

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2014

Public Authority: Caerwent Community Council

Address: clerk@caerwentcc.com

Decision (including any steps ordered)

1. The complainant submitted various requests about Dog Control Orders, and associated Byelaws, signage and press advertisements. Caerwent Community Council ('the Council') stated that it did not hold the information requested. The Commissioner's decision is that the Council does not hold the requested information. The Commissioner does not require any steps to be taken.

Request and response

2. On 28 August 2013 the complainant wrote to the Council and referred to "Dog Control Orders (prescribed offences and penalties Regulation 2006 and Section 55/56 clean Neighbourhood and Environmental Act 2005". He requested information in the following terms:

"My **important** questions relate to: Dog Control Orders prescribed offences Regulation 2006 and Section 55/56 of the important clean Neighbourhood and Environmental Act 2005.

After visiting four play areas i note that "NO DOGS" signs have been erected

Please could i have copies of the very **important** "BY LAWS" that underpin the signage and very **important** press advertisement that supports signage

Please could I have a copy of the **important** press advertisement that rescinds the old "BY Laws"

Please could I have copies of the Dog Control Orders that are applicable to the four play areas and the supporting press advertisement”.

3. The Council responded on 24 September 2013 stating that it did not hold the information requested and suggested that the complainant contact Monmouthshire County Council ('MCC').
4. On 1 November 2013 the complainant wrote to the Council and asked for an internal review of its handling of his request.
5. The Council provided the outcome of its internal review on 12 November 2013 and upheld its position that it did not hold the requested information and again suggested that he contact MCC.

Scope of the case

6. The complainant contacted the Commissioner on 27 November 2013 to complain about the way his request for information had been handled.
7. In his complaint to the Commissioner, the complainant raised a number of issues which the Commissioner advised fell outside his remit, including the Council's practice of holding some meetings where the public and press were excluded. The complainant also raised concerns about other requests for information he had submitted to the Council.
8. The complainant confirmed that the four play areas referred to in his request were:
 - Caerwent playing field situated at the village hall off high fields,
 - Lawrence crescent play area off Dinham Road,
 - Trewen play area, and
 - Llanfair Discoed play area
9. Following correspondence with the complainant it was agreed that the scope of the Commissioner's investigation into this complaint would be to establish whether the Council held the information he had requested on 28 August 2013.

Reasons for decision

Section 1 –General right of access

10. Section 1 of the FOIA provides 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 and (b) if that is the case to have that information communicated to him.

11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to ascertain information falling within the scope of the request and he will consider if the authority is able to explain why further information was not held. For clarity, the Commissioner is not expected to prove categorically whether additional information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"¹. Therefore, the Commissioner will consider both:
 - the scope, quality, thoroughness and results of the searches and
 - other explanations offered as to why further information is not held.
12. The Council originally advised the Commissioner that it had no responsibility for dog control orders or the associated byelaws and as such, the complainant was referred to MCC – the County Council for the area, to ascertain whether MCC held any relevant information. The Council advised the Commissioner that it did not conduct any searches in order to identify any information held relevant to the request because it was "aware" that it did not hold the information requested.
13. The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 and the Dog Control Orders (procedures) Regulations 2006 implement sections 55 and 56 of the Clean Neighbourhoods and Environment Act 2005 (prescribing offences and penalties to be contained in, and procedures and forms for making, dog control orders). Dog Control Orders replace the previous system of byelaws for the control of dogs, and also the Dogs (Fouling of Land) Act 1996, which has been repealed. These Regulations provide primary and secondary authorities with the power to make Dog Control Orders.
14. In light of the fact that the regulations associated with Dog Control Orders appear to provide secondary authorities, like the Council, with the power to make Dog Control Orders, (which appeared to contradict with the Council's statement that it had no such responsibility), the Commissioner asked the Council for further representations to explain

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

how it was "aware that we did not hold this information". The Council confirmed that it knew that it had "never used powers to impose dog control orders within the Caerwent community area".

15. During the course of the Commissioner's investigation, the Council contacted MCC about the subject matter of the request, and provided a copy of MCC's response. MCC confirmed that it had no byelaws in place regarding dogs and had never been involved in making any Dog Control Orders. As MCC does not use such byelaws and has not made any associated Orders, it confirmed that it had not published any notices in the press. MCC also advised that it installs "no dogs" signage for a range of clients, including MCC itself, to try to alleviate problems of dog fouling in the cheapest possible way. MCC also confirmed that when it carried out an annual playground inspection report for the Council in 2011, it highlighted concerns about dog fouling issues and suggested that the Council install signs to try to reduce and alleviate the problem.
16. In relation to the signs erected in the four play areas referred to by the complainant, MCC confirmed that it had erected the sign at the Lawrence Crescent play area. In relation to the signs at the other three play areas, the Council advised that, to the best of its knowledge, the Caerwent Playing Fields Association arranged for MCC to erect the sign at Caerwent Playing Fields. In relation to the signs at Trewen and Llanfair Discoed play areas, following a recommendation/suggestion from MCC, the Council arranged for MCC to erect signs in these two play areas. The Council also confirmed that all of the signs in the four play areas were erected as a preventative measure against dog fouling and not as a result of any Dog Control Orders made by the Council or MCC in respect of the areas in question, as no such orders have been made. The Council also confirmed that there is no legal obligation to advertise the erection or proposed erection of such "advisory signs" in the local press.
17. Taking into account the available information on this matter, the Commissioner's view is that the Council's explanation of why it does not hold the requested information is reasonable in the circumstances. The Commissioner notes that no Dog Control Orders have been made either by the Council or MCC for the areas in question and the signs have been erected as a preventative measure only. He therefore finds that, on the balance of probabilities, the Council does not hold the requested information.

Right of appeal

18. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF