

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 April 2014

Public Authority: Animal Health and Veterinary Laboratories Agency (an executive agency of Defra)

Address: Woodham Lane
Addlestone
Surrey
KT15 3NB

Decision (including any steps ordered)

1. The complainant has asked the Animal Health and Veterinary Laboratories Agency (AHVLA) to identify the origin, at postal town or county level, of sheep that were transported on a specific truck. The AHVLA refused to disclose this information on the basis that it is exempt from disclosure under sections 38(1)(a) and (b) (health and safety) of FOIA.
2. The Commissioner has found that section 38(1)(b), but not section 38(1)(a), is engaged and that in all the circumstances the public interest in disclosure is outweighed by the public interest in maintaining the exemption. The Commissioner does not therefore require any steps to be taken as a result of this notice.

Request and response

3. The Commissioner notes that under FOIA the AHVLA is not a public authority itself but is actually an executive agency of Defra and therefore the public authority in this case is actually Defra and not the AHVLA. However, for the sake of clarity, this decision notice refers to the AHVLA as if it were the public authority.
4. The AHVLA's role is to safeguard animal health and welfare as well as public health, protect the economy and enhance food security through research, surveillance and inspection. On 4 September 2013 the complainant requested from the AHVLA information of the following description:

1. What was the origin (specific postal town or county within the UK) of the sheep that were loaded onto the truck [specified registration] (IRL) and taken from the UK to Germany?

2. Whether, when AHVLA checks journey logs for live animal exports, the time spent driving and it's relation to Council Regulation EC 562/2006 is taken into account.

5. The AHVLA responded on 9 October 2013. In respect of request 1, the AHVLA advised that disclosure of the requested information could endanger the health and safety of staff and was therefore exempt information by virtue of section 38(1) of FOIA. The AHVLA did, however, provide the complainant with the clarification specified in request 2.
6. In a letter received by the AHVLA on 29 October 2013, the complainant challenged the AHVLA's reliance on section 38(1) of FOIA. In particular, she questioned whether any harm could arise from the disclosure of the information in question. The complainant also included two further information requests, which the AHVLA dealt with separately and thus do not concern the present case.
7. The AHVLA subsequently carried out an internal review into its handling of request 1, the outcome of which was provided to the complainant in November 2013. This upheld the AHVLA's original position, explaining in more detail why the identification of an assembly centre (premises where animals are grouped together to form a consignment) or farm posed a risk for staff at the location because of potential animal rights activity.

Scope of the case

8. The complainant contacted the Commissioner on 4 December 2013 to complain about the AHVLA's decision to withhold the information specified in request 1.
9. This notice therefore focuses on the question of whether the Council properly applied section 38(1) to the disputed information.

Reasons for decision

Section 38 – health and safety

10. Section 38(1) of FOIA states that information is exempt information if its disclosure under the legislation would, or would be likely to –
 - (a) endanger the physical or mental health of any individual, or
 - (b) endanger the safety of any individual
11. The AHVLA has confirmed that it has seeking to rely on both limbs of section 38(1) of FOIA.
12. The Commissioner considers that the term 'endanger' in section 38(1) should be interpreted in the same way as the term 'prejudice' in other FOIA exemptions. This means that three conditions must be satisfied for the exemption to be engaged. First, the harm that is envisaged would, or would be likely to, occur relates to the applicable interests described in the exemption. Secondly, there is a causal relationship between the potential disclosure of the withheld information and the prejudice that the exemption is designed to protect against. Third, there is a real risk of the prejudice, or more precisely the endangerment, arising through disclosure. In this regard, a public authority is required to demonstrate that either disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice; would imposing a stronger evidential burden than the lower threshold of 'would be likely'.
13. As regards the practice of the live exportation of animals, the Commissioner has previously considered and issued a decision notice (FS50465448, 11 March 2013)¹ on the AHVLA's refusal to disclose a list of the UK operators who held a UK transporter authorisation along with their relevant authorisation numbers. In this case the AHVLA's justification for applying section 38(1) of FOIA rests on the following two conditions:
 - Disclosure of the postal town or county that represented the origin of the sheep consignment could allow the identification of a particular assembly centre.
 - There is a real possibility that identifying the assembly centre used for exporting animals will lead to animal rights protests at the site,

¹ http://ico.org.uk/~media/documents/decisionnotices/2013/fs_50465448.ashx

which would risk causing mental and physical harm to staff at the assembly centre.

