

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

### **Decision notice**

**Date:** 22 April 2022

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

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

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1. The complainant has requested, from Sefton Metropolitan Borough Council (the "Council"), information about the management of stray dogs. The Council disclosed some information, said that some had been previously provided and denied holding the remainder. The complainant challenged whether or not the Council held some information, which the Council advised was held by a third party rather than by itself.
2. During the Commissioner's investigation the Council revised its position. It obtained information held by a subcontractor and provided this to the complainant. It maintained that no further information was held.
3. The Commissioner's decision is that by failing to respond to the request within 20 working days of receipt, the Council breached sections 1(1) and 10(1) of FOIA. In failing to disclose information it subsequently located within the statutory time limit, the Commissioner finds a further breach of section 10(1) as well as breaches of 1(1)(a) and (b). On the civil standard of the balance of probabilities, the Commissioner finds that no further information is held by the Council. 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>.
5. The Commissioner understands that the Council has a contract with Animal Wardens Limited ("AWL") for dealing with stray dogs and that, at the time of the request, AWL had a sub-contractor, Merseyside Dogs Home ("MDH"), for providing some services.
6. The request refers to a website entry of May 2019. The complaint has explained (emphasis added by Commissioner):

"The website entry from May 2019 can be viewed here:  
<https://merseysidedogshome.org/questions/>

You will need to scroll down to and click on the following question:

"ARE YOU PAYING VETS FEES THAT THE LOCAL AUTHORITIES SHOULD BE PAYING?"

You should then see the following text:

"Central government issues guidelines to Local Authorities on the interpretation of legislation. The Local Authorities are responsible for providing emergency treatment, this is defined as pain relief and keeping dogs comfortable during the seven day seizure period. The guidelines go on to say that Local Authorities should come to arrangements with rescue centres for the ongoing care of a dog.

**Our agreement** is that we will provide for corrective treatment of injured and ill dogs during the seven day seizure period provided that dogs ownership is transferred into our care. This prevents delays in corrective treatment for dogs. If an owner presents themselves within the seven day seizure period they are responsible for paying the vets fees.

**We have discussed this with the Local Authorities** and they cannot justify using rate payers money on vet fees for dogs they don't have to finance".

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

Reference: IC-110004-M5M8



7. The request also refers to a manager's report which, the complainant explained, can be found via the Charity Commission's website<sup>2</sup>. He said: "You need to download the document for the reporting year ending 30<sup>th</sup> June 2018. The Centre Manager's report is at page 10".

8. Within that report, on page 10, the following statement is made:

"... **we also continue to work with the regional Local Authorities** from whom we take unclaimed lost and abandoned dogs. **Our arrangement with them** on the care of injured and ill dogs is working well as we underwrite veterinary care on dogs awaiting transfer to us. This delivers higher standards of welfare and prevents dogs from just receiving pain relief whilst they sit out the statutory waiting period".

### Request and response

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9. On 13 July 2020, with supporting background information, the complainant made the following request under FOIA:

"1. Please provide me with a copy of the central government guidelines, to which Merseyside Dogs Home refer in their website entry of May 2019. If the Council does not hold this directly, please request a copy from your contractor Animal Wardens Ltd or from your subcontractor Merseyside Dog Home. Note: information held by a contractor or subcontractor during the performance of an outsourced contract constitutes information held by the Council for the purposes of an FOI request.

2. Please provide a copy of the agreement between the Council and Merseyside Dogs Home or Animal Wardens Ltd, to which the website entry of May 2019 refers. If the Council does not hold this directly, please request a copy from your contractor Animal Wardens Ltd or from your subcontractor Merseyside Dog Home, please request a copy from your contractor or sub-contractor.

Please also provide copies of any relevant emails or notes of conversations held by the Council, its contractor or its subcontractor relating to that agreement or to the discussion with the local authorities to which the website entry refers.

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<sup>2</sup> <https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/5054686/accounts-and-annual-returns>

3. Please let me have a copy of all information held by the Council, its contractor or its subcontractor in relation to the arrangement with the regional local authorities, to which the Merseyside Dogs Home centre manager's report refers.

