

## **The Ombudsman's final decision**

Summary: Mr X complains the Council failed to issue a Fixed Penalty Notice following his report of dog fouling. He also complains the Council has failed to provide him with information he has requested and breached the Data Protection Act. The Ombudsman does not intend to investigate this complaint. This is because we do not consider Mr X has suffered significant personal injustice, he has reported his complaint about access to information to the Information Commissioner's Office. And we cannot investigate allegations of criminal activity or matters that affect all or most of the people in the Council's area.

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## **The complaint**

1. Mr X says the Council:
  - failed to issue a Fixed Penalty Notice (FPN) following a report he made about dog fouling
  - failed to respond to his request for information and breached the Data Protection Act
  - fails to employ dog wardens and does not assign its civil enforcement officers to offences against their own public protection laws. Which he says is serious maladministration and service failure to its public
  - failed to act on his many reports of dogs not being on short leads (max 1 metre) and not on leads at all. Which is a failure to deliver a service to the whole community of East Devon

## **The Ombudsman's role and powers**

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service but must use public money carefully. We may decide not to start or continue with an investigation if we believe:

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- it is unlikely we would find fault
  - the injustice is not significant enough to justify our involvement
  - we cannot achieve the outcome someone wants
  - there is another body better placed to consider this complaint

*(Local Government Act 1974, section 24A (6), as amended)*

4. The Information Commissioner's Office considers complaints about freedom of information and data protection. Its decision notices may be appealed to the First Tier Tribunal (Information Rights). So, where we receive complaints about freedom of information, we normally consider it reasonable to expect the person to refer the matter to the Information Commissioner.
5. We cannot investigate something that affects all or most of the people in a council's area. *(Local Government Act 1974, section 26(7), as amended)*

### **How I considered this complaint**

6. I considered the information provided by Mr X in his complaint form and his comments on my decision. I also considered information available on the Council's website.

### **What I found**

7. Mr X submitted a report of dog fouling to the Council. He says the Council issued the dog owner (who he says is a police officer) with a warning letter instead of a FPN. He complained to the Council.
8. Mr X says the dog owner then approached him and accused him of spreading lies about him. Mr X escalated his complaint to the Council, including a new complaint about a breach of data protection. He says the Council has admitted it corresponded with the dog owner but refused to give him copies of this information. Mr X then made a subject access request for copies of his personal information held by the Council. He says he has not received a response either to his complaint or his request for information.

### **Assessment**

9. Mr X complains about the Council's decision not to issue the dog owner with an FPN. He says the Council's explanation that it does not have enough evidence to issue an FPN is dishonest.
10. The Ombudsman considers complaints of fault by the Council leading to personal injustice to the complainant. A person may benefit from an action the Council has taken which a complainant may think is wrong, but this does not necessarily cause the complainant injustice. In this case I do not consider that the Council's decision not to issue a third party with an FPN caused Mr X any significant personal injustice.
11. Mr X is also concerned the Council has provided his personal information to the dog owners and this has led to them writing to him and accusing him of spreading malicious lies. He has asked the Council for copies of emails between it and the dog owners but says the Council has refused to disclose these.
12. The Information Commissioner's Office (ICO) is the body with specific powers and expertise to investigate access to information issues. It has powers which the Ombudsman does not have to require compliance with the Freedom of

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Information Act, the Environmental Information Regulations 2004 and data protection regulations.

13. I understand Mr X has reported the Council's refusal to disclose information, including his personal data to the ICO. And I consider it to be the appropriate body to deal with such concerns.
14. Mr X says the Council's actions have enable the dog owners to spread malicious lies about him, slander and harass him. I have not seen any evidence to support My X's allegation that the Council provided the dog owners with his personal data. And the Ombudsman cannot investigate criminal allegations, these are a matter for the police. If Mr X considers the dog owners to have slandered him, this is a civil matter and not one which the Council or the Ombudsman can investigate.
15. Mr X also says the Council's failure in respect of its policy on dog control and dog fouling affect all the resident of East Devon. However, the Local Government Act 1974 (as amended) prohibits the Ombudsman from investigating matters which affect all or most of the people in a Council's area.

### **Final decision**

16. I will not investigate this complaint. This is because:
  - I do not consider he has suffered any personal injustice because of the Council's decision not to issue a third party with an FPN for dog fouling
  - Mr X has already reported his complaints about access to information to the ICO, which I believe is the appropriate body to consider concerns about access to information and the validity of personal data held by the Council
  - We cannot investigate allegations of criminal actions
  - We cannot investigate matter which affect all or most of the people in a Councils area

### **Investigator's decision on behalf of the Ombudsman**