

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 March 2020

**Public Authority:** Sefton Metropolitan Borough Council  
**Address:** Bootle Town Hall  
Oriol Road  
Bootle  
Liverpool  
L20 7AE

### **Decision (including any steps ordered)**

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1. The complainant has made two related requests about stray dogs from Sefton Metropolitan Borough Council ("the Council"). The Council initially refused to provide the information citing sections 38(1) (health and safety) and 43(2) (commercial interests) of the FOIA.
2. During the course of the Commissioner's investigation, the Council disclosed the requested information in full. However, the complainant advised that he still required a decision notice to record the delay in provision of the information.
3. The Commissioner's decision is that in responding late to the requests and in failing to disclose the requested information within the statutory 20 working day limit, the Council breached section 10 (time for compliance) of the FOIA. No steps are required.

## Background

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4. Information about how the Council deals with stray dogs can be found on its website<sup>1</sup>.

## Request and response

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5. On 29 October 2018 the complainant wrote to the Council and requested information in the following terms:

*"Please can you confirm whether or not Animal Wardens Ltd provides Sefton Council with outcomes relating to dogs rehomed, euthanised etc after 7 days. I assume that no such outcomes exist, given your previous response namely that "The Local Authority gifts all unclaimed dogs to Animal Wardens Ltd after its period of responsibility (seven days) and records on the dog register the outcome at that point, the Local Authority does not track outcomes of unclaimed stray dogs after the period of its responsibility (seven days)."*

*I would be grateful, however, if you could confirm this. If such outcomes do exist, please provide me with all outcomes and KPIs for 2017 and 2018".*

6. On 31 October 2018, he also made the following related request:

*"Please can you provide me with the following information from 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2015 and from 1<sup>st</sup> January 2016 to 31<sup>st</sup> December 2016:*

- 1. Total number of dogs collected by the dog warden or by any person or company subcontracted to provide a dog warden service by the Council.*
- 2. Total number of dogs returned to owner within 7 days.*
- 3. Total number of dogs boarded at an establishment for the boarding of stray dogs within 7 days of being collected.*
- 4. Total number of dogs disposed in compliance with Section 149(6) Environmental Protection Act 1990 after 7 days. If the dogs were*

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<sup>1</sup> <https://www.sefton.gov.uk/dogs>

*gifted to a person, who in the opinion of the Council, would care properly for the dog, please provide the name and address of that person or persons.*

- 5. Please provide details of the procedure adopted by the Council dog warden when forming an opinion, during the exercise of the powers conferred by Section 149(6) Environmental Protection Act 1990, as to whether the person to whom the dog is to be gifted will care properly for the dog. If there is no set procedure, please advise as to which factors are considered by the dog warden when forming any such opinion.*
- 6. Total number of dogs euthanised within 7 days of having been collected.*
- 7. Total number of dogs euthanised 7 days or more after collection.*
- 8. Total number of dogs returned to, or kept by the finder of the dog, where the finder of the stray dog stated that they desired to keep the dog.*

*In relation to each of the above queries, please provide a separate breakdown from 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2015 and from 1<sup>st</sup> January 2016 to 31<sup>st</sup> December 2016”.*

7. The Council provided a joint response to both requests, late, on 14 February 2019. It refused to provide the requested information, citing the exemptions at sections 38(1) (health and safety) and 43(2) (commercial interests) of the FOIA.
8. The Council provided an internal review on 28 March 2019 in which it maintained its position.
9. During the course of the Commissioner’s investigation, the Council revised its position and provided the requested information in stages.

### **Scope of the case**

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10. The complainant initially contacted the Commissioner on 1 April 2019 to complain about the way his request for information had been handled.
11. The Commissioner commenced her investigation on 24 June 2019.
12. The complainant provided his full grounds of complaint on 9 July 2019.
13. In an effort to informally resolve the complaint the Commissioner liaised with both parties and the requested information was eventually provided, albeit over a prolonged period.

14. On 3 March 2020, the Commissioner contacted the complainant to ascertain whether any of the requested information remained outstanding. He advised her that he had now received everything and was happy for the case to be closed.
15. The Commissioner wrote to the complainant confirming that the case would now be closed and he responded adding that he required a decision notice to record the delay. He drew the Commissioner's attention to an email that he sent to her on 19 December 2019 in which he stated:

*"... there was significant delay by the Council in responding to my request. The response then consisted of a refusal notice, which they subsequently retracted, without explanation, after the matter was referred to the ICO. It then took the Council several months to provide the information requested, most of which should have been readily available on the register of seized dogs".*
16. The Commissioner is unable to comment as to what information should or should not be readily available as this is outside her jurisdiction.
17. The Commissioner's will consider timeliness below.

## **Reasons for decision**

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### **Section 10 – time for compliance**

18. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
19. The requests were submitted on 29 October 2018 and 31 October 2018 and the complainant did not receive a response, which confirmed that the public authority was in possession of the relevant information, until 14 February 2019. The Commissioner therefore finds that the public authority has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.
20. In failing to disclose the requested information within the statutory time limit the Council further breached section 10(1).
21. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in

her draft "Openness by design"<sup>2</sup> 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 her "Regulatory Action Policy"<sup>3</sup>.

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<sup>2</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>3</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

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22. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**