

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2017

Public Authority: Royal College of Veterinary Surgeons

Address: Belgravia House
62-64 Horseferry Road
London
SW1P 2AF

Decision (including any steps ordered)

1. The complainant has requested information relating to the Practice Standards Scheme ('PSS') which is held by the Royal College of Veterinary Surgeons ('RCVS'). The RCVS refused to disclose the requested information, citing sections 31(1)(g) by virtue of sections 31(2)(b-d) and 43(2) of the FOIA.
2. The Commissioner's decision is that the RCVS has correctly applied section 31(1)(g) by virtue of section 31(2)(c) to the requested information. She has therefore not gone on to consider the application of the other subsections of 31(2) or section 43(2) to the requested information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 25 May 2016, the complainant wrote to the RCVS and requested information through the website www.whatdotheyknow.com. The text of the request is contained in an Annex to this notice.
5. The RCVS responded on 20 June 2016, disclosing some of the requested information, stating that it did not hold some of the requested

information, and applying section 12(1) of the FOIA to the remaining requested information.

6. Following an internal review the RCVS wrote to the complainant on 20 July 2016. It provided advice and assistance as per its obligations under section 16 of the FOIA in relation to the part of the requested information to which it had applied section 12(1) of the FOIA.
7. The complainant contacted the Commissioner regarding some elements of his request, which were divided into separate FOIA complaints. The complaint which is the subject of this notice is in relation to part 2(c) of the complainant's request, which reads as follows: -

"Is the information I have from RCVS officers correct that members of the public cannot as of right see the reports and certainly not from the RCVS?"
8. The RCVS' reply to that part of the complainant's request was that PSS reports are not disclosed to the public as they set out areas for improvement and as such are not an accurate reflection of the current standards of a practice.
9. Following correspondence between the Commissioner and the RCVS, it was ascertained that the RCVS did not consider PSS reports to be subject to the FOIA as they were not part of the RCVS' functions as a public authority. Therefore the RCVS did not hold those reports.
10. The complainant did not accept this and further complained to the Commissioner. Following further correspondence with the Commissioner, the RCVS accepted that it did hold those reports for the purposes of the FOIA. The complainant had previously requested the reports regarding the practice he usually attended. The RCVS informed the Commissioner that the reports were exempt from disclosure under section 31(1)(g) by virtue of subsections 31(2)(a) to (d) and section 43(2) of the FOIA.

Scope of the case

11. The complainant contacted the Commissioner on 7 September 2016 to complain about the way his request for information had been handled.
 12. The Commissioner has considered the RCVS' application of the above exemptions to the requested information, which consists of the PSS reports for the veterinary practice used by the complainant.
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Reasons for decision

13. Section 31 of FOIA states that: -

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)".

14. Section 31(2) of FOIA states that: -

The purposes referred to in subsection (1)(g) to (i) are—

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on.

The RCVS has informed the Commissioner that the relevant purposes for which it is exercising its functions under section 31(1)(g), which disclosure would be likely to prejudice, are those as set out at subsections (b) to (d).

Section 31(2)(c)

15. The Commissioner has considered the application of section 31(1)(g) with subsection (2)(c) in the first instance. She has therefore considered whether the RCVS is formally tasked with ascertaining whether circumstances would justify regulatory action.

16. The Commissioner is aware that the RCVS has statutory powers to take regulatory action under the Veterinary Surgeons Act 1966.

17. The RCVS has argued that it is essential that it is able to carry out its regulatory functions effectively. This includes being able to ascertain whether any professional misconduct has occurred and whether the practice of veterinary surgeons falls below the statutory standards.

