

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2019

Public Authority: Brighton and Hove City Council

Address: Bartholomew Road
Brighton
BN1 1JW

Decision (including any steps ordered)

1. The complainant has requested information with regards to council tax. Brighton and Hove City Council (the council) provided the information however the complainant considered it held more.
2. The Commissioner's decision is that the council has provided the complainant with the information it holds falling within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 15 January 2019, the complainant made the following information request to the council:

"Under the Freedom Of Information act I request recorded information relating to the Council's policy or practice surrounding the use of Council tax data and the processes involved that lead the Council to making decisions about how they use this data."

5. The council acknowledged receipt of the request on the 16 January 2019 and provided its response on the 11 February 2019.
6. The complainant queried the council's response on 22 February 2019 stating that the council has explained how it protects the data *"but not*

the council's policy or practice around the use of Council tax data and the processes involved that lead the Council to making decisions about how they use this data."

7. The council then requested clarification of the request and what it described as a supplementary question on the 28 February 2019. It asked the complainant:

"Is your question about how the Council Tax section decides how to use Council Tax data to collect council tax? So for example we follow the statutory legislation and we have meetings where section managers interpret that legislation and then devise procedures to ensure we adhere to that legislation?"

8. The complainant responded on the 1 March 2019 advising that it was not a supplementary question, it was what he had previously requested. He then clarified what he required by setting out 10 points:

1. *"What approval do you seek from council payers on how the council tax data is used (e.g. exact wording)*
2. *Those that apply for council tax relief e.g. students are they made aware how the council data will be used (again the exact wording of this)*
3. *Which departments at the council use the council tax data other than Finance*
4. *Which departments use the council tax relief data other than Finance*
5. *Where a department other than Finance uses the council tax data what specifically is it used for (all departments)*
6. *Where a department other than Finance uses the council tax relief data what specifically is it used for (all departments)*
7. *Where a department requests council tax data, who oversees that this is the appropriate use of the data e.g. Finance, Information on Governance*
8. *Where a department requests council tax relief data, who oversees that this is the appropriate use of the data e.g. Finance, Information Governance*
9. *Copies of any council tax policy documents that relate to council tax and council tax relief usage*

10. *Any practice/procedure documents the council has produced relating to council tax usage e.g. how the data is used, how long it can be kept etc"*
9. The complainant emailed the council again on the 27 March 2019 as he had not received a response from the council. He then advised the council, on the 2 April 2019, that he would now be contacting the Commissioner.
10. The council responded on the same day asking if the complainant would like it to carry out an internal review or if he was still going to contact the Commissioner. The complainant confirmed, on the 4 April 2019, that he will be contacting the Commissioner which he did on the 8 April 2019.
11. The council provided a response to the complainant's 10 points on the 24 April 2019 and advised that it will await the Commissioner's contact for any investigation.

Scope of the case

12. The complainant then contacted the Commissioner on the 20 May 2019 as the council had not provided an internal review. He has asked that the Commissioner ensures that the council provides the information he has requested in full.
13. The Commissioner has advised the complainant that her legal powers are set out by Section 50 of FOIA. Under that section the Commissioner is empowered to make a decision on whether or not the council has dealt with the request in accordance with the requirements of Part 1 of the FOIA.
14. This means that the Commissioner must determine whether or not the council has provided all the recorded information it holds relevant to the scope of the request.
15. If the Commissioner finds that further information is held by the council falling within the scope of the request, the council will either have to provide it or issue a valid refusal notice citing any relevant exemptions in Part 2 of the FOIA.
16. The Commissioner, in scenarios where she needs to investigate if other information is held, such as in this case, cannot simply order the information which the complainant believes is held to be disclosed, if indeed it is even held by the council.

17. The Commissioner has also advised that under the FOIA, if no further information is held, public authorities are not required to create information, answer questions or give opinions (if not already held in recorded form) in order to satisfy a request.
18. Therefore the Commissioner considers the scope of the request is to determine whether the council has provided all the information it holds falling within the scope of the complainant's request of 15 January 2019 and subsequent 10 point clarification dated 1 March 2019.

Reasons for decision

Section 1 of the FOIA – Information held/ not held.

19. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to him.
20. 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 within the scope of the request (or was held at the time of the request).
21. The council's initial response advised the complainant:

"The use of data for council tax purpose requires us to adhere to the Local Government finance Act 1992 and the subsequent regulations. The Council also adheres to the requirements of the Data Protection Act 2018. Managers within the service are trained and experienced in making decisions regarding the appropriate use of data. When there is need for advice this is provided by the Information Governance Team who are the corporate experts in such matters."
22. The council then provided the complainant with an extract from its procedural manual that is provided to staff dealing with council tax enquiries.
23. The council's response to each of the complainant's 10 points of what he is after, dated 1 March 2019 has been provided in an annex at the end of this decision notice.

24. The Commissioner has asked the council about the searches it has carried out in order to determine whether it holds any further information falling within the scope of the request and whether any other departments use the information than what it has already advised.
25. The council has told the Commissioner that the request was allocated to its Head of Revenues and Benefits who has overall sight and accountability for policy and processes with regards to council tax.
26. Subsequently a task was allocated to one of the council's revenues managers to liaise with other departments of the council using council tax data in order to clarify all of the purposes for which council tax data is used, as well as the lawful bases for these.
27. The council has advised the Commissioner that it carried out the following searches in order to respond to this request:
 - A check of Northgate user permissions to validate which departments have access to council tax information.
 - A search was carried out of email, network drives and SharePoint against the terms 'Council Tax Policy' and 'Council Tax Procedures'.
 - Search of a publicly available URL on the council's website regarding information on the administration of council tax:
<https://new.brighton-hove.gov.uk/search/google?keys=Council+Tax+Policy>
28. The council has stated to the Commissioner that relevant consultations were carried out with the council's Revenues & Benefits, Parking, Planning, Housing and Environmental Health teams to provide the complainant with the departments that use council tax data.
29. The council has told the Commissioner that all relevant data would be held electronically. The council no longer operates hardcopy recordkeeping systems for any current business processes.
30. The council has confirmed to the Commissioner that it is not aware of any information relevant to the scope of the request has been deleted.
31. The complainant has stated to the Commissioner that potentially other departments could use council tax data, such as building control, scaffolding, highways, Cityclean, recycling/ refuse, and other council websites.

32. The Commissioner has queried with the council whether this is the case and it has stated that no other departments or websites than what it has already advised have access to council tax data.
33. The Commissioner has also asked the council to clarify its business purposes for holding the requested information.
34. The council has responded to the Commissioner stating that with regards to the policy information requested, there are two purposes. These are to establish standards and processes for staff in administration of council tax and to communicate to the residents of the city, what they can expect from the council in its administration of council tax and associated processes.
35. It has also stated that its Privacy Notice is on its website, which it has provided to the complainant, outlines the additional purposes the council has for its council tax data.
36. The council has told the Commissioner that, as explained in its response to the complainant, the gateway for any departments accessing council tax data is through the Head of Revenues and Benefits, who is the Asset Owner for the system and therefore accountable for ensuring that all access and purposes are appropriately founded in law.
37. The council maintains that no further information is held by the council.
38. The complainant clearly considers that the council uses council tax data for more than it has stated in response to this request.
39. However, the council has outlined the searches it has carried out in order to determine the information it holds relevant to the request and the Commissioner has had the council confirm that it has provided the complainant with all the departments that would use it.
40. The Commissioner has considered the above and her decision is that, on the balance of probabilities, the council holds no further information falling within the scope of the request.

Right of appeal

41. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

42. 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.
43. 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
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Cheshire
SK9 5AF