

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2022

Public Authority: Canterbury City Council
Address: Council Offices
Military Rd
Canterbury CT1 1YW

Decision (including any steps ordered)

1. The complainant requested a wide range of information relating to stray dogs. Canterbury City Council (the "council") disclosed some information. It withheld other information under the exemptions for health and safety (section 38), information provided in confidence (section 41) and commercial interests (section 43(2)) of the FOIA. During the Commissioner's investigation the council dropped its reliance on exemptions and disclosed the outstanding information.
2. The Commissioner's decision is that the council disclosed all the relevant information that it holds and complied with section 1(1) but that it disclosed the information outside the time for compliance and breached section 10(1) of the FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 22 April 2020, the complainant wrote to Canterbury City Council (the "council") and requested a wide range of information relating to stray dogs. The full text of the request is reproduced in the annex to this notice.
5. The council responded on 21 July 2020 and disclosed some information. It withheld other information under the exemptions for health and safety (section 38), information provided in confidence (section 41) and commercial interests (section 43(2)).
6. Following an internal review on 5 February 2021, the council disclosed additional information, confirmed other information was not held and maintained its reliance on the exemptions cited in the initial response.

Scope of the case

7. On 27 February 2021 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. During the Commissioner's investigation the council dropped its reliance on exemptions and disclosed information to the complainant.
9. The Commissioner confirmed with the complainant that he would issue a decision notice regarding the extent of information disclosed and the timeliness of the council's response.

Reasons for decision

Section 10 – time for compliance

10. Section 10(1) of FOIA states:

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

11. In this case the complainant submitted their request on 22 April 2020. The council failed to provide all the relevant information it held until the time of the Commissioner's investigation, some 2 years after the original request.

12. The Commissioner has, therefore, concluded that the council failed to respond to the request within the statutory time limit and breached section 10(1) of the FOIA.

Section 3(2) - Information held on behalf of

13. Section 3(2) of the FOIA states:

“For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

14. The Commissioner’s guidance states:

“For the purposes of FOIA, the second part of the definition of section 3(2) states that information held by the public authority includes information “held by another person on behalf of the authority”.

This means that there may be information within the scope of a FOIA request that you do not physically hold, either in hard copies or electronic files on your systems. This could be information that the contractor holds on your behalf.”¹

15. As identified in the request and confirmed by the council, the provider responsible for the collection and kennelling of stray dogs is Serco Ltd. It is the case that Serco Ltd has subcontracted Animal Wardens Ltd to carry out this work on its behalf.
16. The Commissioner recognises that the council has a statutory duty to collect and detain stray dogs in its area and that, in this particular instance, the contract (for services) to collect and detain dogs is between the council and Serco Ltd. The Commissioner understands that the council worked solely with Serco Ltd to ensure its statutory obligations are met.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/outsourcing-foia-and-eir-obligations/#info3>

17. The complainant considers that information provided to Serco Ltd by Animal Wardens Ltd constitutes information held by Serco Ltd on behalf of the council.
18. The council has argued that the contract between Serco Ltd and Animal Wardens Ltd is a private business arrangement between those two companies, and that it falls outside the terms of the contract between itself and Serco Ltd.
19. The Commissioner has found no evidence that the contract between Serco Ltd and Animal Wardens would provide the council with a right to access the information requested.
20. The Commissioner recognises that the complainant considers that the information is held by the council as per section 3(2) and he has considered the arguments they have provided in this regard.
21. However, the Commissioner considers that it is for the council to determine what information it needs to access in order to monitor a contractor's compliance with the terms of a contract. Whilst the complainant has their own views on this, this does not square with the council's position. The council has explicitly confirmed to the Commissioner that it has no access to information Serco Ltd holds regarding its arrangements with Animal Wardens Ltd.
22. Whilst the Commissioner has some sympathy with the complainant's position, it is not his role to pass judgement on the council's contractual arrangements for outsourcing services or to question its strategies for monitoring performance under such contracts. The council has stated that the information it receives from Serco Ltd is sufficient for these purposes and confirmed that it does not have access to any additional information held by Serco Ltd regarding its arrangements with Animal Wardens Ltd.
23. In reaching his conclusions the Commissioner has had regard to a previous decision notice which relates to a comparable instance of information being held by a contractor regarding its arrangements with a third party. The Commissioner considers that the conclusions reached in that notice are relevant to this case².

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4020064/ic-70679-17r7.pdf>

24. In light of the above the Commissioner has determined that information held by Serco Ltd regarding its contract with Animal Wardens Ltd is not held on behalf of the council.

Section 1 – duty to provide information held

25. Section 1(1) of the FOIA states:

“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.”