18. The Commissioner is satisfied that the RCVS is formally tasked with ascertaining whether circumstances would justify regulatory action. The Commissioner has therefore gone on to consider the RCVS' arguments as to why it considers disclosure of the withheld information would be likely to prejudice its ability to ascertain whether circumstances would justify regulatory action.
19. In this case, in order for section 31(1)(g) of FOIA to be engaged, the RCVS must be able to demonstrate that the potential prejudice being argued relates to the interest contained in section 31(2)(c).
20. As with any prejudice based exemption, a public authority may choose to argue for the application of regulation 31(1)(g) on one of two possible limbs – the first requires that prejudice 'would' occur, the second that prejudice 'would be likely' to occur.
21. The RCVS has not specified whether it considers that prejudice 'would' or 'would be likely to' occur if the requested information were to be disclosed. The Commissioner has considered the information on the basis that the RCVS wishes to apply the lower standard of 'would be likely'. While this limb places a weaker evidential burden on the RCVS to discharge, it still requires the RCVS to be able to demonstrate that there is a real and significant risk of the prejudice occurring.
22. The RCVS has informed the Commissioner that one of its primary functions is to ascertain whether circumstances exist which would justify regulatory action under sections 15 and 16 of the Veterinary Surgeons Act 1966. Section 15 sets out that an investigation must be carried out in each disciplinary case, while section 16 obliges the RCVS disciplinary committee to remove veterinary surgeons from the Register of Veterinary Surgeons if they are found to be guilty of serious professional misconduct.
23. The RCVS further informed the Commissioner that, in order to judge whether or not a veterinary surgeon is guilty of serious professional misconduct, the disciplinary committee will consider whether or not the veterinary surgeon's actions fall far below the standard expected. In practice, this means the veterinary surgeon's conduct is cross-referenced with the standards set out in the RCVS' Code of Professional Conduct. This standard and process is mirrored in the regulation of veterinary nurses, however the authority comes from Royal Charter rather than statute.
24. The core standards of the PSS reflect both the requirements of the Code, and the legal requirements which must be met in running a veterinary practice, e.g. with regard to the storage of medicines, including controlled drugs. In order to fulfil its functions, the RCVS

must develop and adapt methods of evaluating practices to ensure that minimum standards are being met, which is likely to include using PSS reports as sources of intelligence.

25. The RCVS considers that disclosure of the requested information contained in the PSS report could undermine the methods currently in use and discourage other practices from signing up to the scheme. This would be likely to prejudice the RCVS' ability to uphold and maintain regulatory standards and determine whether regulatory action is necessary, by reducing potential sources of intelligence for identifying serious professional misconduct which may justify regulatory action.
26. Given the nature of the requested information, and the RCVS' submissions as to the likely prejudice caused by disclosure, the Commissioner considers that the RCVS is formally tasked with ascertaining whether circumstances would justify regulatory action. Its ability to fulfil this function effectively is dependent upon it being able to gather full evidence efficiently from reliable sources of intelligence to assist in ongoing investigations. The Commissioner therefore accepts that disclosure would be likely to result in the prejudicial effects to the RCVS' purposes described at section 31(2)(c) of FOIA.
27. As section 31 is a qualified exemption, the next step is for the Commissioner to consider whether in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest factors in favour of disclosing the requested information

28. The Commissioner considers that there is a strong public interest in public authorities being open and transparent with regard to their decision-making processes so that the public can better understand these.
29. The Commissioner also considers that disclosure of the requested information would assist in informing the public as to how the RCVS carry out its regulatory activities and reassure them that these are carried out thoroughly and effectively.
30. The complainant argues that the PSS scheme is a national initiative administered by a public body through which it is claimed one can

choose veterinary providers with confidence. Therefore the RCVS should make available the PSS inspection reports so that the public can make appropriate informed choices and be able to see that these practices have been thoroughly inspected and the areas of strength and weakness identified.

