

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2022

Public Authority: Stockport Metropolitan Borough Council
Address: 1st Floor South
Stopford House
Stockport
SK1 3EX

Decision (including any steps ordered)

1. The complainant requested information from Stockport Metropolitan Borough Council in relation to its statutory responsibility for the collection and kennelling of stray dogs pursuant to Section 149 of the Environmental Protection Act 1990. Stockport Metropolitan Borough Council disclosed some of the requested information but stated the remainder was not held. During the Commissioner's investigation the Council disclosed the remainder of the requested information which it held, albeit in breach of the statutory requirements under Sections 1 and 10 of the FOIA.
2. The Commissioner's decision is that Stockport Metropolitan Borough Council has breached Sections 1 and 10 of the FOIA. However, as the complainant is satisfied all of the outstanding information held falling within the scope of his request has been disclosed, the Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

3. On 27 October 2020 the complainant wrote to Stockport Metropolitan Borough Council (the Council) and requested information in the following terms:
 1. "Were Animal Wardens Ltd given advance notice of the inspection on 27 June 2018, and have there been any subsequent inspections?"

2. I asked about the number of kennels, for the following reason. Animal Wardens kennel dogs at Common Fold on behalf of eight different local authorities. They also have contracts with Tameside, Trafford and Oldham Councils for the occasional kennelling of dogs, for which they are paid an additional monthly retainer in addition to the cost of kennelling each individual dog. Wigan Council has advised me that they rent a kennel block consisting of 17 kennels altogether. Information provided to me by Stockport Council and other local authorities regarding the numbers of dogs kennelled at Common Fold for up to 7 days for 2015, 2016 and 2017 that Animal Wardens simply did not have the kennelling capacity at Common Fold to kennel this number of dogs individually.

You state that Animal Wardens Ltd euthanise only a very small number of dogs seized in the Stockport area, on the basis that these are stated to be "desirable" dogs. You also state that unclaimed dogs are "kept by the kennels for as long as it takes to find it a home."

For the reason I have stated above, Animal Wardens Ltd cannot possibly keep the dog at Common Fold after 7 days, as they do not have capacity to do so. Please can you therefore confirm at which kennels the dogs are kept after they have been gifted to Animal Wardens Ltd.

3. When I have asked you previously what information is actually held by the Council regarding specific unclaimed stray dogs, you have stated that no information is held. However, you have stated that nearly all of the unclaimed dogs seized in Stockport are rehoming, indicating that you do now hold the relevant outcome data.

Please can you therefore let me have copies of all information held by the Council or by Animal Wardens Ltd relating to the outcomes of specific stray dogs for the financial year 2018-19 and 2019-20. Obviously any information held by your contractor for the purpose of delivering the contract constitutes information held by the Council for the purpose of an FOIA request. So if the Council does not hold this information directly, please request it from your contractor.

4. The minutes of the meeting confirm that a further visit was planned to Merseyside Dogs Home. Please can you confirm whether that meeting went ahead. If so, please can you provide me with a copy of the inspection report and/or minutes of any meeting which took place.
5. You have advised that, where a dog is kennelled by Animal Wardens Ltd on behalf of the Council for up to 7 days, the dog's photograph

is published by Animal Wardens Ltd. Please can you advise me where the photograph is published. I have checked the Doglost website used by Animal Wardens Ltd, which confirms that they do not publish the photograph of a dog on the Doglost website during the statutory 7 days. See for example:

<https://doglost.co.uk/dog-blog.php?dogId=161257>

<https://doglost.co.uk/dog-blog.php?dogId=160086>

Please can you advise me where Animal Wardens Ltd published the photographs of the above two dogs, as well as the numerous other dogs seized on behalf of Stockport Council, which have been advertised on Doglost without a photograph."

4. As part of his internal review request dated 7 December 2020, the complainant submitted a new request to the Council in the following terms;

"In addition to responding to my follow up questions, (name redacted) has provided me with significant additional information, which I did not request. Some, but not all, of the information appears to be information which is held by Stockport Council. Much of the new information provided is not consistent with previous information I have been given by the Council. I therefore have a small number of additional follow up requests for information.

1. You have stated as follows: "The inspection referred to took place on 27 June 2018 when I was relatively new to the Council/role and it was prompted because of a FOI request from yourself suggesting that the dogs were maltreated and the kennels didn't comply to National standards. I can assure you that following the inspection I was more than satisfied with the standards. I had no concerns at all."

You refer to an FOI request from myself prior to 27th June 2018 suggesting that dogs were maltreated and that the kennels did not comply to national standards. I have reviewed my correspondence with the Council and I cannot find any such allegations prior to 27th June 2018. Indeed I am not aware of any "national standards" prior to June 2018, with which it would be possible for the kennels to comply. This does give rise to the possibility at least that (name redacted) is referring to correspondence received from another individual.