4. Please provide details of all information held by the Council, its contractor or its subcontractor relating to the veterinary treatment of dogs being kennelled by Animal Wardens Ltd and Merseyside Dogs Home during the statutory seven day period for the period 1st April 2017 to 31st March 2018. Please specifically include:

- Total number of dogs, which received veterinary treatment
- Total cost to the Council of the veterinary treatment

I look forward to receiving your response in due course".

10. On 22 December 2020, following a number of 'chase-ups' by both the complainant and the Commissioner, the Council responded. It disclosed some information, said that some had been previously provided and denied holding the remainder.
11. On 31 December 2020, the complainant requested an internal review in respect of timeliness and the Council's response to parts (2) and (3) of his request.
12. The Council provided an internal review on 10 March 2021. It apologised regarding the delay. It maintained its position regarding its response to parts (2) and (3) of the request, advising that any information held by Merseyside Dog Home was not held on its behalf.
13. On 21 January 2022, during the Commissioner's investigation, the Council revised its position. It advised the Commissioner that it held two documents as follows:

"One is the Contract Framework Agreement between the consortium and Animal Wardens Ltd which I am informed has been redacted by Liverpool City Council to remove personal or commercially sensitive data. It is my understanding that this document has [sic] previously been shared with the complainant by Liverpool City Council. Liverpool CC are the Lead Authority for the Consortium.

The other is a document provided to my colleague, [name redacted], today. It is a contract between Animal Wardens Ltd [AWL] and Merseyside Dogs Home Ltd (MDH) for the provision of a reception facility to keep dogs for a maximum of 24 hours. Please note this relates only to the arrangement for which the Consortium

now accept MDH are a sub-contractor of the Council; and the costs involved have been redacted”.

14. It wasn't clear from the Council's response whether or not there was an intention for it to provide a revised response to the complainant with some disclosure. The Council had also not responded to any of the Commissioner's investigation enquiries which had been raised on 6 January 2022. The Commissioner therefore sought clarification regarding any potential disclosure and a response to his questions.
15. On 26 January 2022, the Council wrote to the complainant. In respect of part (2) of his request, it advised:

“The Council accepts that Merseyside Dogs Home were a sub-contractor to the Council specifically for the provision of a reception point for the holding of stray dogs for a maximum 24 hour period. A copy of the agreement provided by Animal Wardens Ltd between themselves and Merseyside Dogs Home is attached”.
16. It provided a copy of the contract between AWL and MDH. This contract, dated February 2019, clarified that the contracted service included the following:

Reception Point

  - To act as a reception point for the delivery of stray dogs between the hours of 9am and 5pm five days a week (Monday to Friday).
  - To check the health and provide care for the dogs for a period of 24 hours.
  - Any medication or veterinary costs required is to be provided by AWL.
  - To provide four kennels for the holding of such dogs.

Facilities

  - To provide a hot desk for AWL and Local Authority staff. To provide storage space for dog equipment relating to the Rabies contingency plan.

Doss [sic] for rehoming

  - To accept dogs that match Merseyside dogs home intake criteria.
17. On 27 January 2022, the Council responded to the Commissioner 's enquiries.
18. The complainant has confirmed that he already has a copy of the Contract Framework Agreement.

## Scope of the case

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19. The complainant initially contacted the Commissioner on 22 May 2021, to complain about the way his request for information had been handled, specifically in respect of parts (2) and (3) of his request.
20. The complainant did not accept that information held on behalf of the Council by its contractor AWL, or their subcontractor MDH, did not constitute information held by the Council.
21. He further clarified his position as follows:

"It was not clear from the Council's response to Question 2 that it had checked with its contractor Animal Wardens Ltd ('AWL') or its subcontractor Merseyside Dogs Home ('MDH') as to whether or not they held the information requested.

