

Freedom of Information Act 2000 (FOIA)
Re-use of Public Sector Information Regulations 2015
(‘RPSI’)

Decision notice

Date: 16 June 2021

Public Authority: Brighton and Hove City Council
Address: Hove Town Hall
Norton Road
Hove
BN3 3BQ

Decision (including any steps ordered)

1. The complainant has requested to re-use templates of the council’s Penalty Charge Notice letters, which he initially received from the council in response to an earlier FOI request. The council accepts that it initially disclosed the information to him, however it considers that, in retrospect, it did so in error, and would not disclose that information publicly again. It considers that if the same FOI request were to be received again it would refuse the request under section 31 of the FOI Act (prevention and detection of crime). It therefore refused the request to re-use the information in this case.
2. The Commissioner’s decision is that the council was not correct to refuse the re-use request, however it was able to refuse to permit the re-use of the council’s logo on its webpage as this is excluded from the rights within the RPSI.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To permit the re-use of the requested information, other than the logo.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 12 May 2020 the complainant wrote to the council and requested information in the following terms:

"This is a request under regulation 6 of The Re-use of Public Sector Information Regulations 2015, for permission to re-use the documents supplied by the council under FOI reference 2857365.

The documents are to be used for the purpose of being published on the internet.

Pursuant to regulation 11, please would the council make the documents available to me in the format in which they are held by the council. If at all possible, could the documents be supplied in an open format."

6. The council responded on 4 December 2020. It refused the re-use request stating that, on reflection, the information provided in response to the initial request under the FOI Act should have been withheld under the exemption in sections 30, 31 and 43 of FOIA.
7. As it considered that an exemption in the FOI Act applies it claimed that it was able to refuse the re-use request under the RPSI under section 5(7)(a) (in the refusal letter this was wrongly stipulated as Regulation 7).
8. The complainant requested that the council review its decision on 17 December 2020. The council did not however carry out a review.

Scope of the case

9. The complainant contacted the Commissioner on 21 July 2020 to complain about the way his request for information had been handled.
10. He considers that, as the information has been disclosed to him under the FOI Act previously, the council is not now able to refuse his request to re-use the information. He also argues that as information requests are considered to be to the whole world, the information is now already within the public domain and so the exemptions claimed would not be applicable.
11. Regulation 18 of RPSI imports the enforcement and appeal provisions from the FOIA. Therefore, the Commissioner can issue a decision notice in order to decide whether a public sector body has dealt with a request for re-use in accordance with the requirements of the Re-use of Public Sector Regulations 2015 (RPSI).

Reasons for decision

12. Section 6 of the RPSI states that:

6. A person who wishes to make a request for re-use must ensure that the request—

(a) is in writing;

(b) states the name of the applicant and an address for correspondence;

(c) specifies the document requested; and

(d) states the purpose for which the document is to be re-used.

13. Section 7 of the RPSI states that:

Permitting re-use

7.—(1) Subject to paragraph (2), a public sector body must permit re-use where it receives a request made in accordance with regulation 6...

... (3) Where a public sector body permits re-use, it must do so in accordance with regulations 11 to 16.

14. The council accepts that the request is a valid request to re-use the information under the RPSI. It also accepts that, as it currently stands, the information is already publicly available as it has disclosed this information in response to the complainant's previous FOI request.
15. However, it argues that its response to the initial FOI request for this information was an error. It therefore wishes to withhold permission to re-use the information on the basis that it would not wish information which it now considers exempt to be published more widely by the complainant. The complainant confirmed to the council that he wishes to publish the information on the internet on a non-commercial basis.
16. The council initially argued that the information would be exempt under sections 30, 31 and 43 of FOIA. However, during the Commissioner's investigation it clarified that it considers that section 31(1)(a) is applicable.
17. Regulation 5(7) of RPSI states;

"These Regulations do not apply to—

(a) a document where access is excluded or restricted under information access legislation including on the grounds of protection of personal data, protection of national security, defence or public security, statistical confidentiality or commercial confidentiality (including business, professional or company secrets); or..."

18. The council is therefore seeking to argue that, despite its previous disclosure of the information to the complainant, it now considers that the same information is subject to exemptions, and therefore it is entitled to refuse the re-use request under Reg 5(7).

Section 31(1)(a)

19. Section 31(1)(a) of FOIA provides that

"Law enforcement.

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the prevention or detection of crime,"

20. The Commissioner considers that issues relating to the prevention and detection of crime fall within the definition of the term 'public security' for the purposes of Regulation 5(7) of the RPSI.

21. The council's argument is that a disclosure of the templates it uses to issue and enforce PCN's would allow criminals to amend and use the templates to issue forged PCN's to defraud the public. It argues that a wider publication of the templates would therefore facilitate fraud against members of the public and businesses as it would make it easier for fraudsters to create authentic looking PCN enforcement correspondence.