14. The Commissioner is satisfied that the nature of the harm referred to by the AHVLA is relevant to the exemption. The Commissioner has therefore gone on to consider the next stage of the prejudice test; that is, whether there is a causal link between disclosure and the harm referred to by the AHVLA. In his guidance on the prejudice test², the Commissioner acknowledges that it will not usually be possible for a public authority to provide concrete proof that the prejudice would or would be likely to result. This is because the test relates to something that may happen in the future. However, the Commissioner considers that the engagement of an exemption cannot be based on mere assertion or belief but must reflect a logical connection between the disclosure and the prejudice.
15. The Commissioner is aware that the issue of the live exportation of animals is the source of considerable debate and, on occasion, active protest against the practice. This is because of the cruelty that some perceive is inherent in live exportation due to the stress placed on the animals.
16. In FS50465448, the Commissioner found that there remained at the time of the request (24 April 2012) a threat of protests against those companies and individuals involved in the transportation of animals. Extending this finding, the Commissioner considers that there is a prevailing risk of protest activity. However, the Commissioner must decide whether this consideration means that there is a logical connection between disclosure and one or more of the factors described in section 38(1) of FOIA.
17. In his guidance on the exemption³ the Commissioner explains that there "is an obvious interrelation between physical health and safety, and in

²http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the_prejudice_test.pdf

³http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_19_-_HEALTH_AND_SAFETY.ashx

practice it may be convenient to think of physical health with medical matters and physical safety with the risk of accident and the security of individuals". The Commissioner continued by saying that the risk to "mental health may be more difficult to judge. However, it would be a mistake to equate danger to mental health with a risk of distress and the Commissioner considers that the endangerment of mental health implies that disclosure might lead to or exacerbate an existing mental illness or psychological disorder."

18. In this case the AHLVA has argued that the detrimental effect arising from disclosure links in with the possibility that animal rights protests will be staged at the site in question. In the Commissioner's view, this argument is more properly suited to section 38(1)(b) than section 38(1)(a) of FOIA. This is because it refers to the security of individuals connected with the site rather than to an adverse effect connected with medical or mental health matters. The Commissioner has therefore found that section 38(1)(b) and not section 38(1)(a) satisfies the second stage of the prejudice test. Accordingly, he has gone on to consider the likelihood of the prejudice occurring only with regard to section 38(1)(b) of FOIA.
19. The AHVLA has not clearly specified in this case the likelihood of prejudice – either 'would' or 'would be likely' – it considers is relevant in the circumstances. Where this is the case, the Commissioner will apply the lower threshold of prejudice. This still requires that a public authority is able to demonstrate that the prejudice is more likely than not to arise.
20. The complainant has argued that requesting information on a postal town or county level would not allow a member of the public to track down the specific site from which the sheep originated. She therefore considers that the AHVLA's endangerment argument does not correspond with the information that has actually been requested. The AHVLA disagrees, however, and contends that releasing information at the level of detail required would still allow an informed member of the public to identify the site.
21. On the issue of the likelihood of prejudice occurring, the Commissioner considers that the answers to the following three questions must be assessed. Firstly, has the AHVLA demonstrated that the release of the information could enable a recipient of that information, either by itself or in conjunction with other pieces of information already in the public domain, to trace the relevant assembly centre or farm from where the sheep were transported? Secondly, is there a real risk that the site in question could attract animal rights activists and activity? Thirdly, can it be assumed that the animal rights activity would be likely to endanger the safety of those individuals linked to the site?

