

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2017

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

Decision (including any steps ordered)

1. The complainant has requested information held by Brighton and Hove City Council (the council) regarding the decision to dissolve Seaside Community Futures (SCF). The council maintains that as SCF was an independent limited company, it does not hold any information within the scope of the request.
2. The Commissioner's decision is that the council was correct to state that the requested information is not held and has therefore complied with section 1 of the FOIA. The Commissioner therefore does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

3. On 5 March 2016 the complainant made the following request for information under the FOIA using the whatdotheyknow website¹. The request was entitled "Seaside Community Futures Limited" and asked:

"Please advise why an application has been made to dissolve this company.

Could you also provide details of officer and/or councillor involvement in this decision."

¹ https://www.whatdotheyknow.com/request/seaside_community_futures_ltd#incoming-840814

4. The council responded on 10 March 2016 and advised that the information was not held, but may be obtained from the directors of Seaside Community Futures.
5. The complainant requested an internal review on 10 March 2016. He contacted the council again regarding his request for internal review on 30 June 2016. The council provided the outcome of the internal review on 19 July 2016 in which it maintained its position.

Scope of the case

6. The complainant contacted the Commissioner on 22 July 2016 to complain about the way his request for information had been handled. His view is that the decision to establish SCF required the agreement of the councillors who sit on the board of Brighton and Hove Seaside Community Housing (BHSCCH). He also stated that the decision to set up the "parent company", BHSCCH, was taken by the council. Therefore, he considers that there is no other public authority that can provide the requested information other than the council.
7. The Commissioner considers the scope of the case to be to determine the extent to which the council was correct when it said that it does not hold the requested information.

Reasons for decision

8. Section 1 of the FOIA states that a person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him. Section 1(4) clarifies that section 1(1) only applies to information that is held by the public authority at the time the request is received.
9. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of Information Tribunal decisions

in applying the civil standard of the balance of probabilities. She will determine whether, on the balance of probabilities, the council was correct to say that the information was not held.

10. In the first instance, the Commissioner finds it useful to set out the context of the council's relationship with SCF. The council has explained that SCF was a sister company of BHSCH. BHSCH is a Local Delivery Vehicle set up as a formally incorporated and independent company that has the ability to raise funds from the private sector. The council has advised that it entered into an Overarching Agreement with BHSCH on 23 September 2011. Following this, a comprehensive suite of commercial, financial and legal documents was entered into and in the 5 year period since then, the council has leased 499 dwellings to BHSCH. The council then provides housing management services to BHSCH pursuant to these arrangements.
11. The council states that any additional activity pursued by BHSCH beyond that which was contemplated in September 2011 requires the council's consent. The council confirmed that SCF is not referred to in any of the agreements between the council and BHSCH, and consent to set up SCF was not sought by BHSCH from the council. This would indicate that SCF was not an activity pursued by BHSCH, but rather by individual BHSCH board members.
12. In terms of the information held by the council about the decision to dissolve SCF, it has stated that it has no business purpose to hold any such information, as the company was a sister company of BHSCH and there had been no formal notification of its establishment to the council by BHSCH. However, the council has considered whether it does hold any information on SCF for its own purposes.
13. The council has advised that having searched its records for any information it might hold in respect of SCF, it has located references to it in two of the quarterly contract meetings between the council and BHSCH. The purpose of the quarterly meetings is specified in the Overarching Agreement to be to review the council's performance and deal with complaints about any BHSCH properties.
14. The first reference the council has located regarding SCF is a brief mention that it was being set up as an independent charity by some BHSCH board

members. The second reference is BHSCCH asking that the previous minutes be updated to reflect that there is no legal link between the BHSCCH and SCF. The council holds this information on its own behalf. However, it does not fall within the scope of the request, which is for information concerning dissolving SCF.

15. With regard to the part of the request which asks for information held concerning the involvement of council officers or councillors in the decision to dissolve the company, the council has explained that whilst there are councillors on the BHSCCH board, they are board members on their own behalf. The council has explained that these individuals were appointed to the BHSCCH to act independently and according to the framework set out by BHSCCH and not in terms of any criteria set by the council. It stated that therefore there is no expectation on these individuals to act on behalf of the council. In turn, as they are acting on their own behalf and in the best interests of BHSCCH, there is no requirement for them to share information with the council.
16. In addition to this, the Commissioner notes that BHSCCH board membership is recorded on a councillor's declaration of interest, and therefore when BHSCCH issues arise in committee or council meetings, those individuals have an obligation to declare their interest and remove themselves from the relevant part of the meeting. The Commissioner observes that this occurred in the 13 November 2013 meeting of the Housing Committee, where two committee members excused themselves from an item regarding BHSCCH for having a pecuniary interest in BHSCCH. The council is therefore satisfied that following its search for information within the scope of the request it does not hold any information regarding councillor or council officer involvement in the decision to dissolve SCF, and given the reasons above, would not be likely to.
17. The complainant stated to the Commissioner that he believes that the council's refusal to provide information in this case suggests that structures were established precisely in order to avoid providing information under FOI legislation. However, the complainant has not disputed the fact that BHSCCH is not a public authority, as he has stated to the Commissioner that he believes that the council is the only public authority that can provide the information he has asked for, both in this request, and in others. The Commissioner recognises the complainant's frustration that BHSCCH may be

carrying out functions which previously were carried out by the council, but is not subject to the FOIA. However, she can only make decisions based on the legislation as it currently stands, and this means that as BHSCCH is not a public authority, the council cannot compel it to share information with it for the purposes of the FOIA. In this case, the information requested from the council is detached further still as SCF is a company set up by some board members of BHSCCH, and BHSCCH has gone to some lengths to ensure that SCF is a legally separate entity.

18. In determining whether, on the balance of probabilities, the council was correct to say that it did not hold the requested information, the Commissioner has had regard to the fact that BHSCCH has not asked the council for consent to set up SCF, and also that BHSCCH had requested that the minutes of the quarterly meeting be amended to reflect the fact that there is no legal link between it and SCF. The Commissioner also notes that none of the agreements between the council and BHSCCH refer to SCF. She therefore considers it reasonable that the council would not hold information regarding the decision to dissolve an independent limited company not least because BHSCCH has distanced itself from SCF, and given that BHSCCH was the bridge between the council and SCF, the likelihood of the council holding any further information regarding SCF is very limited.
19. The Commissioner concludes that on the balance of probabilities, the council was correct to say that it did not hold the requested information.

Other matters

20. The Commissioner would also like to note that the internal review in this case was not completed in a timely manner as required by the section 45 code of practice. The council has acknowledged this and is aware that this falls below the acceptable standards that it sets itself. However by way of mitigation, it explained to the Commissioner that this request and internal review was one of a number submitted by the complainant in a relatively short time frame.
21. The section 45 code of practice outlines that if an internal review procedure is offered, the public authority should keep the complainant updated on the progress and timescale of the review. The Commissioner's guidance on the

Reference: FS50638884

code of practice also states that the internal review should be completed within 20 working days, and should not take longer than 40 working days. In this case, the complainant was not kept informed of the progress of his internal review and was provided with a response some four months later, only once he had chased a response.

Right of Appeal

22. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

23. 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.
24. 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
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