The Commissioner's analysis

22. The question for the Commissioner is therefore whether the council's claims are correct in this instance. If the council is correct to argue that section 31(1)(a) is applicable, then the qualification to the right to re-use outlined in Regulation 5(7) is also applicable, and the council is able to refuse the re-use request.
23. In carrying out her assessment, the Commissioner must take into account that the information is already within the public domain. The council initially provided the information to the complainant in response to his earlier FOI request, and FOI responses are considered to be to the whole world. Additionally, the council will have issued the majority, if not all of these template documents, to members of the public over time as part of its genuine enforcement activity. Neither the templates, nor the council's general letters disclosing information to requestors under FOI appear to include warnings to recipients not to publish copies of the letters they receive, and it appears therefore to be open for them to publish their own examples on, for instance, lobby groups or chat/help groups on websites¹.
24. When information is disclosed in response to an FOI request, it is generally considered that that information should, from that point, be disclosed to any person who subsequently requests it from the authority. The complainant argues that it is not possible to withhold information which has previously been disclosed under an FOI request, and therefore the re-use refusal in this case is flawed.
25. However, the Commissioner considers that an authority must be able to take into account any significant changes of circumstances surrounding a previous disclosure of information which might change the status of that information. In its consideration of this point, however, it must bear

¹ As noted from various FOI responses issued by the council and published on Whatdotheyknow; https://www.whatdotheyknow.com/body/brighton_and_hove_city_council

in mind the earlier disclosure, and that the information is effectively already available to the public. This will play a part in determining whether the exemption is applicable, and in the strength of the public interest arguments supporting the maintenance of the exemption where this is applicable. In effect, a later application of an exemption will serve only to restrict the wider disclosure of that information, albeit that it remains ostensibly available to the whole world through the earlier disclosure.

26. The complainant has provided arguments that a case previously considered by the First-tier Tribunal is relevant to this issue. In *Webber v Information Commissioner (EA/2019/0369)*² the tribunal considered a similar case relating to template PCN letters. In this case the council applied section 31(2)(c) of FOIA to withhold the information from disclosure, and the Commissioner upheld the application of the exemption.
27. The majority of the decision relates to matters which are not particularly relevant to the council's arguments in this case. They relate to the potential harm to the council's ability to enforce PCN's if individuals are aware of the policies under which the council enforcement officers work. In the current case the council is arguing that it is the public which would be likely to suffer harm.
28. Additionally, it was only the text of council paragraphs which was under consideration in the case of *Webber*, not whole template letters. The council in this case argues that, in addition to the content of the template letters, a disclosure would provide the 'look and feel' of the template letters it uses.
29. It argues that criminals may use the templates to create false PCN documents which have the same look and feel of genuine council PCN letters. It argues that it is aware of two attempts to defraud individuals in this manner occurring within the last twelve months which appear to have used this method.
30. However, the public interest test carried out by the tribunal in *Webber* is relevant. In its decision the Tribunal was strongly of the view that the public interest rested with the council being transparent about its policies and templates. It considered this to be the case in order that the

²[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2655/Webber%20,%20Gabriel%20\(EA.2019.0369\)%20%20Allowed.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2655/Webber%20,%20Gabriel%20(EA.2019.0369)%20%20Allowed.pdf)

public is able to confirm that the council's PCN enforcement process is fair, and so that the public fully understands how the process is undertaken. At paragraph 45 of the decision, it pointed out that:

"...guidance issued by the Secretary of State for Transport 16 under section 87 of the Traffic Management Act 2000 (the guidance) encourages local authorities to be open about how they enforce parking offences so that motorists can know when to challenge a PCN. For example, paragraph 10.4 says: '... [Enforcement authorities] should approach the exercise of discretion objectively and without regard to any financial interest in the penalty or decisions that may have been taken at an earlier stage in proceedings. Authorities should formulate (with advice from their legal department) and then publish their policies on the exercise of discretion. They should apply these policies flexibly and judge each case on its merits. An enforcement authority should be ready to depart from its policies if the particular circumstances of the case warrant it...'

46. The guidance is not binding but local authorities must have regard to it.

31. The Tribunal also recognised the likelihood that disclosing the information may facilitate fraud (and the manipulation of appeal arguments using the information), however it considered that this was outweighed by the need for a fair and open enforcement process, and it therefore ordered the disclosure of the withheld information.
32. On the counter side, the Commissioner has also taken into account the First-tier Tribunal's decision in the case of *Westminster City Council v Information Commissioner and Gavin Chait EA/2018/0033*³.
33. In that case the question related to whether a disclosure of a list of business rates information would prejudice the prevention and detection of crime. The Tribunal accepted that much of the information was available from various other sources within the public domain, however at paragraph 104, it considered that:

"In relation to property crimes we accept that the planning portal, Google Street View and other sources already allow criminals to identify targets, and that the list is not likely to contribute to

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2557/Westminster%20City%20Council%20EA-2018-0033%20\(04.12.19\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2557/Westminster%20City%20Council%20EA-2018-0033%20(04.12.19).pdf)

opportunistic crimes, but we accept the submission by Sheffield that the provision of a readymade list makes it easier to commit crime and therefore prejudices the prevention of crime: it enables criminals to avoid the significant effort of researching and compiling the information in relation to each potential target."