22. The AHVLA has explained that it publishes a list of approved assembly centres on its website⁴. It considers that an interested member of the public could if so desired use the requested information and piece it together with the list of assembly centres to locate the relevant one. From his analysis of the information, the Commissioner agrees. He must therefore decide whether there is a real risk of animal rights protests happening as result of disclosure and, if so, whether this would have a detrimental effect on individuals.
23. In considering this matter, the Commissioner has returned to his findings on FS50465448. The request in that case related to the authorisation of animal transporter operators and so the information plainly differs from the information under consideration in this case. However, in the Commissioner's view it seems reasonable to expect that the threat of animal rights activity, to the extent that it exists, would extend to each link of the animal transport chain and not simply one part. Furthermore, while almost 18 months had elapsed since the request in FS50465448 had been made, there is no indication that the risk had diminished.
24. At paragraph 44 of the decision notice issued on FS50465448, the Commissioner referred to the continued presence of a threat by some activists and acknowledged that there had been protests directed at some animal transporter operators as well as against the members of the scientific community. Similarly, in this instance the AHVLA has highlighted more recent actions of campaigners that it considers set a worrying trend in respect of the safety concerns of individuals involved in the transportation trade.
25. His analysis of the arguments provided has led the Commissioner to conclude that section 38(1)(b) is engaged on the basis that the risk of prejudice is substantially more than remote. As section 38 is a qualified exemption, however, consideration must be given to the balance of the public interest in disclosure.

Public interest arguments in favour of disclosure

26. The complainant has argued that disclosure is necessary for those interested in the welfare of animals being exported from the UK. Specifically, with regard to a particular consignment over which concerns had been raised, the complainant considers that the

⁴ <http://www.defra.gov.uk/ahvla-en/files/approve-assembly-centres.pdf>

information would provide a more complete picture of the movement of the animals; enabling a calculation to be made about how long the sheep had been travelling for, based on the knowledge of the animals' starting point. This could, in turn, indicate whether there had been a breach by the transporter of existing legislation in relation to journey times.

27. The Commissioner recognises that the issue of animal welfare is an important one. Furthermore, he accepts that the activities of campaigners can help to highlight poor practices or focus attention on areas where further scrutiny of current policies and procedures is needed.

Public interest arguments in favour of maintaining the exemption

28. The AHVLA has argued that it is strongly in the public interest that there is protection for those individuals involved in, or working at sites connected with, the transportation of animals.
29. The AHVLA has also pointed out that it is obliged to report any instances of non-compliance in respect of journey times to the Member State that granted the authorisation for the transporter. It is for this Member State to take any regulatory action that they consider appropriate. In the AHVLA's view, disclosure of the information in question would not ultimately assist it in applying the journey time rules involved in animal exports. As such, the AHVLA considers that disclosure would have little benefit to the public.

Balance of the public interest

30. The Commissioner will invariably place significant weight on protecting individuals from the risk to their physical safety. The natural consequence of this is that disclosure will only be justified where a compelling reason can be provided to support the decision. In this case the Commissioner has no doubt that the complainant has a valid reason for seeking the information. However, when placed against the risk that disclosure potentially poses, the Commissioner considers that the value of the information to the public is not sufficient to outweigh the strong arguments in favour of maintaining the exemption.
31. In coming to this view, the Commissioner has taken into account of the fact that the live exportation of animals is legal. Accordingly, any individuals working in this area are entitled to work in an environment that is free of intimidation or threats of harassment. In saying this, the Commissioner has no doubt that there will be occasions when individuals or companies will fall foul of the laws governing transportation. However, the Commissioner recognises that there are already mechanisms in place by which any transgressions can be monitored.

32. Against this background, and following the approach taken in FS50465448, the Commissioner considers that the strength of the arguments for disclosure that are based on informing public debate and the promotion of accountability and transparency does not justify the risk to individuals' safety. Therefore, in all the circumstances, the Commissioner has decided that the balance of the public interest favours maintaining the exemption.

Right of appeal

33. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Graham Smith
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