

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2023

Public Authority: Pendle Borough Council
Address: Town Hall
Market Street
Nelson
BB9 7LG

Decision (including any steps ordered)

1. The complainant requested information from Pendle Borough Council ('the council') relating to a licenced private dog seller. The council applied section 40(2) to withhold it from disclosure (personal data of third parties). The complainant argued that the redactions were incorrect and that further information should be held by the council.
2. The Commissioner's decision is that the council was correct to state that it holds no further information, and that it was entitled to rely on section 40(2) of FOIA to withhold other information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 7 January 2023, the complainant made the following request for information to the council:

"1. All information held by the council in relation to the number and type of breeding dogs kept by [name of company redacted by ICO] in respect of the current dog breeding and pet selling licence issued by the council. The council has previously stated that it does not count the number of breeding dogs at the breeding establishment. If the council's position remains the same then please confirm if it has ever counted the number of breeding dogs at any dog breeding establishment (including previous licences issued to [name of company redacted by ICO] and current/previous licences issued to other licence holders) it licences. In the event that the council has previously, or currently still does, count the number of breeding dogs at dog breeding establishments (including previous licences issued to [name of company redacted by ICO] and current/previous licences issued to other licence holders) please provide all information about the change in policy in relation to the current licence issued to [name of company redacted by ICO].

2. A copy of the most recent inspection report at the dog breeding and pet selling establishment [name of company redacted by ICO].

3. All correspondence between the council and [name of company redacted by ICO] in respect of the dog breeding licence issued by Fermanagh & Omagh District Council in the name of [name of individual redacted by the ICO] (this is a matter of public record so it is my view that S40 would not apply to information relating to the licence) and the sale of puppies by [name of company redacted by ICO] of puppies bred under that licence."

5. The council responded on 23 January 2023. It provided an explanation in respect of part 1 of the request. It refused to provide the information falling within parts 2 and 3 of the request on the basis that section 40(2) (personal information) of FOIA applied. It referred the complainant to a previous decision notice of the Commissioner which related to the same information¹.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616170/fs50819531.pdf>

6. The complainant asked the council to review its decision on 26 January 2023. The complainant argued that the council hadn't fully answered part 1 of the request by confirming how many dogs are housed at the site. They also questioned whether the council's reliance on section 40(2) was correct, bearing in mind a recent tribunal decision, and clarified the request in relation to part 3.
7. On 21 February 2023, the council responded. It said that it did not hold information in relation to part 1 of the request, it disclosed the names of the business owners as it confirmed that that information was available via Companies House, and it confirmed the application of section 40(2) to the information falling within part 2 and 3 of the request.
8. Following the Commissioner's intervention, the council disclosed information which it held in respect of part 1 of the request which it had not previously identified as being held. It also disclosed correspondence which fell within part 3 of the request which it had subsequently located.

Scope of the case

9. The complainants made their complaint to the Commissioner on 21 February 2023. She said that she remained unhappy with the council's response. She clarified that her remaining concerns were that:

"I would like explicit written confirmation from the Council they have provided all information they hold in relation to points 1 and 3 of my request. When providing this written confirmation the Council should confirm how they searched for the information. Did they just ask the employees dealing with the licensing of this establishment to respond to them or was an independent electronic search also undertaken?"

I have received no information in relation to point 2 of my request and still require a copy of the inspection report."

Reasons for decision

Section 1 – General right of access to information

10. Section 1(1) of the FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.

11. In scenarios where there is some dispute between the amount of information which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

13. The complainant argues that the council holds further information in respect of parts 1 and 3 of the request. She specified one particular email exchange which was disclosed to her during the course of the Commissioner's investigation and argued that this suggested that further information is held. She also asked the Commissioner to confirm with the council the searches it had carried out in order to locate any relevant information.

The council's position

14. The council states that after carrying out adequate and appropriate searches it has been unable to locate any further information falling within the scope of the complainant's request for information.
15. It said that any relevant recorded information would be held in either its electronic files, or in its Outlook accounts. It confirmed that these would be the only two formats in which relevant information would be retained as paper copies of documents are scanned onto its system and then shredded.
16. Searches had been carried out of the electronic files, and there is no further information falling within the scope of parts 1 to 3 of the request. It said that each of the files it holds had been looked at as there are not many documents of potential relevance to the complainant's request.
17. It confirmed that it had carried out searches of its Outlook and IDOX accounts. It had also carried out a wildcard search of the relevant service manager's Onedrive using the same search parameters as it used when searching its Outlook accounts. It provided the Commissioner with a list of the key words which it used to conduct the searches. No further information was located.

