

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

28 July 2009

**Public Authority:** Brighton & Hove City Council  
**Address:** King's House  
Grand Avenue  
Hove  
East Sussex  
BN3 2LS

#### Summary

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The complainant requested information about the Penalty Charge Notices issued by the Council in respect of parking infringements. The request was framed in such a way as to level allegations at the Council. The Council responded significantly outside the statutory time limits, and concentrated on rebutting the allegations rather than providing a comprehensive response to the request. It eventually provided the requested information following the Information Commissioner's intervention. As the information was provided the Commissioner requires no further steps to be taken, however he found breaches of section 1(1)(a) and (b) and section 10(1) in the way the Council handled the request.

#### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

#### The Request

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2. On 18 June 2006, the complainant made the following request for information by email:

“...will the Council please provide the following information from its records, or confirm unequivocally that the information in question is not held by the Council:

- Given that Parliament saw fit to pass a statute that prescribed the wording of Penalty Charge notices, why did the Council not comply with that statute?
  - What benefits resulted as a consequence of the Council departing from the prescribed wording, and to whom do those benefits attach?
  - What has been the cost of the Council departing from the prescribed wording, including but not limited to – the additional legal costs resulting from the Glowzone case?
  - What effect will this cost have on (a) Council tax bills, and (b) the services provided by the Council?"
3. On 23 July 2006 he wrote to the Council and asked for a response to the request, and to others he had made to the Council. The letter was headed "Freedom of Information Act 2000". He did not receive a response to this letter.
  4. On 3 September 2006 he contacted the Commissioner to complain about the way his request for information had been handled by the Council. On 14 September 2006 the Commissioner wrote to the Council enclosing a copy of the request and asking it to respond to the complainant within 20 working days. He notified the complainant and advised that the file on the matter would be closed, but invited the complainant to contact him again if he remained unhappy with the Council's response.
  5. On 20 September 2006 the Council emailed the complainant stating that it never received the original request of 18 June 2006 and proposing to allow itself a fresh period of 20 working days to respond.
  6. The complainant responded the same day asking why the chaser letter sent on 23 July 2006 had not prompted earlier action by the Council. He also commented that a series of emails and letters he had sent to different contact points within the Council had also gone unanswered.
  7. The Council responded to the request by email on 18 October 2006, attaching a press release rebutting claims made in the local paper that its Penalty Charge Notices were invalid. The email contained information about how to complain to the Council about the response, and also how to complain to the Information Commissioner.
  8. The complainant responded by email the same day, stating that the copied press release did not adequately address the questions set out in his original request. He asked the Council to provide answers from its records or confirm that it did not hold the information.
  9. The Council responded by email on 24 October 2006. It responded:

- Given that Parliament saw fit to pass a statute that prescribed the wording of Penalty Charge notices, why did the Council not comply with that statute?

*The legislation does not prescribe the wording for a Penalty Charge Notice*

- What benefits resulted as a consequence of the Council departing from the prescribed wording, and to whom do those benefits attach?

*Please see above*

- What has been the cost of the Council departing from the prescribed wording, including but not limited to – the additional legal costs resulting from the Glowzone case?

*Please see above and as the issues between Glowzone Ltd and the Council have yet to be resolved it would be premature to comment on the question of additional costs.*

- What effect will this cost have on (a) Council tax bills, and (b) the services provided by the Council?"

*None, please see above.*

10. The email repeated the information about complaints procedures contained in the previous response.
11. The complainant responded by email on 24 October 2006 expressing dissatisfaction with the response and asking for further clarification. He does not appear to have received a reply to this email.
12. On 5 February 2007, the complainant contacted the Commissioner again regarding the request. Due to the volume of complaints under investigation, the case could not be opened and allocated straight away, however the Commissioner encouraged the Council to resolve the matter prior to a full investigation commencing. On 7 April 2007 he wrote to the Council and instructed it to revisit the request and provide a more detailed response or a formal refusal. The Commissioner drew attention to the provisions of section 17, the public interest, and review procedures. He also instructed the Council to address the complainant's question about why the original request and subsequent chaser had not been acted on.
13. The Council wrote to the complainant on 3 May 2007. It submitted fresh responses to each point as follows:
  - Given that Parliament saw fit to pass a statute that prescribed the wording of Penalty Charge notices, why did the Council not comply with that statute?

*There is no prescribed wording for Penalty Charge Notices. Therefore we have no recorded information regarding this.*

- What benefits resulted as a consequence of the Council departing from the prescribed wording, and to whom do those benefits attach?

*Please see above. Therefore we have no recorded information regarding this.*

- What has been the cost of the Council departing from the prescribed wording, including but not limited to – the additional legal costs resulting from the Glowzone case?