The Council has statutory responsibility under s149 Environmental Protection Act 1990 to seize and kennel stray dogs for up to 7 days. The Council outsources this to AWL, who kennel dogs on behalf of the Council for up to 7 days. AWL kennel dogs at MDH's premises for up to 24 hours, following which the dogs are supposed to be transferred to AWL's privately rented kennels. The contract between the Council and AWL ... states that the Council is responsible for the payment of veterinary fees incurred in treating a dog prior to arrival at kennels and that AWL is responsible for the payment of any veterinary fees incurred thereafter (p43, paras 5.2 and 5.3).

The stray dog contract between the Council and AWL specifically names MDH as a subcontractor (B9, pages 15-16). For reasons which are unclear, Sefton Council denied in its internal review that MDH is a subcontractor. I would be grateful if you could let me know if they are maintaining this position.

If the Council had not checked with its contractor AWL or with its subcontractor MDH if they held a copy of an agreement between the Council and MDH (or between AWL and MDH), then it was not in a position to say that the information was not held.

In relation to Question 3, again it is not clear from the Council's response that it had checked that its contractor or its subcontractor held a copy of the requested information".

22. He also asked the Commissioner to consider timeliness.
23. Following the additional disclosure made during the Commissioner's investigation, the Commissioner wrote to the complainant for his views. On 4 February 2022, he responded as follows:

"... the agreement which [the Council] has now sent me is not an agreement for the payment by Merseyside Dogs Home of the council's veterinary costs. It is still not clear from the council's response if any such agreement is held between the council and MDH or between the AWL and MDH for the entirety of the statutory 7 day period. The council has stated that it has limited its contractors' search for information to a "24 hour holding period" rather than the entirety of the statutory 7 days during which the dogs are kennelled by AWL on the council's behalf. Because the council has limited its search in this way, it is not in a position to state whether or not a relevant agreement is held either by AWL or MDH.

I would also ask the ICO to determine whether or not the council has responded to this request within the statutory time limit...

... In the council's internal review, it did not indicate whether or not it had checked both with its contractor AWL and with its subcontractor MDH if they held the information requested, and wrongly stated that MDH was not a subcontractor to the council".

24. Following further enquiries with the Commissioner, the complainant explained:

"... .. this is quite a complex issue. Merseyside Dogs Home (MDH) are (or were, at the time of my request) the council's subcontractor. The council has now confirmed this, having initially denied it. Under the terms of the subcontract, MDH kennelled dogs on the council's behalf for up to 24 hours, and provided office facilities for the council's contractor Animal Wardens Ltd (AWL).

In the above Question [ie as stated on the MDH website, see paragraph 6, above], and in their annual report to the Charity Commission, the charity claimed that they had an agreement with "the local authorities" to provide care for dogs kennelled by AWL on the local authorities' behalf. So I simply wanted to know whether or not this agreement did, in fact, exist, because the contract between the local authorities and AWL states, by contrast, that either the local authorities or AWL are responsible for the payment of those fees.

Any agreement between the council's contractor AWL and its subcontractor MDH, whereby MDH agreed to pay for the veterinary costs of dogs kennelled on behalf of the council, would be disclosable under FOIA, would it not? The council has not argued otherwise. So unless the council is now saying that any such agreement is not held by the council and is therefore outside the scope of my request, it should have checked with its contractor

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AWL and its subcontractor MDH whether or not they held copies of the agreement”.

25. Put simply, the complainant wishes to establish whether the Council holds a copy of any agreement/s to which MDH’s manager’s report and website entry refer. In order to determine whether or not such an agreement is held, he thinks the Council needs to confirm that it has checked what is held with both AWL and MDH.
26. The Commissioner notes the complainant’s comments regarding whether or not the Council had contacted either AWL and / or MDH in order to inform its responses and will comment on this below.
27. The Commissioner will also consider timeliness and whether the Council holds any further information.
28. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## **Reasons for decision**

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

29. Section 1(1) of 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.
30. 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.
31. The complainant submitted his request on 13 July 2020 and the Council replied on 22 December 2020, more than five months later. By failing to respond to the request within 20 working days of its receipt, the Council breached sections 1(1) and 10(1) of FOIA.