Public interest factors in favour of maintaining the exemption

31. The RCVS states that PSS is a voluntary initiative to accredit veterinary practices in the UK. PSS aims to promote and maintain the highest standards of veterinary care through setting standards and carrying out regular assessments. By doing this, it is hoped that PSS serves to enhance public confidence in accredited practices. The scheme is run by the profession, for the profession and is overseen by the Practice Standards Group ('PSG'). Practices can apply to be accredited at different levels depending on the services they offer; the levels are Core Standards, General Practice and Veterinary Hospital. In order to become accredited, practices must meet the requisite standards for the level of accreditation they are seeking and pay an application fee and an initial assessment fee. It should be noted that the Core Standards set out in PSS reflect the minimum standards required to comply with the Code.

32. Once accredited, a practice must maintain at least Core Standard in order to remain in the scheme. To this end, practices are inspected once every four years (routine assessments) and in some circumstances, are subject to spot checks. Routine assessments and spot checks are carried out by a PSS Assessor. All of the PSS Assessors are registered veterinary surgeons. When carrying out their assessment, the PSS Assessor is required to complete a PSS report. In the PSS report, the Assessor records whether or not the practice has met the standard required in the requisite areas and if they have not, sets out action that needs to be taken within a certain timeframe. If the practice complies with the action points specified by the Assessor within the timeframe and achieves at least Core Standard, the practice will remain in the scheme. If they do not, they lose their accreditation. As such, if a practice was required to take action at their last routine assessment but remains a PSS practice, the practice must have remedied any deficiencies identified by the Assessor and be at least Core Standard, otherwise they would not have been permitted to remain within the scheme. This means that the report is effectively out of date almost as soon as it is written and as such, the content is unhelpful in determining the current standard of any practice. In fact, the contents of the report could serve to mislead the public as to the standard of the relevant veterinary practice, which would be unhelpful and not in the public interest.

33. The RCVS argues that, as PSS is a voluntary scheme, when a practice joins it is a private arrangement with no expectation that reports will be made available to the public. Therefore, setting a precedent for disclosing reports to the public is likely to discourage openness and deter practices from using the service. The fewer practices that join the scheme, the less revenue there is to reinvest in the scheme. In terms of the public interest, this means less money to invest in driving standards forward with ultimate aims of protecting animal welfare, which would not be in the public interest.

Balance of the public interest arguments

34. The Commissioner considers that there is a strong public interest in the RCVS operating openly and being accountable in its effectiveness in carrying out its statutory functions.
35. The Commissioner does however also consider that there is a strong public interest in not disclosing information which would be likely to impede the RCVS' ability to carry out its functions effectively. She notes the RCVS' comments that it relies on PSS reports as potential sources of intelligence in relation to investigating whether regulatory action is justified. Should disclosure of these reports discourage practices from signing up to the PSS, the quality and quantity of intelligence sources would be diluted, potentially leading to fewer investigations of serious professional misconduct by veterinary surgeons and nurses, which would not be in the public interest.
36. The Commissioner accepts the complainant's argument that the public needs to choose veterinary service providers with confidence, and that the PSS reports would be a way of showing the public the strengths and weaknesses within certain areas in the practices. However, she also notes the RCVS' explanation that the reports are used by the practices to remedy any deficiencies identified, in order to remain in the PSS. Therefore, the reports would be out-of-date almost as soon as they are written and would not be helpful to the public in attaining the current standard of any practice.
37. The Commissioner also accords significant weight to the RCVS' argument that disclosure may deter practices from joining the PSS, thereby lessening revenue and resulting in less available money to invest in improving standards, with the ultimate aim of protecting animal welfare. The Commissioner considers that putting this in jeopardy would not be in the public interest.
38. On balance, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption. Section 31(1)(g) with subsection (2)(c)

FOIA was correctly applied in this case to the withheld information.

39. As the Commissioner considers that section 31(2)(c) was correctly applied in this case, and applies to the whole of the requested information, she has not gone on to consider the other subsections of section 31(2), nor has she considered the RCVS' application of section 43(2) to the requested information.

Right of appeal

40. 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

41. 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.
42. 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

Deirdre Collins
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