Follow up question: please can you advise me of the date and content of the FOI request from myself, to which you referred, which prompted the site visit."

5. The Council responded to the complainant's first request on 17 November 2020 and his second request on 23 December 2020.

6. As the complainant was dissatisfied with the Council's response to both of his requests, he asked for internal reviews on 7 December 2020 and 6 January 2021.
7. The Council completed its internal review in relation to the first request on 23 December 2020 and its review in relation to the second one, on 10 May 2021.

Scope of the case

8. The complainant contacted the Commissioner on 8 March 2021 to complain about the way his requests for information had been handled. In particular, he was unhappy with the lack of information disclosed and delays in carrying out an internal review.
9. Following discussions with the Commissioner, the complainant agreed to restrict the the scope of his complaint to the Council's response to questions 1, 2, 3 and 5 of his request dated 27 October 2020 and the first question of his request dated 7 December 2020.
10. Following extensive correspondence with the Commissioner in 2021 and 2022, the Council disclosed further information previously withheld in response to the complainant's first request dated 27 October 2020.
11. On 30 May 2022, the complainant confirmed to the Commissioner that he had received all of the outstanding information. However, he asked for a formal determination of the timeliness of the Council's response to questions 1, 2, 3 and 5 of his request dated 27 October 2020 and its response to question 1 of his request dated 7 December 2020.
12. The scope of this Decision Notice will therefore be to make an assessment of the timeliness of the Council's responses to the complainant's requests under FOIA.

Reasons for decision

Section 1 of FOIA

13. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
14. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a

complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

15. The Commissioner will consider the complainant's evidence and arguments. He 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. He will also consider any reason why it is inherently likely or unlikely that information is held.

Request dated 27 October 2020

16. In relation to question 1 of the request, the Council eventually concluded that it did not hold any recorded information. However, during the course of the Commissioner's investigation it became apparent that an email sent to the Council by the complainant was held and within the scope of the request and therefore should have been acknowledged in accordance with Section 1(1) of FOIA. However, it is accepted it would have been excluded under Section 40(1).
17. In relation to question 2 of the request, the Council provided some contradictory responses in relation to the information actually held. During the course of the Commissioner's investigation an accurate picture of the information actually held emerged. It was apparent that this information was held in a document in the possession of the Council. Although the Council claimed this information was held on behalf of a private third party it subsequently accepted during the Commissioner's investigation that it was held for its own purposes and therefore covered by Section 1 of the FOIA. The complainant now has a copy of this document.
18. In relation to question 3 of the request, the Council claimed that the information requested was held by a private third party organisation and not by itself. However, during the course of the Commissioner's investigation the Council accepted it held the information for its own purposes under Section 1 of FOIA and disclosed it to the complainant.
19. In relation to question 5 of the request, the Council provided contradictory answers. It subsequently transpired that the information was not held but the Council failed to confirm this in its initial response under Section 1 of FOIA for which it issued an apology.

Request dated 7 December 2020

20. In relation to question 1 of the request, the Council did not fully address this until its internal review some 5 months later on 10 May 2021 when it stated the information was not held and issued an apology. This late confirmation breached Section 1 of FOIA.

Section 10 of the FOIA

21. Section 10(1) of FOIA requires a public authority to respond to a request promptly and “no later than the twentieth working day following receipt.”
22. During the investigation and as recorded above, the Council recognised that additional information was held that should have been released to the complainant. It also accepted that some of the responses provided were inadequate.
23. As the Council did not confirm whether some of the requested information provided was held and failed to disclose further information the complainant with all of the information held within the required 20 working days, the Commissioner finds that there has been a breach of Section 10(1) of the FOIA.
24. As the complainant is satisfied all of the outstanding requested information has been disclosed, it is not necessary for the Commissioner to order any further steps. However, the Council should ensure that it carries out all the necessary enquiries and searches and responds accurately to any further information requests within 20 working days in accordance with Section 10 of the FOIA.

Other matters

25. The Commissioner uses intelligence gathered from individual cases to inform the ICO’s insight and compliance function. This aligns with the goal in his draft “Openness by design”¹ strategy to improve standards of accountability, openness and transparency in a digital age.

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

26. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in the ICO's "Regulatory Action Policy"².
27. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal reviews

35. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a Decision Notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under Section 45 of FOIA.
36. Part VI of the Section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances, it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
37. The complainant requested an internal review in respect of the request dated 7 December 2020 on 23 December 2020. However, the Council did not provide a full response until 10 May 2021, more than 5 months later.
38. The Commissioner considers that by failing to complete the internal review within the timescales set out above, the Council did not comply with the Section 45 code. He refers the Council to his comments regarding his regulatory approach in paragraphs 25 to 27, above.

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

Right of appeal

39. 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

40. 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.
41. 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

**Laura Tomkinson
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Information Commissioner's Office
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SK9 5AF**