

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2023

Public Authority: Food Standards Agency
Address: Clive House
70 Petty France
London
SW1H 9EX

Decision (including any steps ordered)

1. The complainant has requested information about animal welfare incidents in slaughterhouses. The Food Standards Agency (FSA) provided some information but relied on exemptions under section 31 (law enforcement), and on section 38 (health and safety) of FOIA to withhold the remaining information. FSA subsequently also applied additional exemptions under section 31, and on section 43 (commercial interests) to the withheld information.
2. The Commissioner's decision is that FSA is entitled to withhold the specific information the complainant has requested under section 31(1) of FOIA. It's not necessary for FSA to take any corrective steps.

Request and response

3. On 8 May 2023 the complainant requested information of the following description:
 - "[1] Please send me records of all breaches of animal welfare rules which were detected partly or wholly by using evidence from CCTV cameras since they became compulsory in

slaughterhouses in England in 2018. For each breach, please state the slaughterhouse, the type of breach, the number and species of animals affected, and the outcome of the case (eg the fine imposed).

"[2] Please also send me records of all breaches of the CCTV regulations since they came into force in 2018. For each breach, please state the slaughterhouse, the type of breach and the outcome, eg an enforcement notice and/or fine.

"[3] Please also send me records of the number of times CCTV footage was copied or seized by inspectors in each year since the CCTV regulations came into force."

4. On 19 May 2023, FSA responded. It provided the information requested in parts 1 and 2, but in anonymised form. It refused to identify the premises in question and relied on sections 31 and 38 of FOIA to withhold that information. FSA advised it didn't hold the information requested in part 3.
5. The complainant requested an internal review on 28 June 2023. FSA sent the outcome of its internal review on 26 July 2023. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 31 July 2023 to complain about the way their request for information had been handled.
7. Before the Commissioner began his investigation, FSA offered to produce pseudonymised tables. These tables would show how many breaches occurred at which premises, but the premises would not be identified. The complainant accepted this offer, but still wanted to pursue their complaint. FSA also subsequently decided that it could only produce such a table for CCTV breaches and not animal welfare breaches.
8. In its submission to the Commissioner FSA confirmed that it's also now relying on further exemptions under section 31 of FOIA, and on section 43(2).
9. The Commissioner considers that the scope of his investigation is to determine whether FSA is entitled to rely on any of the cited exemptions to withhold the specific information originally requested, ie the slaughterhouse names.

Reasons for decision

Section 31 – law enforcement

10. FSA is now relying on sections 31(1)(a) and (b) in addition to section 31(1)(c) and section 31(1)(g) with sections (2)(a) and (c).
11. Under section 31(1)(a) and 31(1)(b) of FOIA information is exempt information if its disclosure would, or would be likely to, prejudice the prevention or detection of crime, or the apprehension or prosecution of offenders.
12. Under section 31(1)(c) information is exempt if its disclosure would, or would be likely to, prejudice the administration of justice.
13. FSA explained that whether section (a), (b) or (c) was engaged would depend on the specific circumstances of the Food Business Operator (FBO) being considered for named disclosure; whether that FBO is subject to enforcement action, referral for investigation, or prosecution.
14. Under section 31(1)(g), information is exempt if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2). The purposes that FSA has specified are those under section 31(2)(a) and 31(2)(c) – the purposes of ascertaining whether any person has failed to comply with the law and the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
15. FSA has confirmed in its submission to the Commissioner that Defra has given it the delegated authority to regulate and investigate animal welfare non-compliance and offences.
16. Regarding section 31(1)(a) and 31(1)(b), FSA says that it holds information gathered in pursuit of enforcement actions with a view that, should circumstances arise, it would be used in evidence of an investigation and potential prosecution which Defra has the powers to carry out.
17. FSA's role in monitoring, enforcing, and investigating incidences of non-compliance relies heavily on the businesses it regulates trusting that it's acting with integrity, in the public interest, and won't publicly disclose information which can be used to prejudice their operations or place them at undue risk of harm.
18. FSA considers that disclosing the specific names requested would undermine that trust and cause conflict between FSA staff and FBOs. It

would significantly inhibit and prejudice its ability to prevent or detect crime and prosecute offenders.

