

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2018

Public Authority: North Kesteven District Council
Address: Kesteven Street
Lincolnshire
NG34 7EF

Decision (including any steps ordered)

1. The complainant requested from North Kesteven District Council (the Council) information relating to complaints the Council received concerning a specific dog breeding/puppy farm and the responses the Council sent to each complainant during a period of time.
2. The Commissioner's decision is that the Council has correctly withheld the information to part 1 of the request under section 41(1) (information provided in confidence) of the FOIA. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 4 April 2018 the complainant wrote to the Council and requested information in the following terms:

"I am sending this request under the Freedom of Information Act to ask for the following information:

- 1) *Please can you release in full copies of (A) all complaints received by North Kesteven Council about the dog breeding/puppy farm [name redacted]; and (B) the response from the Council to each complainant from the date of receipt of this request to 1st January 2015.*
- 2) *A copy of the council's guidelines on how to respond to complaints against a licenced animal breeder.*
- 3) *A copy of the latest dog breeding licence renewal inspection report by the council for [name redacted].*

If you are encountering practical difficulties with complying with this request, please contact me as soon as possible (in line with your section 16 duty to advise and assist requesters) so that we can discuss the matter and if necessary I can modify the request.

If it is necessary for any reason to redact any information, please redact the minimum necessary and send me the rest of the material, explaining the legal grounds for each redaction."

4. On 24 April 2018 the Council responded. The Council refused the information to part 1 of the request under section 41(1) (information provided in confidence) of the FOIA and disclosed information to parts 2 and 3 of the request.
5. On 25 April 2018 the complainant asked for an internal review of the Council's use of section 41(1) of the FOIA to refuse to disclose the information to part 1 of the request.
6. On 14 June 2018 the Council provided its internal review response. It upheld its original position that section 41(1) of the FOIA applied.

Scope of the case

7. The complainant contacted the Commissioner on 22 June 2018 to complain about the way her request for information had been handled. Specifically, regarding the Council's reliance of section 41(1) to refuse to disclose the information requested in part 1 of her request.
8. The scope of the case concerned whether the Council correctly withheld the information at part 1 of the request under section 41(1) of the FOIA.

Reasons for decision

Section 41 – Information provided in confidence

9. Section 41(1) of the FOIA states that:

"Information is exempt information if –

a) it was obtained by the public authority from any other person (including another public authority), and

b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

10. To properly engage section 41(1) of the FOIA, disclosure of the requested information must give rise to a possible actionable breach of confidence. This requires the information to have the necessary quality of confidence. The information must therefore be more than trivial and not be otherwise accessible.
11. The information needs to be communicated in circumstances which import an obligation of confidence. This obligation can be implicit or expressed explicitly.
12. Finally, unauthorised disclosure of the information would need to cause detriment to at least one party.
13. In this case, the information sought by the complainant, which is being withheld, is for copies of complaints which the Council received relating to a particular dog breeding/puppy farm and the Council's response to each complainant.
14. The Council provided the Commissioner with the withheld information. This consisted of a report containing the complaints and responses in relation to [name redacted] dog breeding/puppy farm. The Commissioner accepts that the correspondence was provided by members of the public to the Council and that this constitutes information provided by a third party. Therefore, the withheld information was obtained from another person for the purposes of section 41(1)(a) of the FOIA.
15. Any party who submits a concern to the Council must provide their identity as part of the necessary process for taking such matters forward. The Commissioner finds that the contents of the correspondence are not trivial because the complaints, the Council's responses and the general handling of the complaints appear to be of great importance to the complainants. She understands that these complaints often relate to personal and distressing experiences by families or are expressed views and opinions concerning the breeding of dogs. Therefore, the content of the information (complaints/responses) reflect the impact on the individual.
16. The Commissioner also finds that the information is not otherwise accessible. Although the Council had stated that some information may be in the public domain (i.e. online petition made against the licensing of the puppy farm) the Commissioner accepts that the identity and views of complainants are not in the public domain.

17. The Council explained to the Commissioner that it believes there is a legitimate and reasonable expectation among members of the public when submitting complaints to the Council. It said that they are doing so with the expectation that their complaints will be kept confidential and only shared with the officers and relevant service area it relates to within the Council, and only supplied to third parties by agreement and in order to assist with the investigation into the reported issue. The Council added that it does not accept that the individuals would expect the details of their complaint and personal responses to be provided to the world at large.
18. Therefore, the Council believes that there is an implied duty of confidence in respect of the withheld information which would be actionable by the individuals, should the Council breach that duty of confidence through disclosure of the information.
19. The Commissioner acknowledges that the information is of a sensitive nature and that the complaints and responses reflect the impact on the individual and their families. She notes from viewing the withheld information, that it can identify areas where the complainants live and the vets they use. Therefore, disclosure is likely to be to the detriment to the confider. In view of this and considering the Council's explanation above, she is satisfied that an obligation of confidence has been created.
20. The Council considers that disclosure of the withheld information, which was provided in confidence, is an infringement of the individual's right of privacy. It explained that it is important for the Council to have a relationship of trust with its complainants. It believes that this may discourage members of the public from submitting complaints to the Council, as they would have no guarantee that their confidence would be respected and that their views would be kept confidential.
21. The Council added that this would also prevent it from conducting its statutory functions effectively and would be of detriment to the Council and its community.
22. The Council stated that it operates *"the statutory licensing regime in respect of [name redacted] and other businesses and needs to ensure that it can maintain a professional relationship in order to work with local business to ensure compliance with all required legislation, and disclosure of the withheld information may undermine that relationship and cause a specific detriment to [name redacted] in this case."*
23. The Commissioner accepts the Council's contention that disclosure of the withheld information would be likely to constitute a breach of confidence and the confider would be entitled to take action against the Council.