18. It said that staff in Licensing and Environmental Health teams had carried out the same searches. No other staff have been asked as no other staff deal with the licensing referred to in the request.
19. Specifically, as regards point 1, it clarified that licensing staff do not go to sites and count animals. It therefore argued that the only information which would hold this type of information would be held within the application forms and correspondence from the licencing applicants. It confirmed that all information which was located was read, and no further information is held as regards the number of dogs in any of that information, barring the information which it has already disclosed.
20. As regards part 3 of the request, the council disclosed the correspondence which it had located.

The Commissioner's conclusion

21. The Commissioner has considered the council's position, in conjunction with the request.
22. Whilst the complainant believes that further information may be held, there is no evidence of this.
23. The council has described the searches which it carried out and explained why it believes that those searches were adequate and appropriate in order to identify any further information falling within the scope of the request. No further information was located.
24. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
25. On this basis the Commissioner has concluded that, on the balance of probabilities, no further information is held by the council.

Section 40 - personal information

26. As regards part 2 of the request, the council withheld copies of its inspection reports relating to the site. It applied section 40(2) to withhold the information. It did, however, disclose the names of the owners as that information is already within the public domain. The withheld reports include a number of separate documents reporting on various aspects of the site and its management.
27. Section 40(2) says that information is exempt information if it is the personal data of an individual other than the requester and disclosure would contravene any of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

28. The council referred to a previous decision of the Commissioner in case FS50819531, which relates to similar information. Having considered this, the Commissioner is satisfied that the withheld information is personal data relating to the owner and the site manager of the site for the same reasons as stated in that previous decision notice. Some personal data also relates to staff at the site.
29. The inspection reports provide an overview of the site and the monitoring of the licence. It therefore provides full insight into the council's findings on the site, and by extension/extrapolation, on the owner's and site manager's actions in respect of that company at the site.
30. In the case of a 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.
31. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
32. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest. A disclosure of the information would provide the public with greater insight on the council's monitoring of the site, and licenced dog breeders generally, and the regulatory checks, actions, and measures which it carries out on such sites. It is also accepted that there is a public interest in the regulation of dog breeding establishments and in the welfare of the animals held in them.
33. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.
34. In the Commissioner's view, a key issue when considering the balancing test is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals, taking into account whether or not they have consented to its disclosure.
35. The council highlighted that its arguments in decision notice FS50819531 retained their strength as regards this request for information. The Commissioner agrees that the same arguments are

relevant as regards the information caught within the scope of the current request.

36. That decision notice in FS50819531 also refers to arguments in another decision notice, FS50501130², and again the Commissioner notes that these arguments are relevant in relation to the withheld information in this case.
37. The Commissioner agrees with the council that in the circumstances, the data subjects would have a reasonable expectation that the inspection reports would only be used to inform the public authority's decisions about whether or not to renew their dog breeding licence. They would not expect that it would be disclosed to the public. The general means by which the council informs the public about its inspection ratings for such establishments is via a star rating system. The inspection report determines the star rating, and it is this star rating – which is required by law to be displayed by the business - that allows the public to make an informed decision on the site. The individuals would therefore expect that this level of detail to be disclosed in respect of their business; they would not expect the level of detail contained within the inspection reports to be disclosed.
38. Because of the greater level of detail in the inspection reports, the Commissioner also considers that their disclosure would be likely to be concerning to the individuals. Dog breeding is an emotive issue. Campaign groups and activists take an interest in the regulatory monitoring of such establishments. If an inspection report is disclosed the business owners may fear that the publication of additional information about their business may lead to unwanted contact from campaigners, activists, or others, despite the council being clear that the site meets the necessary standards.
39. Importantly, the Commissioner has not noted any evidence from within the inspection reports in this case which leads him to find that the legitimate interests of the public in accessing the reports outweighs the rights and freedoms of the data subjects.
40. Based on the above factors, the Commissioner has determined that the fundamental rights and freedoms of the individuals outweigh the legitimate interest identified above. The Commissioner therefore considers that disclosing the requested information would be unlawful as

² https://ico.org.uk/media/action-weve-taken/decision-notices/2013/904496/fs_50501130.pdf

it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation.

41. The Commissioner has therefore decided that the council was correct to withhold the relevant information under section 40(2) of FOIA.

Right of appeal

42. 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

43. 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.
44. 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

Ian Walley
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