19. FSA says the issue at hand is emotive so that perceived non-compliance with animal welfare legislation would receive disproportionate public attention. It says the resulting public perception would mean disclosing the information would disproportionately impact FSA's ability to assess and investigate issues of non-compliance fairly and effectively.
20. FSA goes on to say that disclosing any information which leaves the businesses FSA regulates vulnerable to disproportionate scrutiny and disruption will, in turn, impede the prosecution of offenders. This is because it would reduce the extent to which businesses and other third-parties respect and trust FSA's integrity as a public authority. It would also offer defendants an avenue by which to attack the credibility of FSA's activities.
21. Regarding section 31(1)(c), FSA has confirmed that this exemption applies to the names of FBOs where, as part of its regulatory activities, it's identified or suspect severe breaches of animal welfare legislation and have referred this to other public authorities who have powers to institute criminal proceedings.
22. The Commissioner had queried FSA's reference to preserving the right to a fair trial (in its correspondence to the complainant). The Commissioner considered it likely that any defendant's compliance history would be raised at trial anyway, by either the prosecution or the defence.
23. FSA explained that its statement that it may prejudice the right to a fair trial is one example which may apply, where prosecution action is considered or taken, in the administration of justice by the Crown Prosecution Service (CPS) and local authorities.
24. FSA says that where prosecution of a business has already been publicly stated, it's fair to say that the information which the courts decide is appropriate to raise at trial will be made publicly available. However, FSA doesn't consider it's appropriate for it to make a decision on or predict "the specific circumstances which may arise where disclosing this information as a comprehensive register of enforcement action would be prejudicial."
25. Additionally, FSA says it decides whether, on the available evidence, a formal investigation should be undertaken. Not all such investigations will pass the evidential or public interest threshold necessary for a case referred to the CPS, or for a prosecution to be taken forward by the CPS when a referral is made.
26. FSA considers that because the issue of animal welfare at slaughter is a highly emotive one for the public, there's a risk that disclosing the

slaughterhouse names could result in coverage of the slaughterhouse and the welfare issue by the media. This would be likely to prejudice the claimant's or respondent's ability to have a fair hearing.

27. FSA says its role is to make sure that the information it holds which may be presented to the CPS for prosecution consideration is protected. This ensures that no disclosures under FOIA, historically or in the present, impact the CPS's ability to consider what evidence should or shouldn't be raised at trial. Equally, the defendants shouldn't be prejudiced in being able to shape their case in a fair and just manner.
28. It can be argued that evidence submitted about trials is made publicly available in the process of the administration of justice. However FSA says it doesn't publish a comprehensive register of businesses where enforcement actions relating to animal welfare breaches have been taken. To do so would prejudice investigations. It would provide a tool that groups responsible for known instances of injurious behaviour could use to target businesses that they morally disagree with.
29. FSA considers it's sufficient to state that, should circumstances arise, disclosing the names of businesses constitutes a real and substantial risk of prejudice to the administration of justice, and the right of the businesses to a fair trial.
30. The evidence which FSA has a duty to collect in monitoring animal welfare may, if circumstances arise, be held for the purposes of the prevention or detection of a crime, apprehension or prosecution of offenders, and/or the administration of justice.
31. In cases where prosecution or any other formal judicial action is being considered or undertaken, evidence which may be raised at trial is not for the FSA to decide. In FSA's view, that would be inherently prejudicial to the administration of justice
32. Regarding section 31(1)(g) [with sections 31(2)(a) and (c)], FSA says that disclosing any information which would place the businesses it regulates at significant and disproportionate risk of being targeted by actors who pose a credible threat would prejudice its relationships with the businesses FSA regulates. In turn, this would prejudice FSA's ability to ascertain whether any person has failed to comply with the law, and whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
33. FSA says it relies on FBOs to trust that the information which the FSA gathers as part of its regulatory and law enforcement functions will be held with an appropriate duty of care. Therefore, in addition to the other regulatory functions which FSA has already illustrated above, FBOs would have a reasonable expectation that FSA wouldn't publicly disclose

information in such a way as to unduly prejudice their commercial interests, or the safety of themselves, their premises, and their staff.

