

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 June 2022

**Public Authority:** Cheshire East Council  
**Address:** C/O Municipal Buildings  
Earle Steet  
Crewe  
CW1 2BJ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to dog breeders.
2. The Council aggregated the requests and relied on section 12(1) (cost of compliance exceeds appropriate limit) of FOIA to refuse them.
3. The Commissioner's decision is that:
  - The Council was entitled to aggregate the requests in accordance with section 12(4).
  - However, the Council has failed to demonstrate that section 12(1) applies.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the requests that does not rely upon section 12(1).
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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### Request 1

6. On 7 February 2021 the complainant made a request for information relating to 'Dog Breeder 1.' Due to the length of this request it is outlined in an annex to this notice.
7. The Council responded on 3 March 2021, disclosing some inspection reports that fell within the the scope of the request with personal information redacted. It confirmed that it did not hold some information that the complainant was requesting.
8. The complainant was dissatisfied with the way in which their request had been handled and so requested an internal review.
9. On 29 April 2021 the Council provided the outcome to its internal review. It explained to the complainant that 'Officers relied on the information recorded in the inspection sheets and licences to provide answers to your initial response, as these were easily accessible, and it was hoped that the information released would satisfy your query.'
10. It confirmed that it did hold further information that fell within the scope of the request but was refusing it under section 14(1) (vexatious requests) because further compliance would impose a grossly oppressive burden on the Council.

### Request 2

11. On 8 April 2021 the complainant made a request for information relating to 'Dog Breeder 2.' This request is also outlined in an annex to this notice.
12. The Council responded on 3 June 2021 and explained that it was aggregating this request with the previous. The Council explained that 'we no longer consider that section 14(1) applies to your request at this time' but confirmed that it was aggregating both requests under section 12(4) and refusing them under section 12(1).
13. The complainant was again dissatisfied with the way in which their request had been handled and so requested an internal review. Specifically, the complainant disputed the Council's aggregation of the two requests.

## Scope of the case

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14. The complainant contacted the Commissioner on 14 June 2021 to complain about the way that their request for information had been handled.
15. The complainant did not raise any concerns about the disclosure that they received in response to request 1, so the Commissioner will not consider this matter any further.
16. The Commissioner considers the scope of his investigation to be as follows: to determine whether the Council was entitled to aggregate the requests in line with section 12(4) and refuse to comply with the requests under 12(1).

## Reasons for decision

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### Section 12 – Cost of Compliance Exceeds Appropriate Limit

17. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
18. The Commissioner's guidance<sup>1</sup> states that 'As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit.'
19. The appropriate limit is outlined in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') and is set at £450 for a public authority such as the Council, at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

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<sup>1</sup> [costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf \(ico.org.uk\)](https://ico.org.uk/costs_of_compliance_exceeds_appropriate_limit.pdf)

20. Regulation 5 of the Regulations states:

“(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which—

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.”

**Was the Council entitled to aggregate the requests?**

21. The complainant is concerned that there is no link between request 1, for information relating to Dog Breeder 1 and request 2, relating to Dog Breeder 2.
22. Regulation 5 of the Regulations outlines the three part test which must be met in order for requests to be aggregated. Firstly, the request must be made by one person, or by different persons acting in concert. Secondly, the requests must relate to the same, or similar information, ‘to any extent’. Finally, the requests must be received by the authority within any period of sixty consecutive working days.
23. There is no doubt that both requests were made by the complainant. The requests were also received by the authority within a period of sixty working days.
24. The Commissioner’s accepts that the phrase ‘to any extent’ represents a fairly wide test. However, the Commissioner’s guidance also notes ‘requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the

requests in terms of the nature of the information that has been requested.”<sup>2</sup>

25. The Commissioner acknowledges that the requests relate to different dog breeders and both cover a broad range of information. However, both requests relate to licensing information and the practices of these businesses. The Commissioner is satisfied that the requests relate, to some extent, to similar information and therefore the Council was entitled to aggregate the requests.

**Would the aggregated costs of the two requests exceed the appropriate limit?**

26. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are set out at Regulation 4(3) and are:
- (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.”
27. In order to verify its application of section 12(1), the Commissioner asked the Council to provide an estimate as to how long compliance with the aggregated requests would take. Acknowledging that information had already been disclosed in response to request 1, the Commissioner explained to the Council that this estimate would likely be based on work already carried out.
28. In order to satisfy the Commissioner that section 12(1) applies, any estimate must be sensible, realistic and supported by cogent evidence. As part of this evidence, the Commissioner asked the Council to detail any sampling exercise that had been undertaken in support of its estimation.
29. The Council directed the Commissioner to its internal review response to request 1, which it stated 'contains a detailed estimate of the

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<sup>2</sup> [costs of compliance exceeds appropriate limit.pdf \(ico.org.uk\)](#)

time/cost taken to provide the information falling within the scope of this request.' This is the only information the Council gave the Commissioner in support of its application of section 12(1).

