

5 January 2022

Dear

Thank you for your 67 paged letter headed "*Formal Complaint (stage 2) re. the Review of the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 (December 2019) and the consultation thereon (Number: WG42495) dated 23 July 2021*" which we received on October 19. We note paragraph 85 states:

I would ask that, in line with the principles of openness and accountability, the questions I have raised and the information I have requested be answered and/or provided, where available, without the necessity of me having to formalise the requests under the FOIA. If such an approach is required than please treat the requests in the complaint as so being.

Accordingly, your requests have been processed as ATISN 15788. Thank you also for your letter of 11 December where you drew attention to your wish that we treat these questions under FOI, and we apologise for the lateness in allocating this, and thus in our response.

The Freedom of Information Act 2000

It's important to note that The Freedom of Information Act (FOIA) gives individuals a right of access to recorded information held by a public authority at the time the request was received. It does not require an authority such as the Welsh Government to provide views or opinions where those views are not already recorded. This is confirmed by the Information Commissioner's guidance 'The Guide to Freedom of Information', page 7:

"The Act does not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it."

There is no requirement on a requester to cite the Act or to state they are making a request under it; any request that meets the legal criteria of a valid request falls to be considered under the provisions of the Act. To that end, the Welsh Government is guided by the Information Commissioner's stance in Information Commissioner v Vale of Glamorgan Council where the requestor asked nine questions that the Council argued were not FOI requests due to their wording. In their decision, they state (inter alia):

Para 24 (our emphasis)

Some of the requests made by the complainant in this case appear to be relatively straightforward requests for recorded information. For example, part 3 of the request "what were the conditions contained in the new contract". Other parts of the request appear, on the face of it, to be questions posed to the Council, for example, parts 2

and 3 of the request - "why was a new contract considered to be necessary" and "on what authority was a new contract drawn up". **It is always possible that the Council may hold recorded information which answers such questions.** For example, there may have been a report prepared for the Council explaining why a new contract was deemed to be necessary.

Para 26 (our emphasis)

*Neither the EIR nor the Act requires public authorities to create information in order to respond to a request. The obligation is to provide recorded information. **If the Council holds recorded information relevant to the request, it should be provided or the Council should explain why the information is exempt from disclosure and provide a proper refusal notice stating which exception is being relied upon, and details of the public interest test, as provided by regulation 14.***

ATISN 15788

During the course of your complaint document you make a number of requests for information. With the ICO's approach set out above in mind, we have identified 52 separate and individual questions in the main body of your correspondence to which Welsh Government might reasonably hold recorded information that would provide an answer:

1. The Welsh Government should publish a list of all authors of and contributors to the dog breeding review (hereafter "the review"), to include all those individuals who have contributed to a degree greater than just stakeholders (the term stakeholder being limited to those who only attended the stakeholder review meetings, were interviewed, or responded to a questionnaire);
2. The identity of all contributors, and a list of contributions to the associated Task and Finish group;
3. Guidance given to members of the WAHWFG regarding the Nolan principles when offered a position as a member of the group;
4. All guidance produced by Welsh Government given to those contracted to prepare reports and reviews commissioned by Welsh Government;
5. Information on how Welsh Government ensures Research Quality and Rigor. In particular, answering the question, how does the Welsh Government ensure the quality/authenticity of the data and the quality/trustworthiness of the analysis in relation to reviews/reports it asks individuals/bodies to prepare;
6. To what extent was any such process in 5 above applied to the preparation of the review;
7. All guidance provided by the Minister and officials to those charged with preparing the review;

8. Clarity on the involvement of the members of the Task and Finish Group in authoring the review;
9. What steps were taken by the Welsh Government to ensure that the requirements set out as principles in the terms of engagement were complied with;
10. To confirm at what stage the omission of licensed breeders as a stakeholder group first came to the attention of the Minister, the Chief Veterinary Officer and those with involvement in the review in Companion Animal Welfare;
11. Observations made as a result of 10 above;
12. Any information on a decision to purposefully exclude licensed breeders from contributing to the review;
13. Any recorded lessons learned by officials in the light of the above process;
14. Who the actual groups of stakeholders were, i.e., which local authorities, purported representatives of the dog breeding sector, etc.;
15. How the relevant groups were identified;
16. How the individuals within each category of stakeholder were selected to ensure a representative cross-section of participants of sufficient number;
17. The letters of invitation detailing the terms of involvement (redacted as necessary);
18. The number of individuals in each category of stakeholder and why that number was deemed appropriate;
19. How the risk of bias was identified and managed in the stakeholder selection process;
20. How any connection (professional or otherwise) between anyone involved in the preparation and/or authorship of the review (other than in the capacity as a stakeholder) was identified and recorded;
21. Evidence of all representatives from the dog breeding sector who contributed to the review;
22. How many of the 165 members referred to in the review are in fact licensed breeders, and therefore subject to the 2014 regulations;
23. What was the rationale behind the conduct of the stakeholder meeting sessions?

