

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2012

Public Authority: Animal Health and Veterinary Laboratories Agency (AHVLA)

Address: Block C
Government Buildings
Whittington Road
Worcester
WR5 2LQ

Decision (including any steps ordered)

1. The complainant requested the number of poultry establishments within 1 mile and subsequently 100 metres of his property. AHVLA provided figures within a one mile radius but could not provide this information at a more localised level. The complainant was not satisfied with this response so submitted a complaint to the Information Commissioner ("the Commissioner"). The Commissioner has considered the arguments put forward by AHVLA and his decision is that AHVLA does hold the requested information and did not comply with section 1(1)(a) and 10(1) of the FOIA by failing to confirm directly to the complainant that the requested information was held. However, the Commissioner does not require the public authority to take any further steps as AHVLA cannot provide any further information to the complainant.

Request and response

2. On 10 February 2011 the complainant made a request to AHVLA for the locations of all UK registered poultry establishments within a radius of one mile from his property. AHVLA responded and confirmed there were four establishments within this radius but could not provide any further details, such as the locations, as this may constitute personal data and be exempt under section 40 of the FOIA.
3. The complainant then made a further request to AHVLA on 30 March 2011 to obtain the number of registered poultry establishments within 100 metres of his property. The complainant also clarified that *"if there*

are none then that basic information would suffice". AHVLA responded stating it was unable to provide any further information in connection with the request, leading to the complainant requesting an internal review of this decision.

4. Following an internal review AHVLA wrote to the complainant on 24 May 2011. In this letter AHVLA acknowledged its previous response could have been clearer and clarified that the number of poultry establishments within a one mile radius of the complainant's property was obtained from the GB Poultry Register by inputting the complainant's postcode. AHVLA further explained that any more information on the distance of these establishments from the complainant's property could therefore not be established.
5. In addition to this AHVLA stated that to provide the locations or any further details of poultry establishments would constitute personal data and would therefore engage the section 40 exemption.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular the complainant argued that to release the number of poultry establishments within 100 metres of his property would not disclose any personal data.
7. The Commissioner initially considered the scope of his investigation to be to determine whether the number of poultry establishments within 100 metres of the complainant's property would constitute personal data and therefore be exempt from disclosure under section 40 of the FOIA. However, on further investigation with AHVLA the Commissioner now considers the focus of his investigation to be whether the requested information is actually held by AHVLA.

Reasons for decision

8. Section 1(1)(a) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request,"*

9. The Commissioner has considered whether AHVLA has complied with this section of the FOIA in stating in correspondence with the Commissioner that it did not hold information at the level requested by the complainant.
10. After informing AHVLA that a complaint had been received and before the Commissioner began his investigation; AHVLA wrote to the Commissioner to clarify that the requested information was not being withheld but in fact AHVLA could not accurately establish if there were any poultry establishments within 100 metres of his address. AHVLA further explained that it also could not state with any certainty that there were no establishments within this area, even with a map reference for the complainant's property.
11. In discussions with the Commissioner AHVLA acknowledged that the issue may have been confused by reference to the section 40 exemption as the key issue is that AHVLA cannot provide the requested information. AHVLA did maintain that if the information could be provided at this more localised level it would consider it be personal data as it could identify individuals. However, the Commissioner considers this to be a secondary debate that will only be of relevance if he determines that the information is held for the purposes of the FOIA.
12. In determining whether a public authority holds the requested information the Commissioner considers the standard of proof to apply is the civil standard of the balance of probabilities. In deciding where the balance lies in cases such as this one the Commissioner may look at:
 - Explanations offered as to why the information is not held; and
 - The scope, quality, thoroughness and results of any searches undertaken by the public authority.
13. The Commissioner wrote to AHVLA to ascertain whether it held the raw data which allowed it to calculate the number of establishments within a one mile radius but was unable to use this to calculate if there were any establishments within 100 metres, or whether AHVLA did not hold any data in relation to the request.
14. In response to the Commissioner's questions AHVLA explained that the raw data used to answer the initial request was obtained from the GB Poultry Register. The Department for Environment, Food and Rural Affairs ("Defra"), the Welsh Government and the Scottish Government are the data controllers in respect of the information on poultry premises in England, Wales and Scotland respectively. The data is processed by AHVLA on their behalf. AHVLA therefore do have access to this data and hold it for the purposes of the FOIA.

15. The GB Poultry Register contains name and address details and six figure map references. AHVLA has stated that these map references are assumed to be accurate to 100 metres but not less than 100 metres. Therefore, whilst information could be provided on the number of poultry establishments within a one mile radius AHVLA could not provide this information at the more localised level of a 100 metres radius as the map references do not accurately allow this.
16. AHVLA has stated that to accurately check to see if any of the four premises within a one mile radius are within 100 metres would require a physical check on the ground. AHVLA argue that this is because they do not have any precise information on the position of the complainant's house in relation to the available map references for the registered poultry establishments. Therefore even by using the information available in conjunction with an Ordnance Survey map AHVLA could not state with any certainty whether any of the premises lay within 100 metres of the complainant's property.
17. The Commissioner accepts that six figure map references are largely not considered to be accurate below 100 metres and he also notes that following intervention from the Commissioner AHVLA did contact the complainant again to inform him that whilst it did not hold the information and could not provide a figure for the number of establishments within 100 metres it estimated that none of the four premises would be within 100 metres of the complainant's property.
18. The Commissioner is satisfied that AHVLA does not hold a specific piece of information showing the number of poultry establishments within 100 metres of the complainant's property. That being said, the Commissioner has to consider whether the public authority could ascertain the information from the raw data it does hold.
19. AHVLA has stated it does not hold a six figure map reference for the complainant's property however the Commissioner understands a six figure map reference could be ascertained from an ordinance survey map. However, even with a six figure map reference for the complainant's property the Commissioner has then considered whether the apparent inaccuracy of these references at distances less than 100 metres means that the information is not held.
20. In determining this, the Commissioner has considered previous decisions made by the Information Tribunal ¹ in which it stated that "... *the right*

¹ EA/2008/0027

under the Act is to information which is held, not information which is accurate.” On this basis, as the map references can be ascertained without requiring any great level of skill to retrieve them and taking into account the Tribunal’s comments above, the Commissioner has concluded that AHVLA do hold the information irrespective of the accuracy of the information.

21. As such he also finds that AHVLA breached section 1(1)(a) and 10(1) of the FOIA by failing to inform the complainant of this directly when initially dealing with the request. However, the Commissioner does not require AHVLA to take any further steps as it has already communicated to the complainant that it estimates no poultry establishments are within 100 metres of his property.

Right of appeal

22. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**