*Please see above. Therefore we have no recorded information regarding this. Glowzone have not issued any legal proceedings against the city Council.*

- What effect will this cost have on (a) Council tax bills, and (b) the services provided by the Council?"

*None, please see above. Therefore we have no recorded information on this.*

14. The Council also commented that the original request had not been received because it was emailed to an invalid email address ("Council-Lucas", although the complainant subsequently explained, in an email dated 18 January 2009, that this was merely the index name displayed for the full address [Jane.Lucas@brighton-hove.gov.uk](mailto:Jane.Lucas@brighton-hove.gov.uk), held in his email address book.) It offered no comment as to why it had not acted when it received the chaser letter dated 23 July 2006.
15. The complainant remained dissatisfied with the response.

## **The Investigation**

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### **Scope of the Case**

16. The initial complaint to the Commissioner was made on 3 September 2006 and the complainant asked the Commissioner to address the Council's failure to respond to his request. On 2 May 2009, following receipt of the information held by the Council, the complainant asked the Commissioner to consider whether the delay in providing the information breached the Act.

### **Chronology**

17. The complaint was allocated for investigation in January 2009. On 13 January 2009 the Commissioner wrote asking the Council why it had not taken action over the complainant's chaser dated 23 July 2006. He commented that the Council had interpreted the request narrowly and that undue emphasis had been placed on the complainant's allegations of wrongdoing. He referred the Council to the

Information Tribunal's advice in Barber v the Information Commissioner, that public authorities should ignore the tone and precise wording of requests and focus instead upon the information which had been requested, if necessary seeking clarification from the applicant as to what was wanted. The Commissioner asked the Council to provide a full response to the request within twenty working days. He advised the Council to contact the complainant immediately if it required clarification as to what information he wanted. He referred the Council to his website for more information about handling a request.

18. The Council wrote to the complainant on 11 February 2009, stating that it did not hold the information requested. It enclosed other information which it claimed demonstrated its Penalty Charge Notices were legally valid, and also provided information about waived notices.
19. The complainant wrote to the Council on 15 February 2009, pointing out that the documents enclosed with the response dated from September 2006, not from the period up to June 2006, when his request was originally submitted.
20. There followed an exchange of correspondence between the Commissioner and the Council in which the Commissioner explained that the Council should treat the request as a request for information about the reasons for the decisions about the format and content of the PCNS issued by the Council, together with the wider costs involved. On 29 April 2009, the Council sent the complainant a number of documents which the complainant agreed satisfied his request. He nevertheless requested that a Decision Notice be issued in respect of the Commissioner's investigation.

## Analysis

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### Procedural Matters

21. When the Council responded to the request on 18 October 2006, it did not state whether or not it held the information requested by the complainant. As the Council failed to confirm or deny whether the information was held within 20 working days of receipt of the request, the Commissioner finds the Council in breach of section 10(1). The failure to confirm or deny holding the information was not corrected by the date of the Council's internal review on 24 October 2006 and the Commissioner therefore finds that the Council breached section 1(1)(a).
22. When the Council responded on 29 April 2009, it provided the information requested. As the Council had failed to provide the information within 20 working days of the receipt of the request, the Commissioner found a breach of section 10(1). The failure to provide the information was not corrected by the completion of the internal review or the time for statutory compliance and the Commissioner therefore finds that the Council also breached section 1(1)(b).

## The Decision

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23. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in the following respects:
- It breached section 1(1)(a) because it had not confirmed or denied holding the information by the date of its internal review;
  - It breached section 1(1)(b) because it did not provide the information by the completion of the internal review or the time for statutory compliance;
  - It breached section 10(1) for failing to comply with section 1(1)(a) and 1(1)(b) within 20 working days;

## Steps Required

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24. As the requested information has been provided, the Commissioner does not require the public authority to take any steps.

## Other Matters

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25. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner considers that in responding to the request, the Council focussed unduly on addressing the allegation of wrongdoing, rather than objectively identifying what information the complainant was asking for. He considers that the complainant's request clearly went beyond merely asking for confirmation of whether the PCNs were legally compliant. If the Council took an objective approach and then became aware that several objective readings of the request were possible it could have exercised the opportunity presented by section 1(3) to discuss re-focussing the request with the complainant.

He also draws attention to comments made by the Information Tribunal (*Barber v the Information Commissioner*, EA/2005/0004) advising that public authorities should ignore the tone and the precise wording of requests and focus upon the information which has been requested, if necessary seeking clarification from the applicant as to what information is wanted.

## Right of Appeal

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26. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 28<sup>th</sup> day of July 2009**

**Signed .....**

**Steve Wood  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### General Right to Access

Section 1(1) provides that:

“(1) 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 of the description specified in the request, and

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

### Time for compliance with request

Section 10 provides that:

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.