

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 March 2022

Public Authority: Rother District Council
Address: Town Hall
London Road
Bexhill-on-Sea
TN39 3JX

Decision (including any steps ordered)

1. The complainant has requested information held by Rother District Council (the council) regarding the provision of services relating to stray dogs in its area.
2. The Commissioner's decision is that as the council failed to provide the complainant with all the information held within the scope of the request within 20 working days, it has breached section 10(1) – time for compliance, of the FOIA.
3. However, the Commissioner is satisfied that all the information held by, or on behalf of, the council has now been released to the complainant, and therefore, no steps are required.

Request and response

4. On 11 May 2020, the complainant submitted the following request for information to the council:

'Rother District Council was the lead contracting authority, which awarded the tender to Animal Wardens for the collection and kennelling of stray dogs over a three year period from 1st April 2018. The service was procured on behalf of Hastings Borough Council and Wealden District Council. Stray dogs seized on behalf of Rother District Council are kennelled at Frandham Boarding Kennels in Dover for the statutory 7 day period.

Please can you provide me with the following information.

1. Animal Wardens indicated in its method statement for the current contract that dogs may be moved to different kennels during the statutory 7 day period. They state that "the percentage of dogs being reclaimed after forty-eight hours has dropped this past two years, resulting in greater flexibility of movement as dogs, as they can be moved to rescue quicker for increased assessment and welfare care. Ownership is not passed until the expiry of eight days from seizure but work flow and efficiencies are gained." Please can you confirm whether or not stray dogs continue to be kennelled solely at Frandham Boarding Kennels for the entirety of the statutory 7 day period. If any other kennels are used, please can you confirm the name and location of the kennels.

2. Please can you let me have a copy of the contract between the Council and the boarding kennels for the kennelling of dogs for the statutory 7 day period. If the contract is between the Council's provider Animal Wardens and the kennelling provider, please can you let me have a copy of the sub-contract with Animal Wardens. If no sub contract exists, please let me have any information held by Animal Wardens regarding the kennelling of stray dogs at the relevant kennels, including the price paid by Animal Wardens 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).

3. The commercial boarding of other people's dogs is licensable activity under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. Please can you confirm that the kennels provider (or providers) holds a license, and let me have a copy of the license (or licenses) if held by the Council.

4. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, please confirm the total number of stray dogs collected by the Council's own dog warden, Animal Wardens 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.

5. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, please confirm 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.

6. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019 please confirm 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.

7. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, please confirm 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.

8. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, please confirm 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.

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

10. In relation to Questions 8 and 9, 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.

11. From 1st January 2018 to 31st December 2018 and from 1st January 2019 to 31st December 2019, please confirm 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.

12. Please provide me with any additional outcome data regarding unclaimed stray dogs provided to the Council by Animal Wardens for 2018 and 2019. Please provide a separate breakdown for each year.'

5. On 21 July 2020, the council provided the complainant with some information; however, the following day the complainant advised the council that they did not believe that all the relevant information that was held had been provided.
6. On 14 October 2020, the council provided a further response to the complainant. It supplied some additional information and confirmed that some of the information that had been requested was not held; in addition, the council stated that it was still waiting to receive certain other information, which it would provide in due course. The council also confirmed that it was withholding some information relevant to part 1 of the request under section 38(1)(b) - endangerment to safety, of the FOIA.
7. On 21 October 2020, the complainant requested an internal review and on 9 November 2020, the council provided its response.
8. The council gave the complainant some additional explanations about the services provided in relation to stray dogs; it also confirmed that certain information that the complainant believed to still be outstanding was not held. The council also advised that it believed that it had been correct to apply section 38 to part 1 of the request, and went on to say it was now also relying on the same exemption to withhold information that the complainant stated that he believed to be relevant to part 3 of the request.
9. On 10 November 2020, and 16 November 2020, the complainant contacted the council again about the information he believed to be held which had not yet been supplied.
10. On 27 November 2020, the council confirmed to the complainant that it was now intending to release some information that it had previously withheld under section 38(1)(b) of the FOIA.
11. The council also advised the complainant that it does not have regular meetings, or request information, from the contractor. It stated that the contract is working well, and it does not consider it necessary to obtain such information. It went on to add that it had, however, received some statistical information, which it provided to the complainant.

Scope of the case

12. On 14 November 2020, the complainant contacted the Commissioner to complain about how their request had been handled.
13. On 23 August 2021, and 1 September 2021, the Commissioner wrote to the council to request further information, advising that the complainant was particularly concerned about how parts 1, 2 , 3, 8 and 12 of the request had been dealt with.
14. On 15 October 2021, the council issued a revised response to the complainant, providing some additional information. The council also confirmed that it regarded information that had been requested relating to the price paid by Animal Wardens for the kennelling of each dog to be exempt from disclosure under section 43(2) - commercial interests, of the FOIA.
15. The complainant was still not satisfied with the council's revised response. As a result, the council requested the opportunity to try and address any outstanding matters. This led to further discussions between parties, including the Commissioner; the council went on to release some additional information to the complainant.
16. On 14 December 2021, the council provided a further 'revised' response to the complainant. With regard to the pricing schedule held by the council as part of the tender contracts (which set out the costs/fees agreed for the various services provided by Animal Wardens on the council's behalf), it confirmed that, given the passage of time, this information could now be released.
17. On 17 January 2022, the complainant advised the Commissioner that matters had still not been resolved to his satisfaction. He stated that he believed that additional information would be held by, or on behalf of the council, that was relevant to parts 2 and 12 of the original request.
18. The complainant also asked for a formal decision to be made about the time in which it had taken for the council to deal with certain parts of his request, and provide him with information.
19. The Commissioner is to consider whether the council has provided the complainant with all the information which is held that is relevant to part 2 and part 12 of the request. He will also consider certain procedural matters as requested by the complainant.