32. In failing to locate and disclose the MDH contract within the statutory time limit, the Commissioner finds a further breach of section 10(1) as well as breaches of 1(1)(a) and (b) of FOIA.

**Section 1 – general right of access**

33. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
34. In this case, the complainant suspects that the Council holds information from which it could answer the request. The Council's position is that it does not.
35. 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.
36. 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 not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held. He is only required to make a judgement on whether the information is held on the civil standard of proof, which is the balance of probabilities.
37. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the Council holds any recorded information within the scope of the request. Accordingly, he asked it to explain what enquiries it had made in order to reach the view that it did not hold the information.
38. In respect of its own searches for information, and rationale as to why no further information is held, the Council explained:
- “Unfortunately [MDH's website] entry referred to in May 2019 is inaccurate and misleading. This has been raised with the Council's contractor Animal Wardens Ltd. The Council had no input into the statements made. The Council has a written agreement with Animal Wardens Ltd (AWL) for the collection and kennelling of stray dogs for a statutory 7 day period. Animal Wardens Ltd. are responsible for all veterinary costs during that period. The Council accepts that

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Merseyside Dogs' Home (MDH) are a sub-contractor of the Council only for the limited period when a 24 hour reception facility is provided. MDH are not a sub-contractor of the Council for any other aspect of the contract and there is no agreement between the Council and MDH for the provision of veterinary treatment”.

And:

“We do not have an arrangement with MDH to underwrite veterinary care and they do not directly take unclaimed, lost or abandoned dogs from the Council. At the end of the 7 day period the Council gift all unclaimed dogs to AWL and it is for them to then decide how they dispose of these dogs, this will include passing dogs to various re-homing centres and rescue charities including transferring a number to MDH. The Council do not pay AWL for veterinary treatment during the 7 day period.

MDH website entry ... is inaccurate”.

And:

“The Local Authority only take responsibility for the costs of emergency treatment to relieve immediate pain and suffering up to the point of a dog entering the contracted kennel facilities. AWL are responsible for all veterinary treatment beyond that point. The Council has no arrangement with rescue centres for the on-going care of dogs, as all dogs are gifted to AWL at the end of the statutory 7 day period. There is no agreement with the Council for MDH to provide corrective treat of injured and ill dogs during the 7 day period and this has not been discussed with MDH.

We believe that these quotes have led to confusion. Attempts have been made to clarify matters with the complainant on several occasions...”.

39. Regarding searches for information that it had undertaken, the Council explained to the Commissioner:

“The SharePoint folders relating to the Environmental Health service were searched and it was established that the Council did not have a record of a contract between AW Ltd and MDH”.

And:

“Liverpool City Council were contacted as the Lead authority for the Consortium, MDH and AWL. Liverpool City Council confirmed they did not hold a copy, MDH did not provide anything in response [to our enquiries] and AWL responded last week...”.

40. The Council explained that it could not recall the exact search terms used when looking for any relevant information. However, its Environmental Health & Trading Standards Manager, who has responsibility for this area of work and searched for the information, confirmed that he would have tried words and terms such as: 'dog warden contract', 'Animal warden contract', 'agreement Merseyside dogs home', 'consortium agreements', 'vets fees', 'arrangements for vets fees' etc. The Council advised that documents are held on a common 'G' drive and searches included both this drive and email accounts.
41. The Council confirmed that any relevant information, if it were held, would have been held electronically so the searches undertaken would have revealed any related information.
42. When asked whether there would be a business purpose for which the requested information should be held, the Council confirmed that there would be. It explained:
- "It was initially the belief of the Consortium that the arrangement between AWL and MDH for the reception facility did not constitute a sub-contract because it was understood that AWL merely rented kennels from MDH and no other services were provided. This has been re-evaluated and we now acknowledge MDH are a sub-contractor for this 24 hour period. It was not considered necessary to have this document [the sub-contract] as they were originally deemed not to be a sub-contractor".
43. In respect of searches with AWL and MDH, the Council provided the Commissioner with copies of email correspondence it had had with both parties regarding this request and the later related one. This evidenced the Council submitting a copy of this request, and the later related request, to its contact at AWL (who is also connected to MDH) asking for their views. It did receive a limited response from AWL, which included provision of the sub-contract which has now been provided to the complainant. However, despite several attempts, it was unable to elicit a clear response from MDH regarding any 'agreements' that it might have. However, the Commissioner considers that the following details are of direct relevance to this investigation.
44. In respect of the further related request made by the complainant to the Council, the complainant asked:
- "... please specifically confirm whether or not there is a relevant agreement between Sefton Council or its contractor Animal Wardens Ltd and the Council's subcontractor Merseyside Dogs Home for the provision of veterinary treatment by Merseyside Dogs Home for dogs kennelled by Animal Wardens Ltd on behalf of the Council. Please also confirm that you have requested details of this

