

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 August 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 from the Royal College of Veterinary Surgeons ("RCVS") regarding an Alternative Dispute Resolution ("ADR") scheme currently being trialled.
2. The Commissioner's decision is that RCVS has correctly applied section 22 of the FOIA to the request.
3. The Commissioner does not require RCVS to take any steps.

Request and response

4. On 4 February 2107, the complainant wrote to RCVS and requested information in the following terms:
"You are well aware of my views of the ADR schemes... might I... ask that I am provided with the latest figures of the new trial: cases referred and accepted, numbers of uncooperative vets and outcomes etc."
5. RCVS responded on 3 March 2017. It stated that the information would be published when members of the RCVS Council were required to make a decision about the future of ADR, which it anticipated would be in September 2017. Accordingly it withheld the information, applying the

exemption at section 22 of the FOIA (Information intended for future publication).

6. Following an internal review, RCVS wrote to the complainant on 9 March 2017. It upheld its position.

Scope of the case

7. The complainant contacted the Commissioner on 23 March 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of the investigation has been to determine whether RCVS was correct to withhold the information under section 22 of the FOIA.

Reasons for decision

Background to the request

9. The information requested in this case relates to RCVS's trial of an ADR scheme. Both the complainant and RCVS have explained to the Commissioner that only a small proportion of complaints made about veterinary professionals ("vets") proceed to a hearing before the RCVS Council Disciplinary Committee. There is not, currently, another way to pursue a complaint against a vet, beyond an individual surgery's complaints procedure, other than via private litigation.
10. RCVS is exploring ADR as a mechanism by which dissatisfied clients could pursue such complaints and where appropriate seek redress.
11. Under ADR, mediation is used to resolve disputes between veterinary professionals and their clients. Participation in the current ADR trial is voluntary and it is free to users.
12. RCVS carried out a previous trial ADR scheme between November 2014 and July 2015 and is currently carrying out a second trial, which is being administered by a firm of solicitors. The second trial began in early October 2016 and is planned to continue for nine months from that date.
13. The complainant has explained what information he expected to be captured by his request in more detail. He wished to know how many cases had been referred to the second scheme and how many had been accepted, in how many of the referred cases the vet had refused to

participate, and in how many cases there had been *"a finding in favour of the client"* as at the date of his request.

Section 22 - Information intended for future publication

14. Section 22(1) of the FOIA states that:

Information is exempt information if –

- a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - b) the information was already held with a view to such publication at the time when the request for information was made, and
 - c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
15. In order to determine whether section 22 is engaged the Commissioner has therefore considered the following questions:
- When the complainant submitted the request, did RCVS intend the information to be published at some date in the future?
 - If so, in all the circumstances of the case, was it 'reasonable' that RCVS should withhold the information from disclosure until some future date (whether determined or not)?

Was the information held at the time of the request with a view to its publication at a future date?

16. RCVS has explained that the results from the trial will be published on its website in September 2017.
17. The data that is published will, specifically, include the information requested by the complainant: that is, the number of cases that have been referred to the VCMS under this trial, how many cases have been accepted, in how many cases the vet refused to participate, and in how many cases there was a finding in favour of the client.
18. The date of publication had been determined on 17 January 2017, prior to the date of the request, at a meeting of the RCVS's Preliminary Investigation Committee and Disciplinary Committee Liaison Committee ("PIC/DC Liaison Committee").

19. At that meeting, it was agreed that the results of the trial would be discussed at the PIC/DC Liaison Committee's September meeting. This has now been scheduled for 28 September 2017.
20. RCVS has explained that in order for this to take place, data from the trial, including the information requested by the complainant, will be set out in a paper which will be published on its website approximately seven days before the date of the meeting.
21. The Commissioner accepts that in this case, at the date of the request, RCVS had a settled intention to publish the information sought by the complainant. This intention to publish remains in place. Accordingly, she has gone on to consider whether it was reasonable for RCVS to withhold the information under this exemption.

Was it reasonable to withhold the information?

22. For the exemption to be relied upon, section 22(1)(c) requires that its application should be reasonable in all the circumstances of the request.
23. RCVS has put forward a number of arguments in favour of withholding the information on grounds of reasonableness and also on grounds of public interest.
24. RCVS has made reference to the Commissioner's guidance¹ in this area which states that it needed to consider whether withholding the information is sensible, in line with accepted practices and fair to all concerned.
25. RCVS has explained that releasing the information early would, in its view, not be sensible as at the date of the request the trial was ongoing and the data was incomplete. It considers that publishing incomplete data could indicate an outcome which is not ultimately borne out once all the data has been gathered and analysed.
26. It considers that it *"may cause those charged with making a decision about the future of ADR to pre-judge the success (or otherwise) without the benefit of having all the information at their disposal."*
27. To support this assertion, RCVS has explained that during a previous ADR trial, it had released data periodically during the course of the trial period and it now considers that this had been counter-productive. It

¹ <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>

had "resulted in the profession and public drawing premature conclusions about the success or otherwise of the trial without the benefit of being able to analyse the complete data."