26. The complainant has raised concerns that the council has not disclosed all the relevant information that it holds.
27. The Commissioner considers that the council initially handled the request poorly but made significant efforts to address this during his investigation, identifying and disclosing information. It took some time to address the outstanding issues, partly because the complainant has in depth knowledge of the issues and the officer at the council has had to work hard to gain an understanding of the outsourcing arrangements. The council has explicitly confirmed that it has disclosed all the information held and, whilst the complainant disagrees with the position regarding information held on behalf of under section 3(2), there is no evidence to contradict the council’s position.
28. The Commissioner has spent some considerable time establishing with the council what information it holds that falls within the scope of the request. On the basis of the council’s submissions and its confirmation of the searches carried out for relevant information he is satisfied that, on the balance of probabilities, it has provided all the information it holds that falls within the scope of the request. He has, therefore, determined that it has complied with section 1(1) of the FOIA.

Other matters

29. Although they do not form part of this decision notice would like to note the following matters of concern.

Outsourcing and records management

30. It came to light during the Commissioner's investigation that there was a lack of knowledge within the council about its contractual arrangements with a third party in relation to stray dogs.

31. An outcome of this was that the council's initial responses to the request were flawed and failed to identify and disclose the requested information.

32. The code of practice issued under section 46 of the FOIA provides guidance to authorities which helps them to create a framework for keeping, managing and destroying their information, and therefore records³.

33. The Commissioner expects that, in its future handling of requests, the council shall ensure that its information management practice conforms to the recommendations of the section 46 code.

Proactive publication

34. The council should also consider proactively publishing information relating to the operation of and performance of its contracts. In addition to helping the council comply with its duties in relation to publication schemes under section 19 of the FOIA, taking such steps will reduce the administrative burden imposed by requests for such information made under section 1(1).

³ Published online here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1010395/Freedom_Information_Code_Practice_Web_Accessible.pdf

Right of appeal

35. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

36. 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.
37. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex – request for information

“1. A copy of any contracts between Canterbury City Council and Serco Ltd for the collection and kennelling of stray dogs, which commenced on or after 1st April 2013, and any subsequent contracts or amendments to that contract or contracts. This includes the contract specification, the pricing schedule and any other documents stated to be a part of the contract or contracts. Please specifically confirm whether there are any named subcontractors. If there are any subcontractors, please provide full details of the contract with the subcontractor including the subcontract specification, pricing schedule and any other documents stated to be a part of the contract.

2. Please provide me with a copy of all documents submitted by Serco Ltd in relation to the above contract or contracts, including but not limited to the tender or method statement, contract questionnaire, case studies and company policy documents. Please also provide any information submitted by Animal Wardens Ltd in support of the contract or contracts.

3. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, the total number of stray dogs collected by the Council's own dog warden, Serco Ltd, Animal Wardens Ltd or by any person or company contracted or subcontracted to provide a dog warden service by the Council. Please provide a separate breakdown for each year.

4. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, the total number of stray dogs returned directly to owner by the dog warden or its contractor or subcontractor, without the need to be kennelled. Please provide a separate breakdown for each year.

5. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019 the total number of stray dogs kennelled for up to 7 days either by its contractor or by its subcontractor or in the Council's own kennels. Please provide a separate breakdown for each year.

6. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, the total number of dogs returned to owner from kennels or reclaimed by the owner from kennels within 7 days. Please provide a separate breakdown for each year.

7. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, the total number of dogs not claimed after the statutory 7 days. Please provide a breakdown of how those dogs were disposed of, pursuant to Section 149(6) Environmental Protection Act 1990. Please provide a separate breakdown for each year.

8. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, the total number of stray dogs euthanised within the statutory 7 days. Please provide a separate breakdown for each year.

9. In relation to Questions 7 and 8, please state whether any euthanised dogs were subsequently transferred to or collected by, or on behalf of any academic, educational or training organisation. Please state specifically whether any of these dogs were subsequently delivered to or collected by, or on behalf of, the University of Liverpool Institute of Veterinary Science or any of its employees, contractors or subcontractors. Please provide a separate breakdown for each year.

10. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, the total number of stray dogs retained by the finder, pursuant to Section 150 Environmental Protection Act 1990. Please provide a separate breakdown for each year.

11. Please can you confirm the name and location of the establishment where stray dogs are kennelled on behalf of the Council or its contractor or subcontractor, and provide a copy of the license held by the relevant kennelling establishment for the commercial kennelling of stray dogs on behalf of the Council or on behalf of its contractor or subcontractor, pursuant to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

12. Please provide copies of any management information or other data held by the Council regarding the outcomes of any dogs disposed of by the Council after 7 days pursuant to Section 149(6) Environmental Protection Act 1990.

13. Please provide copies of any performance management information held in relation to the collection and kennelling of stray dogs by the Council's contractor or subcontractor."