

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2015

Public Authority: Animal and Plant Health Agency

Address: Weybourne Building

Woodham Lane

Addlestone

Surrey

KT15 3NB

Decision (including any steps ordered)

1. The complainant has requested information concerning inspection policies and training held by the Animal and Plant Health Agency ('APHA'). He has also requested information concerning a Moderation Panel hearing which considered his complaint made to APHA. The request was made as part of a subject access request ('SAR'). APHA provided a response under the Data Protection Act 1998 (the 'DPA') and then, following the Commissioner's intervention, later responded to the outstanding FOIA elements of the request.
2. The Commissioner's decision is that APHA has provided the information it holds in response to this FOIA request. However as the FOIA response was not provided within the time for compliance, APHA has breached section 10(1). The Commissioner has also considered any personal data which was included in the FOIA request and is satisfied that this was addressed in the SAR response. There are no further steps to be taken.

Request and response

3. On 17 February 2015 the complainant submitted a SAR under the DPA to APHA. This included a request for information which falls under the FOIA:

"Copies of all policies and training documents or other instructions or guidance for your officers inspecting non-registrants in their private homes along with full details of your authority to enter or access

information from private individuals not registered with your organisation."

With reference to a moderated case which went to an internal panel hearing the complainant also asked for:

"...the complete details of that process and membership details (numbers and backgrounds of people involved along with details of independence and governance), terms of reference and all policies relevant to the work of that internal panel/moderation process along with governance and quality assurance measures for the process".

4. On 18 March 2015 APHA confirmed a response had been sent by Royal Mail. It explained the request had referenced both the FOIA and the DPA and that it had therefore provided a single response under both pieces of legislation.
5. In its response, APHA therefore redacted some third party data under both the DPA and the FOIA. It applied section 40(2) of the FOIA to some withheld data.
6. On 28 March 2015 the complainant confirmed that he had now received the response but that it had been sent to the wrong address.
7. Following the intervention of the Commissioner, APHA reviewed its response and confirmed that it had not responded to the above two FOIA requests.
8. Following this review, on 12 August 2015, APHA provided a further response to the above two FOIA elements of the complainant's request.
9. With respect to request (i), APHA explained it holds powers of entry under Regulation 19 of *The Eggs and Chicks (England) Regulations 2009* to enter premises.
10. APHA explained that its Egg Marketing Inspector's (EMIs) do not demand right of entry and will only enter a premise upon invitation. It explained EMIs are government employees and have therefore all undergone the standard rigorous background checks and are appropriately trained and authorised to lawfully carry-out their functions to a high standard.
11. It enclosed a copy of the APHA policy document adopted by staff working in this area.
12. With respect to request (ii), APHA explained that its Moderation Panel consists of an independent Senior Manager, an independent Poultry Technical Lead and a small administrative function.

13. It explained that all parties are employed as vetted and trained civil servants.
14. It provided the complainant with the APHA Standard Operating Procedure (SOP), the published formal instructions that are followed by the Moderating Panel. It redacted third party personal data from the SOP under section 40(2) of the FOIA.

Scope of the case

15. The complainant contacted the Commissioner on 20 May 2015 to complain about the way his request for information had been handled. He explained that he considered APHA had not responded in full to his SAR and that it had failed to address that part of his request which fell under the FOIA.
16. The complainant argued that with respect to request (i), APHA had provided a link to the legislation regarding powers of entry but no policy or instructions to its staff. He also explained that it had failed to demonstrate how the legislation applied to people not registered as a producer. He argued that with respect to request (ii), APHA had provided no information at all.
17. The Commissioner considered APHA's response to the SAR as part of case reference RFA0582968. As part of its review of that case, the Commissioner asked APHA to consider any personal data which also fell under the two FOIA requests.
18. On 21 August 2015 the Commissioner provided his assessment of the DPA case to the complainant. This case was reviewed by the Commissioner as case reference RCC0594469.
19. With respect to his information requests, the complainant has explained the following:
 - He argued that in its SAR response, APHA had redacted data under section 7 of the DPA and section 40(2) of the FOIA. In the SAR assessment, the Commissioner had explained that he had reviewed the third party data redacted under section 40(2) of the FOIA and considered it could also have been redacted under section 7(4) of the DPA. However the complainant argued that APHA was not correct to withhold this third party personal data under the FOIA.
 - He has argued that APHA identified the above FOIA requests but failed to progress them.