Reasons for decision

Part 2 of the request

Section 3(2)(a) of the FOIA – Information held/not held

20. Section 3(2) of the FOIA states that 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.'
21. Animal Wardens provides services relating to stray dogs on behalf of the council. These services include the arrangement of kennels for the dogs that are found, or collected.
22. The council has provided the complainant with the pricing schedule that it has agreed with Animal Wardens to carry out certain services on its behalf; this includes a fee for accommodating the dogs in kennels. However, the council has advised that the actual price paid to the kennel business for accommodating each dog is not held by, or on behalf of, the council. The complainant disputes this.
23. The complainant has argued that whilst Animal Wardens sub-contracts the kennelling element of the stray dog contract to the kennels, the council has a statutory duty for the dogs placed in the kennels; therefore, it follows that the cost paid by Animal Wardens for the kennelling of seized dogs is information held on behalf of the council.
24. The council has advised the Commissioner that the complainant is correct to say that it 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 Animal Wardens. It has said, however, that no sub-contracts are in place, and that the council works solely with Animal Wardens to ensure its statutory obligations are met.
25. The council argues that the pricing information between Animal Wardens and the kennel business is a private business arrangement between those two companies, and that it falls outside the terms of the contract between itself and Animal Wardens. It goes on to say that this argument is supported by the fact that it pays a fixed price for services, and any costs associated with the kennels is solely the responsibility of Animal Wardens.

26. The Commissioner has found no evidence that the contract between the council and Animal Wardens would provide the council with a right to access the pricing information that has been requested. In addition, there is no evidence that the council has any role or influence in the negotiation process, or agreement, of the price for services which Animal Wardens sub-contracts to the third party (the kennels). The council pays Animal Wardens a fee for the arrangement of kennelling and care of stray dogs (and details of this fee has been released). Whilst the details which confirm how the dogs needs are being met may be information that is accessible by the council (to ensure that Animal Wardens is meeting the terms of the contract and providing the appropriate standards of care required), the actual costs that Animal Wardens incurs in order to fulfil the requirements of the contract do not, in any way, involve the council.
27. The Commissioner therefore accepts that the price agreed between Animal Wardens and the kennels to accommodate the stray dogs is a private arrangement, and is information which is not held on behalf of the council, as defined by section 3(2)(b) of the FOIA.

Part 12 of the request

Section 1(1) – duty to provide information held

28. Section 1 of the 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.
29. 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).
30. 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.
31. With regard to part 12 of the request, the complainant states that whilst the council had previously advised that it would obtain information from Animal Wardens, it has not provided the information required.

32. The complainant has said that whilst the council has released two annual reports from Animal Wardens for the period 2019-20 and 2020-21 (stating the latter falls outside the scope of the request), these documents do not include all the categories of information that should be held in order to comply with the terms of the contract between the two parties. The complainant has asked whether, given this, the council considers that Animal Wardens does not 'maintain and keep detailed documentation to validate' the KPI (key performance indicators) criteria set out within the contract.
33. The council has confirmed that it did ask Animal Wardens if it held the specific KPI data which the complainant had set out in correspondence sent to the council about the request, and then emailed the revised reports to the complainant in December 2021.
34. The council has advised that it has reviewed the annual reports and compared them against the criteria that the complainant states should be made available. It states that it is satisfied that all the categories of information that have been requested were included within the report.
35. The council has made it apparent that it is the data set out within the annual reports which is used to satisfy certain requirements set out within the contract between the relevant parties. If it is the case that the complainant believes that this indicates a failure to comply with certain conditions and requirements set out within the contract, either by the council or, Animal Wardens, then this is not a matter for the Commissioner. The council has already confirmed to the complainant that if they believe that there have been any failings by either party that they should make a formal complaint, using the appropriate channels.
36. Whilst the council did not initially release all the information to the complainant, it is the Commissioner's opinion that it has considered the details subsequently provided in order to try and understand what was still required. It has also conducted additional searches, and has had multiple discussions with Animal Wardens.
37. Furthermore, as far as the Commissioner can see, there is no evidence that would indicate that there is likely to be further information held by, or on behalf of, the council that is relevant to part 12 of the request. The matter of whether the council should hold further information is not a matter which he is required to determine in this case.
38. As a result, having considered all the available information, it is the Commissioner's view that, on the balance of probabilities, the council has supplied all the information which it holds, or is held on its behalf, that falls within the scope of part 12 of the complainant's request.

Procedural matters

Section 10(1) of the FOIA – Time for compliance

39. Section 10(1) of the FOIA requires a public authority to respond to a request promptly and *'no later than the twentieth working day following receipt.'*
40. During the investigation, the council recognised that additional information was held that should have been released to the complainant; it also accepted that some of the responses which it had supplied were inadequate.
41. Whilst it is apparent that the council was keen to have the opportunity to try and correct its failings, it has taken a considerable amount of time to provide the complainant with all the required information.
42. As the council did not provide the complainant with all of the information it held within the required 20 working days, the Commissioner finds that there has been a breach of section 10(1) of the FOIA.
43. Given that the information has now been provided, the Commissioner does not require the council to take any further steps. However, the council should ensure that it carries out all the necessary searches and responds accurately to the requester within 20 working days in relation to future information requests.

Right of appeal

44. 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

45. 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.
46. 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

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