24. How was the make-up of the various stakeholder meeting groups decided upon?
25. Were stakeholders separated into groups with their peers, or were they mixed role groups?
26. Who chaired the individual sessions of stakeholder meetings and why?
27. Were set questions put to the various stakeholder meeting groups?
28. What were those questions in 27, if any?
29. Who decided upon the questions in each stakeholder meeting to facilitate discussion?
30. Who was responsible for making contemporaneous notes in each of the stakeholder meeting sessions?
31. Where are the notes of stakeholder meetings?
32. Why were the sessions not recorded?
33. Who made the typewritten note which purports to 'capture' the comments and opinions of all contributing stakeholders at stakeholder meetings?
34. Why was only a 'capture' note made and not full and contemporaneous notes of stakeholder meetings?
35. When was this note made?
36. Why was it not distributed for comment as to its accuracy and completeness?
37. How can one be certain as to the accuracy of stakeholder meeting notes?
38. How was potential interviewer/chairperson bias at stakeholder meetings managed?
39. Was the maker of the notes the author of the report?
40. If not, how can the note taker understand the captured notes?
41. Any information indicating reasons why issues raised in the capture notes may not have been followed up;
42. How many attendees were there at stakeholder meetings?
43. Did any of the vets attending as stakeholders stand to benefit from the proposals? i.e., how were real or potential conflicts of interest managed and recorded?

44. Where is the evidence within the review on which the recommendations on pen sizes are specifically based?
45. How the members of the task and finish group were made aware of the paper: Warwick, Clifford & Jessop, Mike & Arena, Phillip & Pilny, Anthony & Steedman, Catrina. (2018). Guidelines for Inspection of Companion and Commercial Animal Establishments. *Frontiers in Veterinary Science*. 5. 151. 10.3389/fvets.2018.00151
46. What more can vets do once they have formally noted issues that will be reported to local authorities as part of a licence application?
47. Specific evidence is available to support concern about pen sizes and its extent, and why has it not been disclosed as part of this consultation?
48. Is the Welsh Government really saying publicly to all breeder appointed vets who undertake this important work that they can't be trusted, and that this lack of trust is based on reliable and quantifiable evidence of bias resulting from a conflict of interest?
49. What should be the requirements of domestic breeders who make a profit under the Sept 21 Regulations?
50. Is the Welsh Government also going to suggest that the breeders' privately appointed vets are likewise not fit to assess the health of puppies from those adult dogs?
51. Substantiated evidence of the purported conflict of interest that breeder appointed vets face.
52. An explanation as to why the content of the review does not resemble the information recorded in the stakeholder notes.

Additionally, we have identified a further 44 questions in your Appendix A (pages 40-49 of your request), and 33 questions in your Appendix C (pages 53-65 of your request).

Our response

Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:

- either comply with the request in its entirety or;
- confirm or deny whether the requested information is held.

Regulation 4(3) of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004 states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

For central government bodies, the appropriate limit will be exceeded if it would require more than 24 hours work to undertake the tasks above in order to respond to a request.

In order to provide you with the information that is potentially captured by your requests we would first have to ascertain whether we hold such recorded information. Information relevant to your questions (which cut across all aspects of the dog breeding review and related matters of dog breeding), could potentially be held in the totality of the files Welsh Government holds on the subject. This will require a manual, visual search as each piece of information would need to be read to decide whether there is recorded information held that would answer your questions.

For example, question 4 does not limit itself to the matter of the review in question but asks for all guidance produced by Welsh Government given to those contracted to prepare reports and reviews commissioned by Welsh Government. This would need us to request information from all divisions of Welsh Government, first to understand which divisions produce such reports and reviews and then to ask each division to conduct searches of relevant files.

We believe that most of the Welsh Government divisions would be in the scope of this request, and so the search to locate all such guidance would require searches across as many as 110 different policy divisions. This task would require each division to locate all such reports and reviews and then search across the files related to each subject. Policy divisions approached regarding this task have indicated this could take anywhere from 1 to 5 hours. Thus question 4 alone would take between 110 to 550 hours of work to answer.

