

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2021

Public Authority: Stockport Metropolitan Borough Council
Address: Town Hall
Edward Street
Stockport
Cheshire
SK1 3XE

Decision (including any steps ordered)

1. The complainant has requested from Stockport Metropolitan Borough Council ('the Council') a copy of a sub-contract covering the kennelling of stray dogs on its behalf. The Council initially responded that it did not hold any relevant information, which the complainant disputed. During the Commissioner's investigation the Council located a copy of the sub-contract and disclosed it to the complainant. However, the complainant believed it was incomplete.
2. The Commissioner's decision is that the Council failed to locate and disclose the requested information within 20 working days, which is a breach of section 1(1)(a) and (b) (General right of access) and section 10(1) (Time for compliance) of the FOIA. However, she is satisfied that it complied with its duty under section 1(1)(b) of the FOIA to disclose all the information it held falling within scope of the request.
3. As the requested information has now been disclosed, the Commissioner requires no steps as a result of this decision.

Background

4. The Council contracts out responsibility for the kennelling of stray dogs to Animal Wardens Ltd. Animal Wardens Ltd sub-contracts with a boarding kennels, Common Fold, to kennel the dogs on behalf of the Council.

Request and response

5. On 11 May 2020, the complainant wrote to the Council and requested information in the following terms:

"Please can you also let me have a copy of the sub-contract between Animal Wardens Ltd and the kennelling provider or providers. If no sub-contract exists, please let me have any information held by Animal Wardens Ltd regarding the kennelling of stray dogs at the relevant kennels, including the price paid by Animal Wardens Ltd for the kennelling of each dog for the statutory 7-day period. (Please note that information held by a contractor is disclosable under FOI, if that information is held during the performance of an outsourced contract)."

6. The Council responded on 23 September 2020, as follows:

"There is a schedules [sic] of rates within the Contract document which are still being honoured by the Contractor. We have invited the requester to inspect the files and when we are in a position for him to safely do this following the lifting of the current Coronavirus restrictions, The service area would be more than happy to discuss the Contract with [the complainant] in further detail."

7. The complainant queried this response, and on 7 October 2020, the Council stated to him that there was no sub-contract between Animal Wardens Ltd and its kennelling provider, and that it held no information from which it could answer the request.

8. On 15 October 2020 the complainant formally asked for an internal review of the response, stating:

"As you are aware, information held by a contractor is disclosable under FOI, if that information is held during the performance of an outsourced contract. It is simply inconceivable that Animal Wardens Ltd does not hold any information regarding the kennelling of stray dogs on behalf of the Council at Common Fold."

9. Following an internal review, the Council wrote to the complainant on 5 November 2020. It stated:

"I am satisfied that your Freedom Of Information request ... had been processed correctly and all information held that was requested has been disclosed ... I consider that [the] question ... has been answered correctly."

Scope of the case

10. The complainant contacted the Commissioner on 14 November 2020 to complain about the way his request for information had been handled. He stated:

"I do not accept that the Council's contractor does not hold any information regarding the kennelling of stray dogs on behalf of the Council. Stockport Council has confirmed that dogs are kennelled by Animal Wardens Ltd during the statutory 7 days at licensed kennels. It is a statutory requirement for licensed kennels to hold specific records in relation to the dogs in their care, pursuant to Schedule 4 (section 4) of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. This information must therefore be held by Animal Wardens Ltd. Animal Wardens Ltd must also hold a contract with the kennels (Common Fold) for the kennelling of stray dogs on behalf of the Council. This is also disclosable under FOIA."

11. On 23 June 2021, the Commissioner asked the Council to explain its grounds for saying that it did not hold any information falling within the scope of the request.
12. Following this, on 20 July 2021, the Council contacted the complainant and revised its position regarding the request. It disclosed a copy of a sub-contract between Animal Wardens Ltd and Common Folds, for kennelling services provided on behalf of the Council.
13. The Commissioner has had regard to the particular wording of the request, which had two elements to it. As the Council has confirmed that a sub-contract does exist, and it has disclosed it, the Commissioner is satisfied that this cancels out the second part of the request, which was conditional on no sub-contract existing. The complainant has been informed accordingly and has accepted this position.
14. However, the complainant has told the Commissioner that he believes the Council did not disclose all the information he was entitled to. First, noting that the only information in the sub-contract about costs was a clause agreeing that they be negotiated separately, on an annual basis, he argued that information about the price to be paid was integral to the sub-contract and formed part of it. Secondly, he noted that the sub-contract was agreed in 2008 and he believed it likely that there would have been amendments made to it since then. He therefore argued that the Council should provide him with any amendments made to the sub-contract.
15. The analysis below considers the Council's compliance with section 1 and section 10 of the FOIA in respect of the sub-contract's disclosure.

Reasons for decision

Section 1 – information held

Costs information

16. The only information in the sub-contract about costs payable by Animal Wardens Ltd was as follows:

"6 The Cost

On an annual basis, the Landlord and Tennant shall agree a fixed price for boarding thirty three dogs at the premises.

Payment shall be made on the 1st of each month by Direct Debit.

In addition to the fixed costs a further cost can be agreed on a dog by dog basis for the keeping of dogs above thirty three in number."

