

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

### **Decision notice**

**Date:** 11 September 2018

**Public Authority:** Portsmouth City Council  
**Address:** Civic Offices  
Guildhall Square  
Portsmouth  
Hampshire  
PO1 2AL

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

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1. The complainant has requested recorded information which concerns the names, addresses and contact information of persons holding licences for the provision of home boarder services. Portsmouth City Council has refused to provide the complainant with the information she has asked for in reliance on section 40(2) of the FOIA.
2. The Commissioner's decision is that Portsmouth City Council has correctly applied section 40(2) of the FOIA to the information which the complainant has requested.
3. The Commissioner requires the public authority to take no further action in this matter.

#### **Request and response**

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4. On 7 February 2018, the complainant wrote to Portsmouth City Council and requested information in the following terms:

"Please would it be possible for you to send me a list of animal boarding establishments (kennels and catteries) who hold licences in your area.

I would be grateful if you could indicate the expiry date and year for each licence, and if you could differentiate between commercial boarders and home boarders that would be helpful."

5. On 16 February 2018, the Council advised the complainant that:

"The information is not public. Whilst we would be able to supply the number of establishments and detail the type of animals they board, we would not be able to supply names and addresses. Nearly all our boarders are Home Boarders, and we cannot release personal information such as names and addresses".

6. On 23 February 2018, the complainant asked the Council, "Whether it would be possible to access the business names of the commercial boarders only?" The complainant asserted that "many councils have this information publicly available on their websites".

7. On 9 March 2018, the Council made its response to the complainant's request:

"1. Please would it be possible for you to send me a list of animal boarding establishments (kennels and catteries) who hold licences issued in your area. Please supply business names of the commercial boarders only. Many councils have this information publicly available on their websites.

There are currently no commercial "Kennels and Catteries" registered in Portsmouth. However, the number of registered Home boarders in 2018 is 27.

2. I would be grateful if you could indicate the expiry date and year for each licence, and if you could differentiate between commercial boarders and home boarders that would be very helpful.

All licences run for the duration of the calendar year: 1st January to 31st December."

8. On receipt of the Council's response, and also on 9 March 2018, the complainant submitted a new request for information:

"Please would it be possible to obtain further information about the home boarders – many councils publish this information on their websites and public registers. Otherwise, I am able to identify home boarders online, but cannot confirm which of them holds a licence issued by the Council. I would be grateful for any information which would help me confirm this."

9. The Council responded to the complainant's new request on 22 March 2018. The Council informed the complainant that:

10. "We can confirm that the home boarders are trading under their own name(s) and personal address. Portsmouth City Council believe that this personal data is exempt from disclosure in accordance with section 40(2) of the Freedom of Information Act. We do not believe that these

individuals would reasonably expect that their personal data would be disclosed in to the public domain in this way and to do so would therefore breach the First Principle of the Data Protection Act 1998.”

11. On 26 March 2018, the complainant asked the Council to conduct an internal review.
12. The Council wrote back to the complainant to ask her to set out in writing her grounds for complaint, whether it was in respect of its decision to withhold the names of home boarders trading under their own names or in respect of the Council’s position that it does not hold any further information on home boarders – other than their names, which it could disclose to her.
13. The complainant responded to the Council’s query by advising it that she required an internal review of both matters. The complainant asserted her belief that:
14. “...withholding this information makes issuing the licence fairly meaningless if the council is unable to confirm who they have issued a licence to, which means that it makes it harder for pet owners to confirm that they are using a licenced boarding establishment. This also leaves the system open to potential fraud as the council is unable to verify licences issued.”
15. Having completed its internal review, the Council wrote to the complainant on 19 April 2018, to advise her of its final decision. The Council upheld its decision to withhold the information the complainant asked for in reliance on section 40(2) of the FOIA. The Council advised the complainant that:
16. “The information we hold for these licensees includes their name, home address, telephone number and, in some cases, their email address. This information is not typically already in the public domain, nor do we advise individuals that we will publish it when they apply for a licence. We do not therefore believe it would be their reasonable expectation for us to do so and disclosure would cause us to breach the First Principle of the Data Protection Act.”

## **Scope of the case**

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17. The complainant contacted the Commissioner on 20 April 2018 to complain about the way her request for information had been handled. In support of her complaint, the complainant advised the Commissioner that she is baffled why this information is withheld as similar requests have been dealt with inconsistently by different councils. The

complainant explained her position that "...this information is statutory" and she therefore would expect it to be freely available. The complainant pointed out that some councils put the same information on their websites whilst others refuse to share it.

18. The complainant provided the Commissioner with a list of councils which have refused to disclose the same or similar information.
19. The Commissioner has investigated whether Portsmouth Council is entitled to withhold the names and addresses of persons trading under their own name(s) as Home Boarders, in reliance on section 40(2) of the Freedom of Information Act. The Commissioner advised the complainant that her investigation would concern only Portsmouth Council's refusal of her request.

## **Reasons for decision**

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### **Section 40(2) – personal data of third parties**

20. The Council has advised the Commissioner of its view that the names, addresses and contact details of the persons licensed for the provision of animal boarding is those persons' personal data. The information required by the complainant is therefore subject to the exemption to disclosure provided by section 40(2) of the FOIA.
21. Under section 40(2), personal data of a third party or parties will be exempt from disclosure if to do so would contravene any of the data protection principles in the Data Protection Act 1998.
22. Personal data is defined by section 1 of the Data Protection Act 1998. This states:  
  
"personal data" means data which relate to a living individual who can be identified—  
  
(a) from those data, or  
  
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."
23. The Commissioner readily accepts that some of the information which the Council is withholding from the complainant satisfies the definition of personal data.
24. In order to disclose the withheld information under the FOIA – and into the public domain - the Council would need to ensure that such disclosure would not contravene first data protection principle.