24. In the circumstances of this case, the Commissioner considers that information relates to personal or private information matters. Any party that submits a concern to the Council is unlikely to expect their identity to be made public. It is also evident to the Commissioner that the identity of such parties will represent personal data under the terms of the Data Protection Act 1998 (DPA), and on this basis alone, it is likely that such parties would hold a strong expectation of confidence.
25. Having considered the circumstances of the withheld information, the Commissioner accepts that its disclosure would cause detriment to the confider.

Is there a public interest defence for disclosure?

26. Although section 41(1) is an absolute exemption, and does not need to be qualified by a public interest test under section 2 of the FOIA, case law suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence.
27. The Commissioner has therefore considered whether there is a public interest defence available should the Council disclose the information. The duty of confidence public interest defence assumes that the information should be withheld, unless the public interest in disclosure exceeds the public interest in maintaining the confidence.
28. The Council considers that there is a public interest in it being transparent and accountable about how they licence and inspect businesses, and it is accepted that this is an issue which is of interest to the media and the public. Therefore, by disclosing the requested information this would result in the public being better informed about this issue. However, the Council also believes that this is satisfied by the statutory licensing and inspection procedures which it operates under the details of which are available to the public.
29. The Commissioner takes the view that a duty of confidence should not be overridden lightly, particularly in the context of a duty owed to the confider. Disclosure of any confidential information undermines the principle of confidentiality, which itself depends on a relationship of trust between the confider and the confidant. It is the Commissioner's view that people would be discouraged from confiding in public authorities if they did not have a degree of certainty that such confidences would be respected. It is therefore in the public interest that confidences are maintained.

30. The Commissioner considers that it is important for individuals to be able to complain about any matter without the risk of disclosure of their complaint without compelling reason. If this was not the case, the Commissioner believes there would be a real risk that potential complaints may not come forward.
31. In considering the specific circumstances of this case, the complainant had informed the Commissioner of the amount of complaints the Council had received since 2015 about [name redacted] dog breeding/puppy farm. The Complainant explained that the Council grant licenses for the site and that it also inspects the site. However, she reported that within the past few years, the Council have been subject to several investigations by the media and the complainant considers the complaints against this dog breeding/puppy farm to be serious.
32. The complainant stated that she is seeking the information requested (letters of complaints) in full and she had said to the Council that confidential details including names/addresses could be redacted. The complainant argued that *"any personal or confidential information in the complaints could be redacted whilst leaving the nature of the complaint intact."*
33. With regards to the public interest test of whether a disclosure would amount to a breach of confidence, the complainant reported that this issue had been investigated in the media more than once. She referred to a response to a previous FOI request and detailed the specific complaints against the particular issues. The complainant argued that it would not be a breach of confidence to disclose the requested information with adequate protection of personal data through redaction. Therefore, the complainant considers the information at part 1 of her request should be released and she disagrees with the Council's use of section 41(1) to withhold this requested information.
34. The Commissioner accepts that there is a general public interest in public authorities being open and promoting transparency and accountability.
35. The Commissioner acknowledges that some of the information had been redacted and she accepts the Council's explanation that this information is out of the scope of the request but due to the way it was recorded by the Council, this was produced as part of the report. The Commissioner considers that it would be difficult to make further redactions to the information (the report of complaints) without disruption to the nature of the complaint. This is because there is confidential, identifiable or sensitive information throughout the report and therefore it would be difficult to redact meaningfully.

36. The Commissioner is mindful of the wider public interest in preserving the principle of confidentiality. She recognises that the Council have taken the view that the grounds of breaching confidentiality must be valid and very strong since the duty of confidence is not one which should be overridden lightly.

The Commissioner's conclusion

37. The Commissioner is satisfied that the withheld information has the necessary quality of confidence, was imparted in circumstances giving rise to an obligation of confidence and that disclosure would result in detriment to the confider.
38. On balance, having considered all the circumstances of this case and the withheld information, the Commissioner has concluded that the public interest in maintaining the obligation of confidence outweighs the public interest in disclosing the information requested. On this basis the Commissioner finds that section 41(1) of the FOIA has been correctly engaged.

Right of appeal

39. 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

40. 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.
41. 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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