

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 January 2019

Public Authority: Brighton and Hove City Council
Address: Bartholomew House
Bartholomew Square
Brighton
East Sussex
BN1 1JE

Decision (including any steps ordered)

1. The complainant has requested some information relating to Brighton and Hove City Council's ("the Council") Homemove scheme and the Bedroom tax exemption. The Council stated it did not hold this information.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold the specific information requested.
3. The Commissioner requires no further steps from the public authority.

Request and response

4. On 21 June 2018, the complainant wrote to the Council and requested information in the following terms:

*"Dear Brighton and Hove City Council,
Can you fully explain why the Homemove scheme, won't allow a need for a 2 bedroom property. For someone who is Disabled and who has a Bedroom Tax exemption for a spare room, for an overnight Carer?
Under the Housing Benefit Regulations, this is NOT to be a paid Carer.*

Or, a live in Carer. The person can be a friend or a neighbour or a relative. It's obvious that this same exemption will apply in another property. And the 2nd. Bedroom would be needed for an overnight Carer for a Disabled person. This would be Discrimination. They simply, would not manage in a 1 bedroom property, and so it would be pointless in them bidding. Which, could have the potential, in you removing them from Homemove. Which would be unjust and would be Discrimination. They would be downsizing and freeing up a family sized property. After all."

5. The Council responded on 22 June 2018. It stated that it is unable to deal with the request as it does not appear to contain any questions that can be answered through the FOI process. It also suggested that the complainant contacted the Council's corporate complaints department in order to resolve her query.
6. Following an internal review the the Council wrote to the complainant on 19 July 2018. It maintained its position however it explained in more detail the purpose of the FOIA and that it does not need to create information in order to answer a question. Therefore for the purposes of the FOIA, the Council stated that it did not hold the information the complainant required. In the Council's internal review response, it noted the complainant had another request in process which would be responded to in due course.

Scope of the case

7. The complainant contacted the Commissioner on 29 July 2018, dissatisfied with the responses she had received from the Council.
8. The Commissioner asked for some further information from the complainant regarding the request and also explained that she can only investigate the part of the complaint that is regarding the request for recorded information. Anything else the complaint concerned was outside of her remit.
9. The Commissioner considers that the scope of this case is to determine whether the Council handled the request in accordance with the FOIA and whether the Council was correct in stating that it does not hold the information the complainant requested on 21 June 2018.

Reasons for decision

Section 1 of the FOIA – Information held/not held

10. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled:

(a) to be informed in writing by the public authority whether it holds information within the scope of the request, and

(b) if that is the case, to have that information communicated to him."

11. 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).

12. To revisit, the complainant's question is as follows:

"Can you fully explain why the Homemove scheme, won't allow a need for a 2 bedroom property. For someone who is Disabled and who has a Bedroom Tax exemption for a spare room, for an overnight Carer?"

13. The Commissioner asked the Council to explain what searches were carried out for relevant information to which it replied, detailing what searches were performed.

14. The Commissioner had also made some enquiries to the Council regarding the information it held and whether it had assisted the complainant in clarifying her request. The Council responded to say that the complainant has made a number of requests relating to the same topic.

15. The Council informed the Commissioner that it has provided all of the policies and information it holds to the complainant within previous requests and for this reason, it advised the Commissioner that it does not hold any further or new information. It provided copies of bundles of this request and five other requests the complainant made to the Council. These showed the information previously provided, such as the policies the Council uses when making decisions and further explanations surrounding the application of the policies.

16. The Commissioner notes that the complainant had clarified what information she required in a more recent request made to the Council.
17. The Council included this clarified request and its response to the complainant as part of the six bundles it supplied to the Commissioner. Within this bundle, it can be seen that the complainant was more specific in what she required from the Council and asked for the regulation it used when making decisions regarding the property allocation. In this response, the Council had quoted section 21 of the FOIA and advised that the information the complainant had asked for is readily available by other means.
18. The Council has stated to the Commissioner that it *"holds to its position that the questions of policy which form the basis of the complainant's request cannot be addressed through information the Council holds in recorded form, other than information she has already received."* Therefore it appears that the Council does not hold recorded information that specifically explains the reason and consequently it cannot answer the complainant's question.
19. The Council confirmed that within its internal review, it explained to the complainant that the purpose of the FOIA is to allow access to recorded information and not for the Council to create information to answer a specific question and should she need a specific answer to her question, she should contact the Council's complaints team to have her queries properly addressed.
20. Without any evidence to the contrary and considering that the complainant has already received information concerning Discretionary Housing Payment policy and the application of that policy, it is difficult for the Commissioner to conclude that the Council holds the specific answer to the question the complaint is asking. From the explanations provided to the Commissioner by the council, she is satisfied that the recorded information sought to answer the specific question is not held. The council is not obliged, under the Act, to create new information in response to a request and it appears to the Commissioner that this is what would be required in this instance. The help and assistance provided by the council has outlined the criteria and policies used when making decisions in this area and the Commissioner is satisfied with the explanations and evidence provided that the Council has carried out relevant checks to establish what it does and does not hold.
21. Therefore, the Commissioner finds that the Council does not hold the specific information requested by the complainant.

Right of appeal

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@hmcts.gsi.gov.uk

Website: 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF