

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

### **Decision notice**

**Date:** 21 November 2022

**Public Authority:** Wigan Metropolitan Borough Council  
**Address:** Town Hall  
Library Street  
Wigan  
WN1 1YN

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

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1. The complainant requested information about the kennelling of stray dogs. Wigan Metropolitan Borough Council (the "council") withheld the information under the exemptions for information provided in confidence (section 41), legal professional privilege (section 42) and commercial interests (section 43(2)).
2. The Commissioner's decision is that the council correctly withheld the information under section 42(1) and section 43(2) of FOIA and that the public interest favours maintaining the exemptions.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 9 August 2021 the complainant wrote to Wigan Metropolitan Borough Council (the "council") and requested the following information:
  - "1. Please can you provide me with all information held by the Council in relation to its investigation of the kennelling of seized dogs by Animal Wardens Ltd, Leigh Dogs and Cats Home, All 4 Pets Ltd, Bancroft Kennels or by any other company or individual from 10th January 2020 to date.
  2. Please specifically provide copies of all internal or external correspondence, emails or notes of telephone conversations, including copies of any correspondence, emails or notes of telephone conversations with the owners of Common Fold Kennels and / or any of their employees and copies of any correspondence, emails, notes of telephone conversations with Animal Wardens Ltd, [redacted] or any of their employees.
  3. Please specifically provide copies of all correspondence, emails or notes of telephone conversations with any other local authorities or individuals in relation to the kennelling of seized dogs by Animal Wardens Ltd, Leigh Dogs and Cats Home, All 4 Pets Limited, Bancroft Kennels or by any other company or individual.
  4. Please provide details of any legal advice sought and obtained by the Council in relation to the kennelling of seized dogs by Animal Wardens Ltd, Leigh Dogs and Cats Home, All 4 Pets Limited, Bancroft Kennels or by any other company or individual, including all internal and external correspondence."
5. The council confirmed that, in relation to part 1 of the request, no investigations had taken place so the information was not held, excepting where information also fell within the scope of the information requested in part 2. In relation to the other parts of the request, the council's final position is that the information is being withheld under the exemptions for information provided in confidence (section 41), legal professional privilege (section 42) and commercial interests (section 43(2)).

## **Reasons for decision**

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6. This reasoning covers whether the council has correctly applied exemptions to the requested information.

### **Request parts 2 and 3**

7. The council withheld the information in parts 2 and 3 of the request under the exemption in section 43(2).
8. Section 43(2) of FOIA provides that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
9. The council's position is that disclosure would harm the commercial interests of the businesses to which the information refers.
10. The council confirmed that it consulted with the businesses in question and sought their views as to the nature of the prejudice which disclosure would cause. The council confirmed that it considered that disclosure would result in unwarranted reputational damage to the businesses in question.
11. The Commissioner has considered the council's submissions and is satisfied that it would be likely that disclosing the information would result in the identified prejudice occurring. As he has concluded that the exemption is engaged he has gone on to consider the public interest test.
12. The complainant has concerns about the treatment of stray dogs and about the council's responsibilities in relation to kennelling arrangements. They have also queried the licensing arrangements in place and the council's duties in relation to the enforcement of licensing conditions. The complainant has argued that disclosing the information would provide transparency and accountability in these areas.
13. The council has argued that, as part of its duty to carry out regulatory and enforcement functions, it will often receive commercially sensitive information from third parties. In addition to it being important for the effective discharge of these functions to maintain trust with third parties, the council has argued that disclosure would result in unwarranted reputational damage and/or loss of customer confidence for the businesses in question.

14. The Commissioner recognises that the complainant has genuine and legitimate concerns about the both the council's performance as a regulator and the treatment of animals at kennels provided by the businesses in question. However, he is also mindful that disclosing the information would unfairly prejudice the commercial interests of businesses without direct mitigating public interest reasons for causing such adverse effects. The Commissioner does not consider that disclosing the specific information requested is the only route to accountability and transparency in respect of the council's duties in this regard and regarding the performance of third party businesses it engages to fulfil these duties.
15. Having considered the withheld information and the available evidence the Commissioner has concluded that the council has correctly applied section 43(2) to the information in parts 2 and 3 of the request and that the public interest in this case favours maintaining the information.
16. The council also applied the exemption in section 41 to the information in part 3 of the request. As the Commissioner has concluded that section 43(2) is engaged he has not gone on to consider the council's application of section 41.

#### **Request part 4**

17. The council withheld the information in part 4 of the request under the exemption for legal professional privilege (section 42(1)).
18. Section 42(1) of the FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings. Legal professional privilege (LPP) protects the confidentiality of communications between a lawyer and client.
19. The Commissioner has had sight of the withheld information and he is satisfied that it constitutes constitute confidential legal advice provided by a qualified legal adviser to their client (the council).
20. The complainant has pointed to a previous disclosure of legal advice the council made to them, arguing that this disqualifies the use of section 42(1) to withhold any associated information.
21. In a freedom of information context, LPP will only have been lost if there has been a previous disclosure to the world at large, that the privilege attached to the information has been lost and that the information can therefore no longer be considered to be confidential.

22. The council has confirmed that the information previously provided to the complainant was a restricted disclosure with restrictions imposed on its further use. On the basis of the council's submissions the Commissioner is satisfied that the information has not been subject to unrestricted disclosure and that it remains subject to LPP.
23. In balancing the opposing public interest factors under section 42(1), the Commissioner considers that it is necessary to take into account the in-built public interest in this exemption: That is, the public interest in the maintenance of LPP.
24. The general public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP, namely, safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice. A weakening of the confidence that parties have that legal advice will remain confidential undermines the ability of parties to seek advice and conduct litigation appropriately and thus erodes the rule of law and the individual rights it guarantees.
25. The Commissioner considers that, in this case, the weighting of the public interest in favour of withholding the information and protecting the council's ability to obtain free, frank and high quality legal advice without the fear of premature disclosure is significant.
26. The Commissioner recognises that the complainant might disagree with the council's legal position in this matter, however, a remedy for understanding and challenging this is provided by existing legal processes rather than via the global disclosure of information subject to LPP. The Commissioner is not aware of any public interest factors which would justify circumventing the legal process and disclosing information subject to LPP in this case.
27. Having considered the facts of the case the Commissioner has concluded that the public interest in maintaining the exemption at section 42(1) outweighs the public interest in disclosure. The council has, therefore, correctly relied on section 42(1) in this case.

## Right of appeal

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28. 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)

29. 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.
30. 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** .....

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