaints would demonstrate to the public animal welfare and enforcement activities taken by the council in response to complaints. This would raise the profile of local authority activities in this field and the actions they take in this respect. Providing evidence of the seriousness with which the council takes such allegations and the extent of their investigations could in turn lead to more complaints being made as the public recognise that complaints they make will be dealt with appropriately and investigated properly.
49. The council indicated to the complainants that investigations of this nature are intelligence led. A greater public awareness of such issues, together with a public confidence that complaints will be taken seriously would potentially lead to greater levels of intelligence being received from members of the public.
50. The Commissioner notes that it is often undercover investigations by minded groups, as well as 'tip-offs' from members of the public which lead to subsequent prosecutions taking place. Such actions are an important aspect in the protection of animals and animal welfare. However, the Commissioner notes that where criminal offences are

prosecuted in open court, details of the investigations which were carried out do become public and are often reported on in the media. This need for greater public knowledge on the actions taken by local authorities is therefore met where details of prosecutions are made public through these means.

51. Countering this, and more broadly than the specifics of this particular case, the Commissioner must also bear in mind that although an investigation may decide that there has been no breach of compliance or no criminal activity by a business or by individuals, the information gathered as part of investigations remains recorded and may subsequently be used to inform decisions in any future investigations. A disclosure of that information may negate, weaken or affect the possibility of that information being used as evidence in future criminal proceedings. This is a central purpose behind the exemption in the first instance. There is therefore a strong public interest in protecting intelligence which has been obtained in order that this can be used if this becomes necessary in the future. A disclosure which leads to media publication of the details of the investigations which were carried out may prevent such information being used as supporting evidence in future prosecution proceedings.
52. The Commissioner also considers that there is a strong public interest in protecting the reputation of businesses where investigations have been carried out and the findings indicate that the business is complying with the necessary legislation and standards. The Commissioner is persuaded by the council's argument that, particularly in cases of animal welfare, any disclosure of details of an investigation may lead to a 'trial by media' or false allegations being made against a business and damage being caused to the reputation of that business. However its argument in this respect is weakened by the publication of the initial allegations in this case and further press coverage of this evidence.
53. Disclosing information relating to some investigations and prosecutions could be distressing for those involved, for example the victims, their families or suspects who were ultimately not charged or were acquitted at court. The first Tier Tribunal, in the case of *Guardian Newspapers Limited v Information Commissioner and the Chief Constable of Avon and Somerset Police (EA/2006/0017 5 March 2007)*, indicated that this is not a relevant factor in order to determine the balance of the public interest in respect of the application of section 31 cases. However this does not detract from the fact that there remains a public interest in protecting sensitive information which has been gathered as part of an investigation. The information in this case is still sensitive given the nature of the concerns expressed (and published) by the complainants,

and the fact that these give rise to emotive issues surrounding the farming of animals for the purposes involved in this case.

54. The Commissioner also accepts the council's argument that the cooperation of those being investigated plays an important part in the effectiveness of investigations of this sort. If information gathered as part of investigations of this sort are disclosed on a more general basis, due to the emotive issues involved there is a real and significant possibility that the cooperation of land and business owners might be withdrawn in future investigations. The potential for ongoing publicity of the complaints and issues in the media would raise the prospect of damage to a business's reputation, and the potential for this raising the profile of the business with animal rights activists might cause owners to fear direct action being taken against them.
55. Ultimately this might lead to more formal action, and potentially legal action being required to ensure that investigators are able to gather the information which they need. This would be likely to require further time and add to the costs of such investigations, making it far more difficult for the council to obtain information necessary to either clear or confirm allegations. Ultimately this would be likely to affect the ability of the council to conduct investigations and bring about prosecutions. Investigations would cost more and take longer. Given that the resources of public authorities are limited it would be possible that fewer complaints could be investigated properly, and as a result the scope of council's functions in the protection of animal welfare would be lessened compared to the work it is currently able to undertake.
56. The Commissioner has therefore decided that the public interest in the exemption being maintained in this case outweighs that in the information being disclosed. The council was therefore correct to apply section 30(1)(b) to the information.

Right of appeal

57. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

58. 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.
59. 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

Andrew White
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