



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights  
Decision notice FS50883303**

**Appeal Reference: EA/2020/0252**

**Considered on the papers**

**Before**

**JUDGE CHRIS HUGHES**

**Between**

**SIMON DALLY**

Appellant

**and**

**INFORMATION COMMISSIONER**

First Respondent

**DECISION AND REASONS**

1. The Appellant is concerned about the lawfulness of arrangements which the Borough of Knowsley has entered into for the management of stray dogs. On 11 September 2019 he asked:-

*1) "Please provide me with a copy of the advice received by DEFRA and a copy of all correspondence between Knowsley Council and DEFRA relating to the advice provided by DEFRA, to which [name of officer redacted] refers. If no correspondence exists, please provide me with a note or notes of any telephone or face to face discussions with DEFRA.*

*Please confirm specifically whether or not DEFRA advised that the commercial boarding by Merseyside Dogs Home of stray dogs, which did not belong to them, was licensable activity.*

*2) Please provide me with details of the previous legal advice relating to the kennelling of stray dogs to which [name of officer redacted] refers, including the specific legal*

*advice sought and the legal advice received. Again, if no actual correspondence exists, please provide me with a note or notes of any telephone or face to face discussions relating to the advice received.*

*Please confirm specifically whether or not the previous advice stated that the commercial boarding by Merseyside Dogs Home of stray dogs, which did not belong to them, was licensable activity."*

2. Knowsley responded providing information relating to the first part of the request but refused to provide the information requested by the second part as it was legal advice and protected from disclosure. S42 FOIA gives protection for some information from disclosure (which provides, so far as is relevant):-

#### **42 Legal professional privilege.**

*"(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."*

3. The Appellant complained to the Information Commissioner (IC) who investigated. She found that the material was an e-mail from one of the Council's solicitors to an officer in its environmental health department providing legal advice on the Council's duties in response to a request. It was legal advice given as part of the solicitor's professional duties and was covered by Legal Professional Privilege. It had not been disclosed to the public nor shared in an unrestricted way with third parties. She concluded that the exemption applied to the information(DN 21-26). In considering where the balance of public interest lay she noted:

*"...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest"*

4. She considered the arguments for disclosure which included the amount of money involved, the people affected, lack of transparency and claims of misrepresentation and partial disclosure of the advice. However she made findings as to the age of the material and the context in which it was produced:-

*39. The Commissioner has reviewed the withheld correspondence carefully. While she is unable to specify the contents in detail, she would note that, while it relates to MDH, it dates from several years ago and does not relate specifically to the requirements for MDH (nor any other premises) to be licensed.*

*40. As such, she is satisfied that the email seeking advice does not misrepresent facts about MDH in the manner suggested by the complainant. Nor indeed does it relate to the Animal Welfare Regulations 2018, dating, as it does, considerably before that legislation came into existence.*

41. She is also satisfied that the response from the Council's assistant solicitor does not relate to the subsequent assertions by the Council, and referred to by the complainant, about dogs being boarded at licensed premises.

42. With regard to the withheld information, the Commissioner has no evidence either that the Environmental Health officer misrepresented any facts when seeking the advice, nor that the advice he received was, subsequently, misrepresented to the public. Nor does she have evidence that any of the factors listed at paragraph 31, above, come into play in this case.

5. She noted that while there was some public interest in the advice the Council had received:-

*However, in this case, the Commissioner is not satisfied that there is a compelling reason for the disclosure of the information in question. In all the circumstances of this case, she does not consider that there are factors present that would equal or outweigh the strong public interest inherent in the exemption.*

6. In his appeal the Appellant argued that the Council had misled the public by saying that it had received legal advice that the home did not require a licence to kennel stray dogs for up to 24 hours.
7. In his submissions he raised the question of whether the advice had been given by a solicitor (it was) and devoted attention to the history of the statutory requirements for the commercial operation of kennels and local authorities responsibilities for stray dogs. He detailed the history of his concerns about the relations between the commercial kennels and local authorities and claimed that he had been misled as to the nature of the relationships and the periods of time that dogs were kept. He argues that the Council has misled a local MP, the RSPCA and the public about the operation of the contract.
8. The Information Commissioner acknowledged that she had made factual errors in paragraphs 38 and 39 of the decision notice relating to claims made by the Appellant, however these errors did not go to the merits of the appeal and the balance of public interest which she had struck was correct.

## Consideration

9. Local authorities have a duty under s149 Environmental Protection Act 1990 to deal with stray dogs. In 2014 Knowsley Council entered into a consortium with adjoining local authorities to jointly handle the problem. While it is clear that the Appellant has devoted considerable energy to exploring what may or may not be happening with respect to stray dogs; I am not satisfied that he has produced any cogent reasons for disclosure of the legal advice.

10. He makes a number of claims about current illegality of the arrangements and claims that Ms Rimmer MP has been misled by the Council. A consideration of the letter from the Council to the MP however explicitly states that the advice was taken some time ago and the Council has confirmed with DEFRA that its interpretation is correct.
11. The issue that the Appellant seeks to address is the current operation of the location where the dogs are received and whether that is lawful. He believes that it is not. That question is however distinct from the question of the legal advice obtained some time before the Animal Welfare (Licensing of Arrangements Involving Animals) England Regulations 2018 made some changes to the position of some kennels.
12. There are a range of measures of supervision of the contract between the local authorities and the facility where dogs are taken. To the extent to which there is a problem to be resolved then these contract management measures may assist in resolution. Disclosure of old legal advice will not. There is no public interest in its disclosure and disclosure would erode the principal of legal professional privilege.
13. The Information Commissioner correctly analysed the substantial issues in her decision notice at paragraphs 39-42 and concluded there is no compelling reason for disclosure. I agree. The appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal

Date: 15 February 2021

Promulgated: 16 February 2021