information both from the Council's contractor Animal Wardens Ltd and from the Council's subcontractor Merseyside Dogs Home".

45. This question was put to AWL by the Council on 23 April 2021. AWL responded on the same day and provided the following statement which the Commissioner considers to be directly relevant to the request under consideration here:

"The answer to both questions is that there is no agreement".

46. In its correspondence with MDH, the Council was informed:

"To answer the question: "what happens if a dog becomes ill during the 24 hour period, who arranges veterinary treatment AWL or MDH and who pays for the treatment whilst it is within the 24 hour period ?"

Answer: If a dog is left at the facilities that we provide as a drop of [sic] point for the Dog Warden service, Animal Wardens Ltd are responsible for the welfare of the dog, including any vet fees. It is important to note that it is unusual for a dog to spend 24 hours at our facilities and not all stray dogs come to our facilities".

47. Unfortunately, despite being again asked to clarify its position regarding any 'agreements' that it has referred to, MDH only advised the Council, on 5 June 2021, that the subject matter had: "... been added to the agenda for the Trustees meeting on the 26th June [2021]". No further response or update was subsequently provided by MDH.
48. Whilst the Council was unsuccessful in getting a direct response to this issue from MDH, the Commissioner does not consider that further enquiries are necessary for him to reach a decision in this case. At the time of the request, and continuing until after the internal review, it is clear that the Council understood that MDH was **only** providing a kennelling area for the first 24 hours prior to the dogs being moved; it was believed that AWL was providing the actual care for the dogs. It only transpired much later that MDH had a subcontract whereby they were undertaking a wider role – the Council was unaware of the subcontract until 20 January 2022 when AWL provided it with a copy. This subcontract has been provided to the complainant.

#### **Commissioner's findings**

49. The Commissioner considers that the Council made enquiries with appropriate staff to ascertain whether or not information was held in respect of this case and that they made adequate searches for information, albeit that some information did not come to light until a late stage.

50. The Commissioner has viewed the emails which passed between the Council and both AWL and MDH about this request. Whilst MDH did not specifically respond to all of the Council's enquiries, based on the reasoning provided above, the Commissioner is satisfied that, on the balance of probabilities, the Council itself does not hold any further information. MDH is only subcontracted to AWL to provide the specific services identified and, if by any remote chance there are any further 'agreements', then they are not held by this Council. It is again noted that the Council has agreed that the statements provided on MDH's website and in the charity report are misleading; any such statements are out of the Council's control.

### **Other matters**

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51. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.
52. As mentioned above, there was a considerable delay of over five months when initially dealing with this case.

### **Internal review**

53. 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 the FOIA.
54. 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, which this request was not. The Commissioner is therefore concerned that it took over 40 days for the Council to conduct an internal review in this case.

Reference: IC-110004-M5M8



55. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy<sup>3</sup> 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<sup>4</sup>.

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<sup>3</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>4</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>



**Right of appeal**

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

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57. 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.

58. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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**Signed .....**

**Carolyn Howes  
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Wycliffe House  
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