30. In this internal review response, the Council explained 'There are over 500 documents in the investigation file alone, consisting of various records, emails, photographs, inspection reports, requests for information, police information and legal advice. We have also identified hundreds of other documents which may come under the scope of your request but do not form part of the formal investigation file. The FOI Team would need to manually review the information (in conjunction with specialist Animal Health officers) before any disclosure, in order to consider the application of exemptions.'
31. The Council goes on to explain that it is specifically concerned that section 40(2) (personal information), section 41 (information provided in confidence) and section 42 (legal professional privilege) would be likely to apply to the withheld information.
32. The Commissioner notes that this explanation relates almost exclusively to the consideration of exemptions which is not included as a permissible activity under Regulation 4(3) of the Regulations.
33. The Council also stated 'The collation and preliminary review of the information has so far taken in excess of 18 hours. Whilst it is not possible to provide an accurate estimation of how further time would be required to review each document, including the consideration of exemptions, even allowing 2 minutes per page would take a further 16 hours.'
34. Again, the Council appears to have focused its argument on the amount of time that it would take to consider exemptions within the withheld information. To reiterate, a public authority cannot include the cost and effort of considering exemptions, or applying exemptions, when applying section 12(1).
35. In its submission to the Commissioner, the Council confirmed that it had taken a previous decision of the Commissioner's, FS50831027<sup>3</sup>, into account when making its decision in relation to this request. The Commissioner notes that this decision notice relates to section 14(1) and not section 12(1).

## **The Commissioner's view**

36. Ultimately, whilst the Council was entitled to aggregate the requests, it has failed to convince the Commissioner that undertaking the activities permissible under Regulation 4(3) of the Regulations **only** would exceed 18 hours. For that reason, the Commissioner has determined that section 12(1) has been applied incorrectly.
37. To reiterate, the Council's estimate in support of section 12(1) must be supported by cogent evidence and here is where the Commissioner considers the Council's submission is lacking.
38. The Commissioner accepts that compliance with request 1, including considering redactions and applying redactions, may have exceeded 18 hours. However, the Council has failed to explain to the Commissioner how much of this time was spent undertaking the activities permissible under Regulation 4(3) of the Regulations as opposed to other activities.
39. In relation to the aggregated requests, the Council has failed to provide even a vague estimate as to how long compliance, under section 12(1), would take.
40. During this investigation the Commissioner asked the Council to confirm that the estimate has been based upon the quickest method of gathering the requested information, e.g. where possible databases would be used rather than searching manual files.
41. The Council did confirm that its estimates were based on the quickest method of gathering the requested information but then directed the Commissioner back to an explanation that focused on the consideration of exemptions, rather than the gathering of information.

## **Other matters**

42. In its internal review response to request 2 the Council stated 'As was stated in the earlier response to 10828649 (request 1); the collation and preliminary review of information has so far taken in excess of 18 hours. Whilst it is not possible to provide an accurate estimation of how further time would be required to review each document, including the consideration of exemptions, including data protection requirements.'
43. Section 14(1) of FOIA allows a public authority to refuse to comply with a request whereby doing so would impose a grossly oppressive burden upon the public authority. Unlike section 12, when applying section 14(1) in this way a public authority can take into account the cost and effort of considering exemptions or redacting exempt information.
44. The Commissioner considers that section 14(1) is most likely to apply when: the requester has asked for a substantial volume of information; and

there are real concerns about potentially exempt information which the public authority cannot easily isolate because it is scattered throughout the requested material.

45. The Commissioner has not considered section 14(1) in this notice, though he notes that the Council applied section 14(1) at the internal review stage in relation to request 1. It then retracted this position to apply section 12(1) by virtue of section 12(4).
46. The Commissioner considers the Council's mishandling of this request has stemmed from its conflation of 12(1) and 14(1). The Commissioner's guidance<sup>4</sup> states that 'A single request taken in isolation for example the first and only request received from an individual, may be vexatious solely on the grounds of burden.' The Commissioner notes that there is no option to aggregate requests under 14(1) when compliance would impose a grossly oppressive burden on the authority.
47. Whether compliance, with either request 1 or 2 would impose a grossly oppressive burden is something for the Council to consider when taking the steps ordered in this decision notice.