- He has confirmed that he did not receive a response dated 12 August 2015 from APHA to his FOIA request.
 - He has argued that the second part of his request concerning the Moderation Panel may include some personal data which has not been provided to him under either piece of legislation.
 - In particular, he considers he has not been provided with:
 - a) Copies of policies and training documents (or other instructions or guidance) concerning the inspection of non-registrants in their private homes.
 - b) Details of APHA's authority to enter or access information from private individuals not registered with the organisation.
 - c) Membership details of people involved in the Moderation Panel. He requires numbers and backgrounds along with details of independence and governance. He would like job titles of those responsible for the process and has suggested that job descriptions for each member of the panel would show their experience and background.
 - d) The terms of reference for the Moderation Panel.
 - e) Details of the quality assurance measures and processes which are in place.
20. The Commissioner considers the scope of this case to be concerned with:
- i. Whether APHA was correct to rely on section 40(2) of the FOIA as a basis for refusing to provide the redacted third party personal data within the information provided in its initial SAR/FOIA response.
 - ii. Whether APHA holds further information which could be provided to the complainant with reference to the five bullet points (a-e) above.
 - iii. Whether the second part of the request regarding the moderation panel includes any personal data which has been considered (or should be considered) under the DPA.
 - iv. The procedural aspects of this request.
21. The complainant has not complained about the redaction of third party data in the APHA SOP document and therefore this has been removed from the scope of the case.

Reasons for decision

(i) Third party personal data

22. APHA has explained that when it withheld third party personal data in response to the SAR, it referenced both section 7 of the DPA and section 40(2) of the FOIA. On review it has confirmed it did not withhold any information under any FOIA exemptions in response to the SAR.
23. It has now reviewed the documents provided in response to the SAR and it has confirmed that the only information redacted in documents provided to the complainant relates to personal data of junior civil servants or staff from its external shared services body.
24. APHA has explained that these were people who were carrying out their roles, for example minute taking at the moderation board or the staff who raised the penalty charge on instruction from APHA. They do not have externally facing functions and they had no influence on the complainant's case.
25. As these third party details are contained in documents provided to the complainant under the DPA as part of his SAR, the Commissioner is satisfied they comprise the personal data of the complainant and the third parties.
26. The Commissioner therefore considers that APHA was not correct to apply section 40(2) of the FOIA to this withheld data at the time of the request.
27. The Commissioner therefore considers that this data is exempt from disclosure under section 40(1) of the FOIA.

(ii) Information provided

(a) and (b) Policies and training documents concerning inspection and powers of entry

28. The Commissioner asked APHA to confirm whether it held further information to specifically address the points raised by the complainant.
29. The complainant argued that he required copies of policies and training documents (or other instructions or guidance) concerning the inspection of *non-registrants in their private homes*. He also argued he required details of APHA's authority to enter or access information from private individuals not registered with the organisation.

30. APHA explained that the previously supplied document gives guidance about exercising powers of entry. It applies regardless of registration status because of the powers contained in the legislation (as detailed below).
31. APHA explained that with regards to power of entry, in much of the animal, plant and bee health and animal welfare legislation, safeguards are in place regarding the entering of private dwellings. However, it is recognised that many farm businesses and nurseries are run from private dwellings and records, etc. are often kept within them.
32. It explained that where the relevant legislation requires it, an authorised person must obtain the occupier's consent or obtain a warrant, court order or other judicial authorisation in order to enter premises used as a private dwelling. APHA will only enter private dwellings at the invitation of the owner where the farmer/grower for the sake of his/her convenience invites the inspector to inspect records within the dwelling and any inspections of that nature will only be at this invitation and not for any other reason. The inspector would never enter a private dwelling unaccompanied, uninvited or by force.
33. APHA confirmed that if it has grounds to believe that a private individual is an egg producer, then an appointed inspector is afforded all the powers of entry and inspection under the Eggs and Chicks (England) Regulations 2009 regardless of registration status.
34. It explained it has a statutory responsibility to safeguard both public and animal health and will therefore use the powers within the legislation to investigate potential contraventions. The production of eggs from unregistered production sites may constitute such a contravention.

