

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2015

Public Authority: Brighton and Hove City Council

Address: Kings House
Grand Avenue
Hove
BN3 3LS

Decision (including any steps ordered)

1. The complainant has made three requests to Brighton and Hove Council ("the council") for the numbers of housing assessments made and information about the staff involved in these. The council refused the requests on the basis that they were vexatious under section 14(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly refused the requests on the basis that they are vexatious under section 14(1).
3. The Commissioner does not require any steps.

Request and response

4. On 10 March 2015 the complainant wrote to the authority and requested the following:
 1. *Does Brighton and Hove City Council Environmental Health have an obligation to carry out a HHSRS when requested by a private sector housing tenant?*
 2. *What is the policy of Brighton and Hove City Council to carry out a Housing Health and Rating System (HHSRS) upon the tenants request in confidence because the tenant is fearful of a "Retaliatory Eviction"?*

5. On 13 March 2015 the complainant further requested:
 1. *Number of HHSRS requests made to Environmental Health between 1/12/2014 and 28/2/2015 by Private Rented Sector tenants living in Brighton and Hove?*
 2. *Number of HHSRS carried out by Environmental Health between 1/12/2014 and 28/2/2015 requested by Private Rented Sector Tenants living in Brighton and Hove?*
6. On 17 March 2015 the complainant further requested:
 1. *How many hours per week did the Homemove Medical Officers work on Medical Assessments in December 2014, January 2015, February 2015.*
 2. *What are the average hours spent per week on Homemove Medical assessments for each Homemove officer for December 2014, January 2015, February 2015?*
 3. *How many Medical Officers are full time, how many medical officers are part time?*
 4. *What is the highest medical qualification held by the Homemove medical officers (no personal information required). As Homemove 'Medical Officers' make decisions and have access to confidential medical records they should be medically qualified to make those decisions, however Brighton and Hove City Councils Homemove team fail to disclose this information on request. Please disclose now.*
 5. *Is it possible for both medical officers to be on annual leave at the same time?*
 6. *How does Brighton and Hove City Council monitor absenteeism, sickness, holiday and annual leave for the Homemove Medical Officers?*
7. The council responded on 17 March 2015. It refused all three requests under section 14(1).
8. The complainant requested an internal review on 17 March 2015.
9. The council provided the outcome of its internal review on 2 April 2015. It upheld its position.

Scope of the case

10. The complainant contacted the Commissioner on 2 April 2015 to contest the council's response.
11. The Commissioner considers the scope of this case to be the determination of whether the council has correctly refused the requests as vexatious under section 14(1).

Reasons for decision

Section 14(1) – Vexatious requests

12. Section 14(1) states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

13. The Commissioner has recently published new guidance on vexatious requests and for ease of reference, this can be accessed here: <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>
14. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

The complainant's position

15. The complainant has advised the Commissioner that she resides in unfit private sector accommodation, and that the council is not fulfilling its statutory duties under the Housing Act 2004 by addressing her concerns. The complainant has specifically advised the Commissioner that the council's withholding of the requested information is life-threatening to her, and that she has only pursued information under the terms of the FOIA due to the council failing to provide information to her through other (non-specified) routes.

The council's position

16. The council considers that that complainant views the council as responsible for changing her accommodation. In particular, the council considers that the complainant's personal dispute is intrinsically connected to her information requests, which have previously been contained within larger items of correspondence that detail her accommodation issues.
17. The council has also referred the Commissioner to the significant volume of prior requests that the complainant has made; of which 19 were made between 8 January 2015 and the requests under consideration. At least 7 of these prior requests have led to internal reviews, whilst 3 have been refused on the basis that they are not requests for recorded information under the terms of the FOIA. These requests focus extensively on matters relating to housing and the council's statutory duties in this area.

The Commissioner's analysis

18. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be refused on vexatious grounds, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
19. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the purpose and value of a request outweighs the impact that the request would have on the public authority's resources in providing it.

The purpose and value of the request

20. Having referred to the submissions of both parties, the Commissioner understands that the complainant does not consider their current private accommodation to be safe for habitation, and wishes the council to take action in respect of this. As such, the complainant has confirmed that the request has been made in an attempt to gain information that will aid her position.

21. The Commissioner has identified that the purpose of the request relates to a private rather than public matter. It is also clear that any complaint against the council in respect of its statutory housing duties would need to be made to the appropriate authority, and that pursuing such a complaint by making information requests is not an appropriate use of the FOIA. On this basis, the Commissioner considers the requests to hold limited public value.

The burden upon the council

22. The Commissioner is aware that the complainant has submitted 19 prior requests in the preceding 3 months, and that these have sought a range of information connected to housing. Whilst the council has not provided copies of all these requests, the Commissioner has reviewed examples that have been made on whatdotheyknow.com. It is evident to the Commissioner that significant public resources have already been expended on responding to the complainant's requests on the subject of housing, and that further compliance is highly likely to result in continued requests and correspondence on the same theme.
23. Having already found that the requests hold limited public value, the Commissioner does not consider there to be any overriding public interest to justify the burden on the council's resources that compliance would cause.

Conclusion

24. The Commissioner accepts that there can be a strong public interest in transparency for requests that relate to housing matters, particularly when a public authority has statutory duties in this area. However in the circumstances of this case the complainant has expressly stated that the request has been made in order to extend a dispute relating to a private matter.
25. It is reasonable for the Commissioner to consider that any resolution to the complainant's dispute would need to be effected by the appropriate authority, and that there is limited public value within the requests to justify the further utilisation of public resources that compliance would require. On this basis the council was correct to identify the requests as vexatious under section 14(1).

Right of appeal

26. 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

27. 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.
28. 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
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