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<sup>4</sup> [How do we deal with a single burdensome request? | ICO](#)



## **Right of appeal**

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48. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. 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**

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex**

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### **Request 1**

"1. A list of all variations and periods of suspension relating to dog breeding licence CE/DB10/311220 made between 10 April 2018 and 31 January 2021 (please also see question 4 re extension of licence as there may be some overlap between these issues).

When responding to the above question please confirm in relation to each variation and suspension which of the following applies

#### Part 2

Paragraph 9(a) variation on application of licence holder

Paragraph 9(b) on the initiative of the council with the consent of the licence holder

#### Part 3

Paragraph 15(a) the licence conditions are not being complied with

Paragraph 15(b) there has been a breach of these regulations

Paragraph 15(c) information supplied by the licence holder is false or misleading, or

Paragraph 15(d) it is necessary to protect the welfare of an animal

2. A copy of dog breeding licence CE/DB10/311220 in its original form when issued on 10 April 2018 and the the relevant inspection report and/or risk assessment detailing how the applicant achieved a four star rating. If it is not explicit from the inspection report and/or risk assessment please confirm which of the higher standards were achieved by the licence holder in order to obtain the four star rating.

3. A copy of all further inspection reports in relation to [Redacted] since the granting of the original licence on 10 April 2018. For the avoidance of doubt I do not believe that any information relating to the licence holders ought to be redacted. It is a matter of public record that the business has been subject to investigation, the licence was downgraded and was suspended for a period of time. I do agree that it would be appropriate to redact any personal data relating to council employees, the licence holder's employees or any vet or other professional engaged by the council in relation to any inspection.

4. The copy dog breeding licence CE/DB10/311220 provided on 20 October 2020 in response to an earlier FOI request had an expiry date of 31 December 2020. At some point it appears that that licence was extended 31 January 2021. If the details of the extension of the licence have not been included in response to question 1 above please confirm when the extension was granted and the circumstances leading to the extension of the licence. Was the extension requested by the licence holder? What were the grounds for extending the licence? When deciding to extend the licence what weight did the council attach to the history of this particular licence holder and the number of complaints received about the licence holder?

5. If it is not explicit from the information provided in answer to questions 1 to 4 above please confirm exactly what "breeding arrangements" were put in place by the licence holder. I would draw your attention to the fact that the licence holder put the fact that there were "breeding arrangements" in place in the public domain when responding to concerns raised on social media. The licence holder also states on the website

"We use to have external breeding arrangements in place with other breeders, but we don't offer this any more, it is only our own dogs. Since we re-commenced breeding after the closed period we had during Covid, we only breed from our own dogs and we do not offer the breeding arrangements any longer."

On the basis that licence holder is the one who put the existence of the "breeding arrangements" in the public domain, and has acknowledged use of the arrangements on the business website, it does not appear to me that there are any data protection issues preventing the council from disclosing details of the arrangements. In relation to the licence holders use of "breeding arrangements" please confirm

- A. Where the puppies were born
- B. Who owned the bitch
- C. Where was the bitch normally was resident
- D. Who planned and arranged the matings
- E. Did the arrangement involve the change of ownership and/or transportation of pregnant bitches
- F. Who were the "other breeders" were referred to by the licence holder? Where the "other breeders" were licensed breeders please confirm who their licensing authority was
- G. How many puppies were sold by the licence holder using the "breeding arrangement" since the licence commenced on 10 April 2018

H. Confirmation of whether or not it is the view of Cheshire East Council that the breeding arrangements put in place by the licence holder were in compliance with the regulations."

## **Request 2**

"Please provide me with the following information and documentation

A copy of all licences for selling animals as pets issued for the premises [Redacted]'the premises' in the period 1 January 2018 to date.

A copy of all dog breeding licences issued for the premises [Redacted] 'the premises' in the period 1 January 2018 to date.

Please note I already have a copy of licence CE/DB23/310321 in the names [Redacted] for the period 01/04/20 to 31/03/21. I do not require another copy of that licence. I do require copies of any other licences in force at the premises, whether before, during or after the period covered by licence CE/DB23/310321.

Please confirm the number of puppies sold by each pet shop licence holder.

Please confirm the number of puppies sold by each dog breeding licence holder.

In the event that the Council is aware of any licences, by which I mean dog breeding or pet shop licences other than the ones issued by Cheshire East, please confirm which licence holder(s) holds other licences. Please also confirm the type of licence held and the name of the authority that issued that licence.

Are the council aware of any breeding arrangements any of the licence holders above have in place with any third party. By breeding arrangement I mean any sale of pregnant bitches or transfer of breeding stock to another premises for mating and/or whelping. Any other arrangements that involve the regular transfer of dogs to and from the premises so that puppies are born and/or sold elsewhere."