

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 March 2022

Public Authority: Chorley Council
Address: Civic Offices
Union Street
Chorley PR7 1AL

Decision (including any steps ordered)

1. The complainant requested a range of information relating to stray dogs. Chorley Council (the "council") disclosed some information, confirmed other information was not held and withheld some information under the exemption for commercial interests (FOIA section 43(2)). The council subsequently dropped its reliance on the exemption and disclosed the information to the complainant.
2. The Commissioner's decision is that the council disclosed all the relevant information it held and complied with section 1(1) but that in disclosing some information outside the 20 working day time limit, it breached section 10(1).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 9 November 2020, the complainant wrote to Chorley Council (the "council") and requested the following information:

"1. A copy of the contract between the Council and Animal Wardens Ltd for the current contract for the kennelling and / or collection of stray dogs, and any subsequent contracts or amendments to that contract. 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.

2. Please provide me with a copy of all documents submitted by Animal Wardens 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.

3. From 1st April 2018 to 31st March 2019 and from 1st April 2019 to 31st March 2020, the total number of stray dogs collected by the Council's own dog warden, 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 April 2018 to 31st March 2019 and from 1st April 2019 to 31st March 2020, the total number of stray dogs returned directly to owner by the dog warden or its contractor, without the need to be kennelled. Please provide a separate breakdown for each year.

5. From 1st April 2018 to 31st March 2019 and from 1st April 2019 to 31st March 2020 the total number of stray dogs kennelled for up to 7 days either by its contractor or in the Council's own kennels. Please provide a separate breakdown for each year.

6. From 1st April 2018 to 31st March 2019 and from 1st April 2019 to 31st March 2020, 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 April 2018 to 31st March 2019 and from 1st April 2019 to 31st March 2020, 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 April 2018 to 31st March 2019 and from 1st April 2019 to 31st March 2020, 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 April 2018 to 31st March 2019 and from 1st April 2019 to 31st March 2020, 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. Common Fold Kennels, Cumbermere Lane, Tyldesley, Manchester M29 8ND is used by Animal Wardens Ltd for the kennelling of stray dogs seized on behalf of seven other local authorities: Liverpool, Sefton, Knowsley, Halton, Blackburn, Stockport and Bury. Animal Wardens Ltd are also paid a monthly retainer by Tameside, Trafford and Oldham Councils to maintain kennel facilities at Common Fold for the occasional overnight kennelling on behalf of those authorities. Wigan Council has advised me that Animal Wardens Ltd rent a kennel block at Common Fold consisting of 17 individual kennels, which are used for the kennelling of stray dogs on behalf of the above local authorities.

For the periods 1st April 2018 to 31st March 2019, from 1st April 2019 to 31st March 2020, and from 1st April 2020 to date, please can you confirm the location where stray dogs are kennelled on behalf of the Council, 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, pursuant to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018."

5. The council responded on 9 December 2020 and disclosed some information. It confirmed that other information was not held and withheld some information under the exemption for commercial interests (section 43(2)).
6. Following an internal review the council wrote to the complainant on 8 January 2021 and confirmed it had revised its position in relation to parts 1 and 2 of the request. In relation to part 1 it confirmed information was not held and, in relation to part 2, it disclosed a redacted (under section 43(2)) version of a document.

Scope of the case

7. On 28 February 2021 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that the investigation would consider whether the council had complied with parts 1 and 2 of their request.
9. During the Commissioner's investigation the council dropped its reliance on section 43(2) and disclosed the remaining information held in relation to part 2 of the request.
10. The Commissioner has considered whether the council correctly confirmed that it does not hold information specified in part 1 of the request.

Reasons for decision

Section 1 – duty to confirm or deny

11. 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."

12. Section 10(1) of the FOIA states:

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

13. Part 1 of the complainant's request asked for the following information:

"A copy of the contract between the Council and Animal Wardens Ltd for the current contract for the kennelling and / or collection of stray dogs, and any subsequent contracts or amendments to that contract. 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."

14. In its responses to the complainant the council confirmed that it did not hold a written contract relating to the services provided by Animal Wardens Ltd. It explained that service provision was instead founded on a verbal agreement.
15. The complainant disputes the council's position and maintains that a written contract should be held by the council.
16. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
18. In order to reach a decision in this regard the Commissioner approached the council with a range of standard questions he routinely asks in such cases.
19. The council's response explained the searches that were carried out for relevant information. It also reaffirmed its position that its arrangement with Dog Wardens Ltd was a purely verbal agreement and that a written contract had not been created.
20. The Commissioner notes that the council does hold related information, namely the Chorley Dog Collection Service document, which has been disclosed to the complainant. He also recognises why the complainant might believe that a written contract should be held and that the existence of associated information might suggest that such a document is held.
21. However, the Commissioner is mindful that it is for the council to determine what records should be kept when entering into service arrangements with third parties.
22. On the basis of the council's explanations, the Commissioner is satisfied that, on the balance of probabilities it does not, nor has it ever held, the requested written contract. He has, therefore, concluded that the council complied with section 1(1) of the FOIA.
23. However, in disclosing some of the requested information (the information previously withheld under section 43(2)) during the Commissioner's investigation, the council failed to meet the 20 working day deadline and breached section 10(1).

Right of appeal

24. 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@justice.gov.uk

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

25. 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.
26. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF