

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 August 2009

Public Authority: Brighton and Hove City Council
Address: Kings House
Grand Avenue
Hove
BN3 2LS

Summary

The complainant requested a copy of the receipt of purchase for the bath and washbasin installed in his Council property, at the beginning of his tenancy. The complainant also requested the address of the supplier of the above, the name of the contractor who installed the items and information on the state of the bath before installation. The Council responded and provided information regarding the contractor and referred the complainant to the contractor for further information. Following the intervention of the ICO the Council pursued the contractor to provide the information held on its behalf. The Commissioner is satisfied that the information was not held at the time of the request by the Council or by the council's contractor on its behalf. The Commissioner found the public authority's handling of the request resulted in procedural breaches of the Freedom of Information Act 2000.

The Commissioner's Role

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

2. On 26 June 2008 the complainant requested information from the Council in the following terms:

"Copies, Reprints for:

- Receipt of purchase of the bath and wash basin. That which Brighton and Hove City Council say, was installed in to the above premises at the start of my tenancy July 2007.
 - Retailer/ wholesaler: the address of where the bath and wash basin were purchased from.
 - Contractors: The name of the contractors and persons which Brighton and Hove City Council say installed the above bath and wash basin.
 - Brighton and Hove City Council: admit in part that the bath which they say they installed was damaged. I request to know when this damage to the bath accrued.
 - Make your enquiries as to these matters:
Was the bath damaged when purchased from the retailers/wholesalers.
Was the bath damaged when being installed.”
3. On 22 July 2008, the Council responded. It provided the name of the contractor and quoted from a report on an inspection visit to the property for the purpose of inspecting the ‘void repair works’. The extract states: ‘it was noted that there was a small chip in the enamelling to the internal bowl of the bath. It was agreed that the contractor would carry out a liquid enamel repair to the chip.’ The Council concluded that this damage occurred before 15 August 2007 when the inspection visit took place. The Council explained that the supply of materials and associated paperwork would be held by its contractor and provided the name, address and telephone number of the contractor.
4. On 25 July 2008 the complainant complained to the Council about its response. He explained that he considered that the Council was withholding the requested information and asked for a review of its response.
5. On 26 August 2008 the Council responded. It stated that the Council did not hold copies of invoices relating to the purchase of materials used by the contractor in completing its work. The Council went on to state that it did not know from where the materials were sourced. It also stated that the Council did not know about the damage to the bath until it was seen on 15 August 2007. It did not know ‘when it happened nor the circumstances’. The Council again referred the complainant to the contractor.

The Investigation

Scope of the case

6. On 23 November 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant considered the response he received to be unsatisfactory.

7. The Commissioner sought an explanation of the role of the contractor and the control the Council has over the purchase of fitments for bathrooms. The Commissioner investigated what, if any, information is held by the Council and what information is held, on behalf of the Council, by the contractor.
8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

9. On 9 March 2009 the Commissioner wrote to the Council and asked it to clarify the role of the contractor, Kier Building Maintenance.
10. On 20 March 2009 the Council responded to the Commissioner and provided brief details of the Council's method of working with its contractors.
11. On 27 April 2009 the Commissioner telephoned the Council to ask if copies of the requested receipts had been sent to the complainant. A message was left on the Council's voicemail.
12. On 29 April 2009 the Council telephoned the Commissioner
13. Also on 29 April 2009 the Commissioner wrote to the complainant summarising the dialogue between the Council and the Commissioner and the progress of the request.
14. On 1 May 2009 the Commissioner received copies of email correspondence between the Council and the contractor dating from 16 March 2009.
15. On 1 May 2009 the Council emailed the contractor requesting all of the information to be sent to the Council.
16. On 5 May 2009 the Commissioner emailed the Council for an update on the progress of its request to the contractor.
17. On 5 May 2009 the Commissioner received further correspondence from the complainant in response to his letter of 29 April 2009.
18. On 26 May 2009, following further telephone messages from the Commissioner, the Council provided all copy documents supplied by the contractor, to the Commissioner.
19. On 28 May 2009 the Commissioner sent a letter to the complainant explaining the reasons why the information is not held.
20. On 30 May 2009 the complainant wrote to the Commissioner expressing his dissatisfaction with the outcome of the investigation.

Analysis

21. The provisions of the Act referred to below are set out in full in the Legal Annex to this notice.

Procedural matters

Section 1

22. In accordance with section 1(1)(a) of the FOIA, the Council has an obligation to state whether it holds recorded information of the description specified in a request.
23. In its response to the complainant, the Council stated that the installation of fitments was carried out by its contractor. The Council provided the name and contact details of the contractor stating: "The supply of materials and associated paperwork would be held by them."
24. When the Council completed its internal review, the Council stated that it did not hold copies of the information requested, however the contractor "may have further information". This is an inadequate response for the purposes of the FOIA as it was not clear whether the information was held by the contractor on behalf of the Council. In view of this, the Council breached section 1(1)(a) for not stating whether it held this information.
25. During the Commissioner's investigation the Council maintained its position that the information sought by the complainant was not held by it but may be held on its behalf by the contractor.
26. The Commissioner questioned the Council regarding its relationship with the contractor in order to understand the controls and contract terms in place. The council stated that a contractor sources its materials in an appropriate way depending on the involvement of sub-contractors or the use of direct labour. The Council confirmed that Kier Building Maintenance agreed to provide the Council with copies of receipts held for the complainant's address.
27. The Council explained that the contractor did not readily hold the information sought and was undertaking a search of its archives for the information it did hold. The contractor explained that it was not possible to locate exact material invoices for specific jobs dating back to October 2007. At that time the contractor was not allocating materials direct to the specific jobs therefore an individual receipt for one bath, for example, is not held.
28. The contractor provided job sheets, log sheets and invoices to the Council and the Commissioner. The Council confirmed to the Commissioner this was the only information held.

29. As a result the Commissioner considered the Council's actions to be in accordance with section 1(1)(b) because the information was not held by the Council or the contractor on behalf of the Council.

Section 10(1)

30. Section 10(1) states that 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. Throughout its correspondence with the complainant, the Council did not state whether the contractor held the information sought. The Commissioner concluded from copies of correspondence provided by the Council that the information requested was not held by the contractor.
31. The Commissioner concluded that the Council's actions were not in accordance with section 10(1).

The Decision

32. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- It did not breach section 1(1)(b) of the FOIA because the information was not held by the public authority nor by the contractor on behalf of the public authority.
33. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The Council breached section 10(1) of the FOIA for not stating whether it held information of the description specified in the request within the statutory time limit of 20 working days.
 - As the Council had still not stated whether it held the information requested by the complainant by the date of the internal review, it breached section 1(1)(a) of the FOIA.

Steps Required

34. The Commissioner requires no steps to be taken.

Other matters

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

36. The FOIA Code of Practice issued under section 45 requires an internal review procedure to be as clear and as simple as possible in order to encourage a prompt determination of the complaint. The Commissioner is concerned that, despite his Good Practice Guidance the Council failed to determine if the information held on its behalf fulfilled the request for information sought by the complainant.

Right of Appeal

37. 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.
Website: www.informationtribunal.gov.uk

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.

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 24th day of August 2009

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

Section 1(1) provides that -

“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.”

Section 10(1) provides that –

“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.”