34. Additionally, publicly identifying businesses subject to enforcement action where they have not been provided appropriate protection prior to the defendant exhausting their rights of appeal is contrary to natural justice. Should the FBO be successful in its appeal, that enforcement activity would be expunged from any records. Therefore, publishing this enforcement record outside of FSA's usual processes would unfairly prejudice the commercial interests of the businesses it regulates. It would severely impact their trust in FSA's competence and integrity as a regulator and law enforcement authority.
35. FSA says it's very transparent in publishing animal welfare monitoring statistics on its website which can be used to inform opinions on its performance as a public authority, and whether the actions it undertakes to enforce the legislation which it has a duty to adhere to are effective.
36. In circumstances where an FBO is subject to prosecution, the requested information is made publicly available in the administration of justice under usual disclosure and transparency practices.
37. FSA has confirmed that on 14 September 2023 it provided relevant information to the complainant; namely how the number of CCTV **and** animal welfare referrals was broken down by plant (ie not just the CCTV referrals referred to at paragraph 7); so one plant was subject to six referrals, two plants were subject to three referrals and so on.
38. However, FSA has confirmed that it remains of the view that disclosing the names of FBOs subject to enforcement action into the public domain would, in effect, constitute a comprehensive register of enforcement actions taken against individual businesses. This could be used as a tool to target these businesses, and the associated individuals, resulting in a significant endangerment to the business operators and FSA staff.
39. FSA says it would be disproportionate to interrogate each business to identify the specific section 31(1) exemptions which apply in each case at a particular moment in time. This is because of the number of enforcement actions and businesses contained within the information requested, and the rapidly changing developments in the landscape of law enforcement activities and responsible authorities.
40. FSA has therefore asked the Commissioner to consider the nature of the information in scope of this request in the round, the context and public interest in disclosure at the time of the request. FSA asks the Commissioner to apply the principle that at all times FSA holds the information it collects in pursuit of its regulation of animal welfare, and the handing down of enforcement actions, with a view to it being used in

evidence. Whether it holds evidence for regulatory or criminal proceedings is a matter of individual circumstance, but it collects records of enforcement actions with a view that, should circumstances arise, these would become central evidence in civil and criminal investigations and proceedings.

41. In their complaint to the Commissioner, the complainant has disputed FSA's claim that disclosure could prejudice future prosecutions. They say that FSA carries out very few such prosecutions, and they don't believe that any such prosecutions would be prejudiced by disclosing the FBOs' names.

The Commissioner's conclusion

42. The Commissioner considers three tests when he's considering whether information engages the exemptions under section 31.
43. First, the Commissioner is satisfied that the harm FSA envisions relates to the applicable interests under section 31(1) ie the prevention or detection of crime or the apprehension or prosecution of offenders; the administration of justice; and the exercise by FSA of its functions.
44. Second, the Commissioner accepts that disclosing into the public domain the names of the FBOs that have breached animal welfare or CCTV regulations would or would be likely to have the following detrimental impacts.
45. Regarding sections 31(1)(a) and (b), the Commissioner understands that FSA has applied this exemption to the names of FBOs about which it has gathered regulatory information which may be used in evidence of an investigation and potential prosecution by Defra in the future. Disclosing the information would or could deter FBOs from fully engaging with FSA's monitoring, enforcing and investigating of instances of non-compliance. This is because of the emotive nature of the FBOs' business. Naming a potentially non-compliant FBO could impact negatively on that FBO, in terms of the attention, scrutiny and criticism it may receive from those who disagree with the FBO's business.
46. Regarding section 31(1)(c), FSA has applied this exemption to names of FBOs that FSA has referred to other public authorities who have powers to institute criminal proceedings, because of severe breaches of animal welfare legislation. Disclosing this information would or could prejudice the claimant's or respondent's ability to have a fair hearing (for example because of possible media attention).
47. And regarding section 31(1)(g), disclosure would or could again deter FBOs from fully engaging with FSA's monitoring, enforcing and investigating of instances of non-compliance. Disclosing the names of the FBOs would or could leave them at risk from targeting by those who