28. The Commissioner notes that to release the requested information would reveal the proportion of vets agreeing and not agreeing to participate in the trial when measured against the number of cases accepted. It would also reveal the number of successful outcomes for clients, and would give an indication of whether, and if so how many, vets are likely to agree to participate in a voluntary mediation scheme, and whether the scheme has led to any members of the public obtaining redress.
29. It would therefore naturally give an indication of the findings of the trial to the date of the request, and its success or otherwise in providing the public with a means of seeking redress for a complaint about a vet.
30. The Commissioner has considered RCVS's view that this could lead to those seeking to determine the future of ADR for the veterinary profession, and members of the public, forming a premature and potentially inaccurate view on the trial's findings and success or failure.
31. Although this might prove challenging for those charged with deciding on the long-term use of ADR in the veterinary profession, and may lead to some pressure from the public one way or another, she does not consider that this would necessarily present them with unsurmountable difficulties when then viewing the complete data later on.
32. However, she agrees that it is to some extent unfair to expect RCVS to conduct the remainder of the trial against a backdrop of opinion based on premature conclusions.
33. RCVS has also explained that it does not routinely release information to the public until it has been presented to the RCVS Council, which at the date of the request had not been done in this case. It considers that withholding the information is therefore in line with its accepted practices.
34. RCVS has further explained that it considers it is reasonable to have withheld the information at the date of the request, since at the time only four months' data would have been available and all of the trial data was due to be published within the following seven months.
35. The Commissioner agrees that it is not unreasonable to withhold a relatively small amount of data which will be published in its full context within a few months.

36. The Commissioner is satisfied that RCVS's reasons for withholding the information are reasonable in the circumstances of the case and accordingly the exemption at section 22 is engaged.
37. Section 22 is subject to the public interest test, and the Commissioner has considered the arguments put forward by both sides in respect of this in making her decision.

Public interest test

38. The Commissioner's role is to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

RCVS's position

39. RCVS has stated that it is aware that there is always a public interest in being open and transparent.
40. However, it also considers that there is a public interest in releasing information which is complete and accurate.
41. In addition, RCVS has considered the value in the information requested. It has stated that in its view the information will have more value when it can be released in the context of the data from the trial as a whole, which will include feedback from participants in the scheme, stakeholders and employer groups.
42. RCVS has also noted that, as previously explained, the information was due to be published seven months after the date of the request, which it considers to be a relatively short time.

The complainant's position

43. The complainant has explained that to his knowledge, RCVS receives approximately 800 complaints a year, with this number possibly rising to 1000.
44. It is his understanding that the Veterinary Surgeons Act 1960 prevents RCVS from taking action against a vet unless their behaviour is sufficiently bad as to warrant deregistration, which has meant that, historically, approximately only 1% of complaints about vets has been considered by the RCVS Disciplinary Panel.
45. The complainant is aware of the outcome of RCVS's earlier trial of ADR, in 2014-2015. In that scheme, he understands, 88% of vets who were referred to the scheme chose not to participate.

46. The complainant is concerned that vets' participation in the ADR scheme currently being trialled is also voluntary, and considers that the RCVS would be unwise to continue with a trial if it were found to be failing.
47. He considers that it is in the public interest to discover whether the trial is *"already a failure"* and that for this reason there is merit in the information being released early.
48. In his view, the public interest is *"best served by revealing the statistics"* and he states that if the data were to prove that vets were choosing not to participate, then RCVS would struggle to justify continuing with the trial and would have to consider making vets' participation mandatory.

The Commissioner's decision

49. In considering the balance of the public interest in cases where section 22 has been applied, the Commissioner's considerations will relate specifically to the exemption; that is, she will weigh up any potential harm that could be caused by releasing the requested information before the intended publication date, against the public interest and the value to the public of the information itself.
50. The Commissioner considers that it is in the public interest to encourage participation in the trial, by vets and by members of the public, and that for this reason there is a risk of harm from disclosing information held at the date of the request earlier than the intended publication date. If the trial was found, early on, to have led to sanctions against a large number of vets, this could discourage vets from participating; if on the other hand it had led to very few vets being sanctioned or indeed taking part at all, this could lead to fewer members of the public being interested in participating.
51. The Commissioner understands the complainant's concerns with regard to the procedures which currently exist for the public to pursue complaints against vets, and she is aware that there is considerable public interest in the regulation of vets' practices. Clearly, the public is entitled to have confidence in such regulation.
52. The Commissioner has noted the complainant's view that the previous trial of ADR could be considered as relatively unsuccessful, in part, due to the low numbers of vets agreeing to participate.
53. She understands that he considers RCVS would be unwise to continue with the trial if large numbers of vets were simply refusing to participate in it.
54. However, the Commissioner notes the relatively short time-frame for the trial to be completed: around nine months overall. Even if the

complainant's fears that the trial was "failing," due to only a small number of vets participating, proved accurate, this would become apparent quite quickly when the results were analysed in September. She does not consider it to be unreasonable to conduct a trial for nine months, even if the complainant's fears over the number of vets agreeing to participate prove to be justified.

55. While the Commissioner accepts that there is public interest in knowing the outcome of the trial, she agrees with RCVS's view that there is not a great deal of value in releasing a small amount of data early and out of context, which may also give a misleading indication of the eventual findings of the trial.
56. It is evident that the information will be in the public domain relatively quickly after the date of the request. The public will not have to wait for a lengthy period after its completion in order to view the outcome of the trial.
57. The Commissioner considers that a greater public interest lies, in the longer term, in RCVS establishing a means through which members of the public may seek redress from a vet when they are dissatisfied with the service received, than in viewing the information requested.
58. She accepts RCVS's view that it will be better able to determine the future of ADR once accurate and complete data can be analysed.
59. The Commissioner's decision is that, in all the circumstances of the case, the public interest in the exemption being maintained outweighs the public interest in the information being disclosed and she therefore does not require RCVS to take any steps.

Right of appeal

60. 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

61. 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.
62. 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

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