(c) Membership of Moderation Panel

35. The complainant argued he requires membership details of people involved in the Moderation Panel. He requires numbers and backgrounds along with details of independence and governance. He also suggested he would like job titles of those responsible for the process and has suggested that job descriptions for each member of the panel would show their experience and background.
36. APHA has explained that the panel comprises of a senior manager from the Regulatory Hub Team and a Technical expert. This is the requirement and is not "person" specific. It explained a Moderation Panel will be convened when necessary to review cases and will draw on the available resource from the Regulatory Hub and Technical experts at that time.

37. In this case, APHA has confirmed that as part of the SAR response, it has provided the complainant with the names of the two managers who were on the Moderation Panel. It redacted the name of the administrative officer under the DPA.
38. APHA explained that job descriptions describe the roles in general terms but do not list every specific task undertaken by an individual in the day to day delivery of their role for the Agency. The job descriptions do not include any information on experience or background of the individual performing that role.
39. APHA further explained that the SOP including the Moderation Panel was established to centralise the process of dealing with potential contraventions of the legislation. This was to ensure that there was a consistent approach across APHA nationally and that all potential offences were treated in the same way and considered in a fair and proportionate way.
40. It explained that the process is independent of the Egg Marketing Inspectors and their management chain once the potential cases have been referred for consideration of the offence. The panel may consider several cases in one sitting. The governance would be in line with APHA corporate governance.
41. APHA explained it fulfils the functions of the Secretary of State for Defra in relation to plant and animal health in secondary legislation made under the European Communities Act 1972 and relevant EC legislation. These statutory functions may additionally be supplemented by the Secretary of State's common law powers.
42. APHA explained it is responsible for delivering and advising on the statutory services for the implementation of legislation and standards on animal health, plant health, bee health and plant varieties and seeds in England, Wales and when appropriate Scotland. It operates government inspectorates with the common aim of balancing effective regulation of risks to plants, animals and people with minimising the regulatory burden on industry and trade. It plays a key role in facilitating import and export trade by advising industry on best practice and international standards.
43. APHA also explained that as part of its governance structure the Moderation Panel reports up to the Service Delivery Director who sits on and is a member of the APHA Directorate Leadership Team and APHA Management Board – which gives advice, guidance and assurance to the Chief Executive in setting the Agency's strategic direction.

(d) The terms of reference for the Moderation Panel.

44. APHA confirmed that there are no separate terms of reference for the panel and that the SOP is the procedural document for the process.

(e) Details of the quality assurance measures and processes which are in place.

45. APHA confirmed that the SOP details quality control processes. It confirmed the decisions of the Moderation Panel are not subject to further review.

Review of information provided

46. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.

47. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standards of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

48. In view of APHA's submissions, the Commissioner considers that on the balance of probabilities, it has provided the complainant with the information he requested and has complied with section 1(1)(a) and (b) of the FOIA.

(iii) Personal data regarding the Moderation Panel

49. The Commissioner is satisfied that the names of the individuals who sat on the complainant's Moderation Panel are his personal data and therefore exempt from disclosure under section 40(1) of the FOIA. APHA was therefore correct to respond to this part of the request under the DPA.

(iv) Procedural matters: Section 10(1) of the FOIA

50. Section 10(1) of the FOIA states:

"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt."

51. Therefore APHA is required to provide all the information it holds within the scope of the request, barring any exemptions, within 20 working days of receiving a request.
52. APHA received the request on 17 February 2015 and responded to the SAR but did not provide an FOIA response until 12 August 2015. This is therefore a breach of section 10 of the FOIA.
53. The complainant has also argued he did not receive the response of 12 August 2015. However APHA has confirmed that it sent the response to the email address which was used to contact it in February 2015. This is the email address with which the Commissioner has been corresponding with the complainant.

Right of appeal

54. 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

55. 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.
56. 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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