disagree with their business, and present a risk to staff, premises and to the FBOs' commercial interests. Disclosure would or could therefore erode trust between FSA and the FBOs, with the FBOs becoming less prepared to fully engage in FSA's regulatory activities.

48. Finally, the Commissioner has considered the likelihood of the prejudice occurring. From its submission FSA appears to consider that that the prejudice it envisions **would** happen ie the chance of it happening is more likely than not. The Commissioner doesn't consider that FSA has put forward a compelling case to support this but will accept that the envisioned prejudice would be likely to happen ie that there is a real and significant risk of the prejudice occurring.
49. Because the above three tests have been met the Commissioner finds that FSA has correctly applied the exemptions under section 31(1) to the information it's withholding. He's gone on to consider the related public interest test.

Public interest test

50. In its correspondence to the complainant, FSA noted that there's a lot of public concern about animal welfare. The public gives a high priority to adherence to regulations governing the welfare of animals at slaughter. FSA acknowledged that it's therefore in the public interest for the public to be confident that where breaches take place, FSA carry out its statutory functions under the Food Standards Act effectively and is prepared to take enforcement action.
51. In their request for an internal review, the complainant argued that there's a very strong public interest in disclosing the FBO names. The complainant considered that slaughterhouses would be more likely to work harder to comply with the rules if they knew they would be "named and shamed" for breaking them. The complainant also considered that non-disclosure may also shield FSA from legitimate scrutiny over how well it's carrying out its enforcement and monitoring role.
52. Against disclosure, FSA has noted that providing slaughterhouse names may, because of the emotive nature of this subject, hinder any ongoing or future prosecutions. This would result in FSA being unable to carry out its statutory functions.
53. FSA considers there's a stronger public interest in being satisfied that the FSA is carrying out its regulatory functions and that FBOs comply with the legislation, than in knowing the business details. FSA also says that there's also a strong public interest in ensuring that public authorities, both in the UK and in other countries, aren't hampered in their ability to perform their regulatory functions in relation to law enforcement.

54. The Commissioner has found that disclosing the FBOs' names would be likely to prejudice FSA's ability to prevent and detect crime and to apprehend or prosecute offenders and would prejudice the administration of justice.
55. The Commissioner recognises that there is a public interest in public authorities being open and transparent, particularly in situations such as this. Many people will be very concerned by breaches of animal welfare legislation at places of slaughter.
56. However, the Commissioner hasn't been presented with public interest arguments sufficiently compelling to justify the harms detailed above. There's greater public interest, in the Commissioner's view, in FSA being able to perform its regulatory role with slaughterhouses as effectively and efficiently as possible – so that any breaches of legislation are prevented and detected, offenders are apprehended and prosecuted, and any resulting trials are fair. The Commissioner is satisfied that the public interest arguments that the complainant has raised, and the general public interest in transparency, are sufficiently met through the anonymised data that FSA has disclosed and which it publishes on its website.
57. The Commissioner's decision is that FSA is entitled to withhold the names of the FBOs under section 31(1) of FOIA and that the public interest favours maintaining the exemptions. This is broadly in line with the Commissioner's decision in FS50528633¹.
58. Because the exemptions under section 31 are engaged, and the public interest lies in maintaining the exemption, it's not necessary to consider the other exemptions FSA has cited.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1002412/fs_50528633.pdf

Right of appeal

59. 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

60. 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.

61. 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

Cressida Woodall
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Wycliffe House
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