

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 July 2018

Public Authority: Brighton and Hove City Council

Address: Kings House
Grand Avenue
Hove
East Sussex
BN3 2LS

Decision (including any steps ordered)

1. The complainant has requested information from Brighton and Hove City Council (the Council) regarding the amount that has been paid by a specified legal entity to the Council, in major works costs, service charges and ground rent. In addition, the complainant requested the reasons for refusal of a previous information request. The Council provided the information in relation to the first part of the request, and stated that it did not hold any information in relation to the second part of the request. However the complainant considered that further information must be held.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold further information within the scope of the request and therefore has complied with its duties under section 1(1) of the FOIA.
3. The Commissioner found that the Council breached section 10(1) of the FOIA due to the time it took to respond to the request.
4. The Commissioner does not require any steps to be taken.

Request and response

5. On 27 September 2017, the complainant wrote to the Council and requested information in the following terms:

"On 4.5.16 I submitted the following request:

Please advise how much has been paid in Major Works Costs, Service Charges, and Ground Rent by Brighton and Hove Seaside Community Homes to BHCC for properties in the blocks of flats listed below from date indicated until 1 April 2016. All blocks are on the Bristol Estate.

Blueball (18.9.15)

Clematis (1.6.12)

Thyme (17.3.14)

The information was refused on the grounds of cost and my request for an internal review, 12.7.16, followed by a reminder on 2 November 2016 did not receive a response.

I would like this information up to 1.4.17 and would be grateful if it is at all possible to explain the reasoning behind the original refusal."

6. On 28 September 2017 the Council acknowledged receipt and provided a copy of the response of 31 May 2016, containing the reasons for refusal of the original information request of 4 May 2016.
7. On 6 November 2017 the Council provided figures of monies received by the Council as per the present request. However, it did not address the second part of the request related to the reasons for refusal of the previous request.
8. On the same date the complainant requested an internal review of the Council's lack of response in relation to the reasoning behind the refusal of the request of 4 May 2016.
9. On 7 November 2017, the Council responded to the complainant stating that it will not carry out an internal review, since it considers that all the requested information has already been provided and it considers this matter closed.

Scope of the case

10. The complainant contacted the Commissioner on 24 November 2017 to complain about the way his request for information had been handled.

11. In the course of correspondence with the Commissioner, the complainant stated that *"there must be further information held that led to the construction of detailed reasoning for the application of Section 12 whilst knowing that such reasoning could not be based upon the facts."*
12. The focus of this notice is to determine whether the Council handled the request in accordance with the FOIA. In particular this notice covers whether the Council was correct in stating that it did not hold any recorded information relating to the reasoning for the refusal of the earlier request.

Reasons for decision

Section 1(1) – General right of access

13. Section 1 of the FOIA provides a general right of access to recorded information held by public authorities. Any person making a request for information to a public authority is entitled to be informed in writing by the public authority within 20 working days whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him unless a valid reason exists for not doing so under the legislation.
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information was not held and she will consider if the authority is able to explain why the information was not held.
15. For clarity, the Commissioner is not expected to reach a categorical conclusion on whether the information was held. She is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

The complainant's position

16. The complainant maintains that the Council must be in possession of information beyond what was already provided and states that he is entitled to have access to this information.

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

17. The complainant claims that a decision notice issued by the Commissioner on 25 May 2017² in relation to a different complaint is applicable in this case. He argues that it proves that the Council could not rely on section 12 when it refused to comply with the complainant's request of 4 May 2016.
18. The complainant insists that the Council knowingly provided an incorrect basis when it decided to refuse the request. Therefore, it is his position that the Council should provide further reasons on the original refusal of the request of 4 May 2016. The Commissioner notes, however, that this reasoning and that in the preceding paragraph are not relevant to the question of whether the Council holds information falling within the scope of the complainant's request.

The Council's position

19. The Council maintains that it has provided to the complainant all the information that it held, within the scope of the information request.
20. The Council explained that the relevant information to the request is held in the Council's Freedom of Information Database on SharePoint³. As a result of the searches conducted in this database, the Council provided to the Commissioner two documents: the initial response, dated 31 May 2016, in response to the request submitted on 4 May 2016 and the outcome of the internal review, dated 14 October 2016.
21. The Council stated that the keyword that was used in conducting these searches was the reference number of the information request of 4 May 2016, that is 6405, which would have been included in all email correspondence sent or received in the course of processing that request.
22. The Council explained that, in addition to the above, the additional searches found that the only internal correspondence related to the information request of 4 May 2016 is "*an email from Premises Manager to the Head of Department, forwarding the proposed response to FOI for approval. This document indicated that the response was drafted by [name redacted] (formerly the BHCC Data Protection Manager).*" The Council added that there is no previous correspondence concerning the application of section 12 to the request, stating that "*It is possible that this has been discussed on the phone rather than in email.*"

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014170/fs50654401.pdf>

³ SharePoint is a web-based software platform mainly used as a document management and storage system

23. Addressing the Commissioner's query whether the relevant officer's email account was searched, the Council responded that this email account was deleted in May 2017, six months following the conclusion of the relevant officer's employment, who handled the information request 6405.
24. The Council confirmed that no information, falling within the scope of the present request, has been deleted from the Council's FOI SharePoint Library. The Council retains information requests and responses for five years following closure of a case. However, the Council could not confirm whether its relevant officer who handled the case back in 2016 has deleted any relevant email. Moreover, since the same officer has left the Council the *"email account is no longer in existence and therefore cannot be queried."*
25. The Council further explained that the reason why it provided a response to the complainant in 2017, despite the fact that the request refused in 2016 was identical, is related to the changes that have been made in information management systems of the Council which increased the ease of extraction of information.

The Commissioner's conclusion

26. The Commissioner has reviewed the copies of the requested document that the Council has provided to the complainant and the correspondence it had in the course of handling the complainant's requests.
27. In the circumstances of this case the Council has informed the Commissioner of the searches for relevant recorded information it has undertaken.
28. Whilst the Commissioner recognises that the complainant does not consider that the Council has fulfilled the requests, the Council has provided a clear explanation of the searches that underlay its responses. No evidence is available to the Commissioner which would indicate that the Council's searches have been insufficient, or that recorded information is held falling within the scope of the request.
29. In light of the above, the Commissioner is satisfied that the Council has complied with section 1(1) of the FOIA.

Section 10 – time for compliance

30. Section 10(1) of the FOIA states that a public authority must comply with a request as soon as possible and within 20 working days following the date of receipt of the request.

31. In this case, the complainant submitted his request on 27 September 2017 and did not receive a response until 6 November 2017. Therefore, the Council breached section 10(1) on this occasion.

Other matters

32. In relation to the complainant's claim relating to a previous decision notice, the Commissioner reiterates that, whilst she acknowledges the importance of previously decided cases to ensure consistency in the application of the FOIA provisions, she considers each case individually and decision notices are applicable exclusively in relation to the specific complaints to which they are addressed.
33. The Commissioner notes that the decision notice to which the complainant refers to, was issued in relation to a previous complaint brought by the complainant against the Council, but has no effect in this case.

Right of appeal

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

34. 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.
35. 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

**Ben Tomes
Team Manager
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