34. In paragraph 106 it went on to say:

"Although a potential criminal can piece something similar together with enough time, effort and motivation, that does not answer the point that the criminal's life is made easier through the provision of a ready-made list."

35. Within its analysis of the public interest, it placed a significant weight on the argument relating to the potential for fraud. At paragraph 137 it said that:

"In relation to fraud, we accept that the release of this information would make it much easier for a fraudster to pose as a ratepayer and bypass the Council's security systems, and that changing those systems would entail significant time and expense. Further that it would facilitate a fraudster posing as the Council to obtain confidential information from a ratepayer. There is evidence that rates fraud is a real and current problem. The consequences to the Council of a loss of a significant sum of public money are serious. We therefore give this prejudice very significant weight in the balance..."

...139. Taking all these matters together, including in particular the prejudice to the prevention of rates fraud and terrorism, we find that there is a very significant public interest in maintaining the exemption."

36. The Commissioner notes that this case effectively involves a balancing of the likelihood that this information could facilitate fraud, as outlined within the *Westminster* case above, as against the openness and fairness arguments expressed in the *Webber* Case, and as highlighted in the guidance issued by the Secretary of State outlined above.
37. The Commissioner notes that publishing information on the internet in this case would effectively create a ready-made list of documents for criminals to forge and amend for their own purposes. The use of such templates would also be useful in creating substantially similar looking letters to those issued by the council, and therefore make it more likely that members of the public would be deceived by a false PCN.
38. The Commissioner therefore accepts that there is a likelihood that if the information were to be published as a usable list of documents on the internet, this list could be used as a basis for facilitating fraud.

39. However, the Commissioner must also take into account that the information which is under consideration is already available to the public. She notes that even if the information was not published more widely, obtaining copies of all the of the necessary documents would not be as time consuming for fraudsters as was considered for the information in the Westminster case.
40. She also considers that fraudsters would only require two or three documents in order to be able to create reasonable looking forgeries which cover the majority of situations which they are likely to come across; those dealing with the initial 'fine' and those dealing with the initial appeals process following that. These letters will be issued by the council to members of the public on an almost daily basis. Copies of the initial enforcement letters would therefore be very easy to obtain even if the re-use request had been correctly refused.
41. The council's logos will be widely publicly available, and the look and feel of documents will largely follow its standard templates. The templates following the initial fines will largely follow the initial PCN document template in look and feel. Therefore, a disclosure of the text paragraphs within the documents does not of itself prevent fraudsters creating convincing looking documents, even without the remaining sections of the templates. They may simply rely upon any council letter to create a fairly convincing forgery. The resultant document may not be 100% accurate, but it will have a sufficient degree of accuracy to be convincing to many people.
42. The information in the Westminster case related to the processing of business rates payments. These are, for the most part, administrative functions of the council in collecting a tax on business properties. In the current case the information relates to penalty charge notices imposed on individuals who the council considers has breached its parking bylaws.
43. The imposition of fines differs from the general processing of business rates information. The imposition of fines is a legal, punitive process which can result in court proceedings if the fines are ignored, or payment is refused. There is a public interest in such a process being carried out openly, and the policies surrounding the process being clear. This is the argument referred to by the Tribunal in the *Webber* case.
44. That is not to say, however, that the council's business rate administration should not also be carried out transparently and with accountability. The risk of fraudulent scams against the public is also still possible, and in the case of business rates fraud, it is likely to include much greater sums of money.

Conclusions

45. The Commissioner accepts that the information is already within the public domain, and she considers that it is possible that some of the templates may have been uploaded onto websites catering for pressure and help groups relating to the councils PCN enforcement previously.
46. When considering other council responses on the whatdotheyknow website, it appears that if the council issued its response in a similar way, the use of the disclosed information may not to have been qualified in any way. The complainant may therefore have been able to upload the information onto such sites without further recourse to the council if he had wished to do so, without making a further request under the RPSI Regulations.
47. The Commissioner accepts, in any event, that it would be extremely easy for fraudsters to obtain copies of the initial templates if they were so inclined, and from this they would obtain the information they need to create convincing false PCN's, which many individuals would fall for if they do not carry out checks.
48. As the information is already within the public domain, and the council issues copies of the letters to members of the public on a daily basis, whilst she recognises the potential risks of the publication of ready-made list of templates, she considers that permitting re-use in this case is unlikely to have a significant impact in preventing such attempts at fraud in the manner described.
49. This being the case, the Commissioner has decided that the council was not correct to deny the request to re-use the templates in this case.

Regulation 5(6)

50. Regulation 5(6) of the RPSI Regulations provides that:

(6) These Regulations do not apply to parts of documents containing only logos, crests or insignia.

51. The Commissioner notes that the templates include the council's logo.
52. The council is able to refuse the re-use request as regards the part of its templates which contain the logo should it wish to do so. This falls outside of the complainant's rights under the RPSI. The logo is included within the header section of the templates concerned.

Right of appeal

53. 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

54. 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.
55. 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

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