Simply excluding this question would still see the request as exceeding the appropriate limit in terms of the quantity of files that would need to be searched just to see if we hold any relevant recorded information. There are 4,000 files or documents that would need to be reviewed and, from a scoping exercise, we have found it would take us at least an average of 5 minutes per item to read and understand the contents of the record. This allows us to identify whether relevant information is held but extraction of that information would then be required regarding the relevant information in each document to the questions. We believe this would take significantly longer.

Even assuming a document could be fully processed in 10 minutes, and the relevant information extracted under the appropriate headings above, this would suggest the work required to answer this request would exceed 650 hours. In effect, in a sampling exercise, we found it took substantially longer to extract information for all questions from a document, as the number of questions asked made the task very time consuming. 650 hours is therefore a lower bound for our estimate.

This does not take into account that some of your questions require us to search outside of the division and across the whole of Welsh Government.

Consequently, we have decided not to provide you with the information you have requested.

Whilst we are mindful of our obligations under FOIA s16 to provide advice and assistance, the requests set out under ATISN 15788 are so general and wide ranging that we do not have a clear idea of exactly what information you are seeking. The ICO's own guidance to the public on "How to access information from a public body" advises requesters to:

<https://ico.org.uk/your-data-matters/official-information/>

- *Clearly state that you are making your request under the Freedom of Information Act/Environmental Information Regulations.*
- *Be as specific as possible about the information you want rather than asking general questions. Try to include details such as dates and names whenever you can. It may also assist the authority in identifying the information if you explain the purpose behind your request.*
- *Re-read your request to check for any wording which is unclear or open to interpretation.*
- *Use straightforward, polite language; avoid basing your request or question on assumptions or opinions, or mixing requests with complaints or comments*

It also states that requesters should not

- *Bury your request in amongst lengthy correspondence on other matters or underlying complaints*
- *Send 'catch-all' requests for information (such as 'please provide me with everything you hold about 'x') when you aren't sure what specific documents to ask for.*
- *Disrupt a public authority by the sheer weight of requests or the volume of information requested. Whether you are acting alone or in concert with others, this is a clear misuse of the Act and an abuse of your 'right to know'.*

With this guidance in mind, you may wish to refine your request by narrowing its scope by being more specific about what information you particularly wish to obtain. If you do refine your request in this way, this will be treated as a new request.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004

Further, when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the

conditions laid out in Regulation 5 of the above Regulations can be satisfied. Those conditions state where requests are made to a public authority:

- (a) by one person, or*
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account of complying with all of them.

Regulation 5(2) clarifies:

2) This regulation applies in circumstances in which:

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and*
- (b) those requests are received by the public authority within any period of sixty consecutive working days.*

To that end, in calculating the appropriate limit, we are amalgamating ATISN 15788 with

- ATISN 15760 (received December 12)
- ATISN 15762 (received December 3)
- ATISN 15799 (received December 17)
- ATISN 15918 (received January 4)

as we believe these requests clearly meet the conditions set out under Regulation 5 above. We are thus refusing all five requests for exceeding the appropriate limit under section 12 FOIA.

Next steps

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Section 14 – Vexatious requests.

Further to the above, Welsh Government also believes that the pattern of requests we are receiving on this subject potentially meets the threshold to be considered vexatious. Section 14(1) of the FOIA. Section 14(1) states that:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

A 'vexatious request' is not defined in the FOIA, though ICO guidance states:

The Information Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

Their guidance sets out a number of key indicators that enable a public authority to be able to identify a vexatious request and we believe a number of these are applicable in regards the requests we have received on this subject:

Burden on the authority

The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.

Unreasonable persistence

The requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

Intransigence

The requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.

Frequent or overlapping requests

The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.

Scattergun approach

The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.

As set out above, ATISN 15788 comprises a 67 page complaint document interspersed with a great number of questions, none of which are (as per the cited ICO guidance) clearly presented as freedom of information requests and most of which lack clarity regarding the information you believe we hold. These requests are allocated to a very small animal welfare team within Welsh Government and significant time has already been spent in identifying all the potential requests where recorded information could be held. Whilst we have not refused any request to date on the grounds that it is vexatious, we reserve the right to do so in the future and would like to stress the need for clarity and focus when making requests for recorded information.

Yours sincerely