25. The first data protection principle requires personal data to be processed fairly and lawfully and to meet at least one of the conditions in Schedule 2 of the Data Protection Act 1998.
26. The Council has provided the Commissioner with a list of twenty seven licenced home boarding establishments in Portsmouth for 2018, together with a pro-forma copy of a licence issued under the Animal Boarding Establishments Act 1963.
27. The Council's list of home boarding establishments gives the names, addresses and contact details of the owner or owners of those establishments, and in most case it gives their email addresses.
28. The Council points out that Home Dog Boarding Licensees are issued to those persons who care for dogs in their own home.
29. The terms of the Home Boarding Licence state that applicants are not permitted to make any adaption of the property to provide external accommodation for the dogs they board. This means that licensees will generally provide care in their homes. The information which the Council holds is, in all cases, the private addresses, mobile telephone or home telephone numbers or email addresses of the licensees, and as such it is their personal data.
30. The Council asserts it belief that the licensees would hold a reasonable expectation that their information would not be placed in the public domain and to do so would breach the first principle of the Data Protection Act 1998.
31. The Council explained that it requires each licensee to display their licence in their home or make it available to anyone wishing to board their dog with them. At no time has the Council advised licensees that their information will be published.
32. Without exception, all Home Boarding Licensees in Portsmouth have applied for their licence as individuals, rather than businesses. In some instances, the Council is aware that licensees consider their home boarding to be a hobby or that they look after dogs for the perceived health benefits if they are unable to commit to owning a dog of their own. Nonetheless all persons providing this service are required to have a licence.
33. The Council considers that licensees would not have the same expectation that their information would be placed in the public domain as a business owner would.
34. The application form for an Animal Boarding Licence can be accessed at <https://www.gov.uk/animal-boarding-establishment-licence>. The

application form is in a nationally agreed format and does not contain any privacy statement for applicants. When completing their applications, applicants are therefore not advised of how their information will be used.

35. The Council acknowledges that the public has the right to establish whether a person who offers a home boarding service has a licence, before leaving a pet in their care. This is because a licensee is required to comply certain standards of care.
36. To satisfy this, the licence holder is required to display their licence at their property or show it to a potential boarder if asked. Alternatively any member of the public wishing to make an enquiry about a particular home boarder can contact the Council's Environmental Health team for confirmation of whether a licence is held.
37. The ability of the public to gain sight of a person's licence or to obtain confirmation as to whether that person holds a licence is, in the Council's opinion, sufficient to meet the legitimate interests of the public. Being mindful of this, the Council considers the home boarders' right to privacy outweighs the public interest in disclosing all of their details into the public domain.

#### *The Commissioners considerations and decision*

38. The Commissioner has established the following in respect of the licencing of persons offering home boarding services:
39. They must hold a licence issued by a public authority. This is a statutory requirement under the Animal Boarding Establishments Act 1963<sup>1</sup>.
40. Paragraph 2.1 of the Council's licence contains the following requirement for licensees:

"A copy of the licence and its associated conditions must be suitably displayed to the public in a prominent position in, on or about the premises or made available to each boarder."
41. Applicants for a home boarder licence are, to the date of this notice, given no privacy statement, or similar, which details how their personal details will be used. The absence of such information is, in itself, no ground for importing a reasonable expectation that names, addresses

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1963/43>

and contact details of the licensees would be disclosed to the public on request.

42. The Commissioner accepts that home boarder licensees in Portsmouth are private individuals operating from their own homes. She accepts the Council's assertion that they are not operating as commercial businesses in the way that other businesses operate.
43. Notwithstanding the absence of a privacy statement in the application or being given similar in the application process, the Commissioner recognises that the licensees will still have, to varying degrees, a reasonable expectation of privacy in respect of how their personal data will be used. She agrees with the Council that disclosing the licensees' data through the provisions of the FOIA would likely be unfair to those persons and therefore it would be a contravention of the first data protection principle.
44. The Commissioner has also considered the requirement that disclosure of third party personal data meets at least one of the conditions contained in Schedule 2 of the Data Protection Act 1998. In particular, the Commissioner has considered the sixth condition.
45. In order to satisfy the sixth condition of Schedule 2, disclosure must be "necessary for the purposes of legitimate interests" of the third party or parties to whom the information is disclosed, and such disclosure must not be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the licensees.
46. In this case, the legitimate interest of the complainant and of other third parties is bedded firmly in knowing whether or not a person holds a home boarder licence. It is not bedded in knowing the names, addresses and contact information of the licensees who have signalled in their applications that they are applying as individuals rather than as commercial businesses.
47. The Commissioner agrees with the Council that the legitimate interest of the complainant is properly met by the requirement that licensees display their licences or show them to their clients when asked. The Commissioner considers that there is no necessity for the requested information to be made publicly available.
48. The Commissioner has decided that disclosure of the information requested by the complainant would be unfair to the licensees and would not meet the requirement of condition 6 of the DPA. For these reasons, the Commissioner has decided that the Council has properly applied section 40(2) of the FOIA and it is therefore entitled to withhold the information which the complainant has requested.

Reference: FS50740298



## Right of appeal

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49. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

50. 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.
51. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**