17. The Commissioner has considered whether information about the actual costs, which the sub-contract specified should be agreed annually, falls within the scope of the request for *"...a copy of the sub-contract between Animal Wardens Ltd and the kennelling provider or providers."*

The complainant's position

18. The complainant made the following comments to the Council:

"I requested from the Council a copy of the sub-contract between Animal Wardens Ltd and the kennelling provider or providers. As I am sure you are aware, a contract consists of an offer, acceptance and consideration, the consideration being the price agreed between two parties. The Agreement document you have disclosed to me sets out the terms and conditions of the contract, but it does not include details of the price agreed.

...

The information you have sent me does not, therefore, contain the entirety of the contract between Animal Wardens Ltd and Common Fold. Please can you therefore disclose the price agreed to me, in accordance with my original request."

19. He told the Commissioner:

"...a contract is defined as an offer, acceptance and consideration. See here for example:

<https://hallellis.co.uk/contract-law-basics-formation>

https://en.wikipedia.org/wiki/English_contract_law

As you can see, a contract cannot exist without consideration.

...

In the case of a contract for services, the consideration will usually be the price one party pays to the other party for the provision of services. So in this case, the consideration will be the price paid by Animal Wardens Ltd for the provision of services at Common Fold Kennels.

The Agreement document the Council disclosed to me forms a part of the contract which was formed between the two parties on 6th April 2008, in so far as it includes the terms and conditions which were agreed. However, it does not state the price which was agreed between the two parties. It follows that the information disclosed to me by the Council is only one element of the sub-contract which I requested. If the Council or its contractor holds information regarding the price which was agreed, then this information should therefore be disclosed."

The Commissioner's decision

20. The fact that the contract states that the parties will negotiate costs separately does not mean that those separate negotiations automatically form part of the sub-contract.
21. The complainant states that "*...a contract cannot exist without consideration*" and his implication is that this necessarily means the price agreed between the parties. However, a promise to agree payments is in itself a form of consideration. Therefore, though the sub-contract states that payment will be agreed separately, valid consideration has still legally been given. The fact payments are negotiated separately does not affect the contractual validity of the sub-contract.
22. The Commissioner recognises that the one element that would change this analysis is if the two parties have stated in writing that their agreement on payment is an addendum or an amendment to the sub-contract. Had they done so, their yearly payment agreements would form part of the sub-contract.
23. The Council has confirmed to the Commissioner that there has been no amendment or addendum to the contract since it was agreed in 2008. The copy disclosed to the complainant comprises the only version and it is complete.

24. The Commissioner is therefore satisfied that by providing a complete, unredacted copy of the sub-contract to the complainant, the Council complied with its duty under section 1(1)(b) of the FOIA. Information about the separate yearly agreement of costs does not fall within the scope of the request as it was worded.
25. If the complainant still requires that information, he may submit a separate request for it.

Were amendments made to the sub-contract which were not disclosed?

26. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
27. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

28. The complainant said:

"The agreement is also dated 6th April 2008. It is likely that there have been amendments to the agreement over the past thirteen years...any amendments to the contract, is obviously information held by Animal Wardens Ltd. This information should, therefore, be disclosed by the Council."

The Council's position

29. The Commissioner asked the Council a series of detailed questions about its reasons for believing that it had disclosed all the information it held falling within the scope of the request, including an account of the searches that it had conducted for relevant information and whether the contract had ever been updated or amended.

30. The Council confirmed to the Commissioner that the sub-contract had not been amended since April 2008, and that the copy it had disclosed to the complainant was the most up to date, and only, version it held. The Council confirmed that it had verified this point with Animal Wardens Ltd and it provided her with a copy of its correspondence with Animal Wardens Ltd, which supported that claim. It explained that it had nevertheless conducted searches, in case other, relevant information was held separately. It provided details of those searches to the Commissioner, including the areas searched, and confirmed that the searches had not located any other information falling within the scope of the request.

The Commissioner's decision

31. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraphs 26 and 27, above, the Commissioner is required to make a finding on the balance of probabilities.
32. Having considered the Council's response, and on the evidence provided to her (including the confirmation provided by Animal Wardens Ltd and the Council's own searches for information) the Commissioner is satisfied that the sub-contract has not been amended or updated since 2008, and therefore that the information disclosed to the complainant was up-to-date and complete. It follows that she is satisfied that the Council has complied with its duty under section 1(1)(b) of the FOIA to disclose the information it holds which falls within the scope of the request.

Section 1 – general right of access
Section 10 - time for compliance

33. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
34. Section 10(1) of the FOIA states that, on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
35. The complainant submitted his request on 11 May 2020 and the Council did not confirm that it held the requested information, or disclose it to him, until 20 July 2021, 302 working days later.

36. The Council has therefore breached sections 1(1)(a) and (b), and 10(1) of the FOIA.
37. The Commissioner notes that the complainant went to some lengths to explain to the Council why it was likely to hold information falling within the scope of his request. She is therefore disappointed that it took the ICO's intervention for the Council to properly engage with the request, over a year after it was first received.
38. The Council has offered the complainant the following explanation for its handling of the request:
- "My apologies for the errors made in our response to your original request. The errors were made within the service area and were due to an oversight where the officer dealing with the FOI request was not aware that there was an agreement in place at the time of the request. Discussions have taken place with the service area to avoid this happening in future."*
39. The Commissioner uses intelligence gathered from individual cases to inform our insight and compliance function. This aligns with the goal in our draft "Openness by design"¹ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our "Regulatory Action Policy"².

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

40. 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

41. 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.

42. 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

Samantha Bracegirdle
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SK9 5AF