

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2017

Public Authority: Brighton and Hove City Council

Address: Hove Town Hall
Norton Road
Hove
BN3 3BQ

Decision (including any steps ordered)

1. The complainant requested information from Brighton and Hove City Council ("the council") relating to leasehold properties sold to Brighton and Hove Seaside Community Homes Limited ("BHSC"). The council said that it did not hold the information. The complainant disputed this. Following the Commissioner's intervention, the council said that it did hold relevant information and it provided it to the complainant. The complainant continued to dispute that he had been provided with the information requested. The Commissioner's decision is that the council provided the information that it held and that there is no further information to provide. He finds that it breached section 1(1)(a) and (b) and 10(1) for not providing the information that it held. There are no steps to take.

Request and response

2. The complainant requested information from the council on 29 November 2015 in the following terms:

"On 1 October 2012 BHCC sold 52 '99 leasehold properties' to Brighton and Hove Seaside Community Homes Limited (BHSCH). A BHSCH report, dated 14.9.15, states these properties were in need of refurbishment. The documents registered with Companies House and the Land Registry claim the properties were refurbished at the time of exchange. Please advise which description of the properties is correct".

3. The council responded on 3 December 2015. It said the following:

"The Agreement is that up to 499 properties will be sold to BHSCHs. Some of the properties are refurbished before completion and some are refurbished post completion under a works agreement i.e. BHCC will undertake the refurbishment works on behalf of Seaside Homes. It is down to capacity and timing as to how many can be refurbished prior to completion of leases".

4. On 4 December 2015, the complainant expressed dissatisfaction with the response. He said that the council had not attempted to respond to the question asked.

5. The council replied on 5 January 2016. It said that the information it held was as follows:

"The Agreement is that up to 499 properties will be sold to BHSCHs. All of the transferred properties required refurbishment at the time they were identified. Once identified depending of the circumstances some properties could be refurbished before transfer and some after. It is down to capacity and timing as to how many can be refurbished prior to completion of leases".

6. On 6 January 2016, the complainant expressed further dissatisfaction. He said that the council had not answered the question. He said that he wanted to know *"...why there is a discrepancy between information held by Companies House, BHCC and BHSCH and what is the truth?"*

7. The council completed its internal review on 11 November 2016. It said that it had provided the details of the agreement it was aware of and the information it held. It said that the sold properties at the time of the report may well have been refurbished before the exchange or after exchange under a Works Agreement. It advised the complainant to contact Companies House and BHSCH for clarification of the source of the information. The council said that it was not best placed to assist

as the complainant was requesting clarification on information that is not owned or held by the council beyond its initial response.

Scope of the case

8. The complainant contacted the Commissioner on 9 January 2017 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council did hold the information requested.
9. Following the Commissioner's intervention, the council said that it did hold the information and it provided it to the complainant. The complainant continued to dispute that he had been provided with the information requested. The Commissioner has therefore considered in this notice whether the council had provided the information.

Reasons for decision

Section 1(1) – General right of access

10. Section 1 of the FOIA provides a general right of access to recorded information held by public authorities. Any person making a request for information to a public authority is entitled to be informed in writing by the public authority within 20 working days whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him unless a valid reason exists for not doing so under the legislation.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check that the information was not held and she will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. She is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

12. Firstly, it is worth explaining for clarity, what the relationship is between the parties that are mentioned throughout this complaint. BHSCH is a formerly incorporated and independent company. It is not a public authority for the purposes of the FOIA. Elected members of the council may hold relevant information in their role as trustees of BHSCH but this is not considered to be information held by the council for its own purposes.
13. In this case, the council initially said that it did not hold the information requested, highlighting that BHSCH is an independent company. Following the Commissioner's intervention, the council conceded that its earlier responses were too general it did hold the information, which it provided to the complainant. On 13 July 2017, the council wrote to the complainant and confirmed that according to its records at the time of exchange,

"...Batch 6 included 52 dwellings broken down into the following categories:

- *13 un-refurbished routine empty homes*
 - *10 un-refurbished major works empty properties*
 - *29 former temporary accommodation properties where refurbishment work was underway".*
14. The complainant subsequently wrote to the Commissioner and said that he remained dissatisfied with the response. He explained that although he was grateful for the information provided, particularly as he was told that this information was not held originally, he still did not consider that the council had answered the request submitted. He said that there were now in his view three conflicting descriptions of the properties as sold on 1 October 2012: the most recent provided by the council on 13 July 2017; the description of 52 refurbished properties in information held by Companies House and the Land Registry; and 52 properties in need of refurbishment mentioned in the BHSCH report dated 14 September 2015. He said that he still wanted to know which description was correct. He said that it should be noted that the contradictory information published by BHSCH and the information held by the Land Registry and Companies House must have been provided by the council.
15. The complainant said that that his understanding is that the council owned the freehold for each of the properties and arrangements for refurbishment of the properties would be made by the managing agent for BHSCH, which is the council. He said that the council had accepted that some properties were refurbished prior to the sale and transfer of leases to BHSCH and others were not. He said that one would assume that the state of refurbishment would affect the price of the property. He said that it should be noted that the properties were formerly social

housing properties and the discrepancy about the state of the properties when sold was a concern to him.

16. Given the concerns expressed by the complainant, the Commissioner decided that it was appropriate to consider on the balance of probabilities whether there was sufficient evidence to suggest that the council may not have in fact provided the information that it held in response to the request given the suggestion made that the council may have provided different information to third parties relating to this transaction.
17. The council said that it wished to confirm that it had provided all the information it held falling within the scope of the request and that there was no further information that it was able to provide. It confirmed that it had conducted appropriate searches. It explained that the particular records about the status of the properties in question on transfer is held by the housing asset team. It said that enquiries had been made of the senior manager within the relevant housing team who had searched records to provide relevant information and clarification. It said that searches had been conducted on the council's intranet, which holds copies of relevant housing management policies and procedures and other relevant documents. The council said that it had also searched on its own website for relevant information in committee reports and other documents. It said that it had consulted the property team within the council's legal services department. The council said that no information falling within the scope of the request had been deleted, destroyed or mislaid.
18. In relation to the concerns expressed that contradictory information may have been provided by the council to third parties, the council said that it had written to the complainant directly on 13 August 2017 to seek clarification and evidence of what was being referred to specifically. It said that the complainant had only referred specifically to Form MG01 (particulars of a mortgage or charge). The council said that it had consulted legal services who oversaw the property transfers and it had been confirmed that this is a form which would have been submitted to the Land Registry by solicitors acting for BHCSH not the council, in connection with mortgages. The council said that it was difficult to comment further since the complainant did not provide any additional clarification regarding information on these properties which is apparently held by Companies House. The council said that after careful consideration of the legal arrangements, the council could not identify any purpose for which it would have needed to report any information directly to Companies House and it can only speculate that it would have been BHCSH who submitted the information in this context.

19. Regarding the general concern expressed by the complainant, the council explained that the agreement with BHSCH was that the properties being transferred would, where necessary, be refurbished by the council. At the time the procedure involved the asset team identifying which works required were minor routine void works or major structural works. Whether a particular property was transferred as refurbished or not depended on capacity to undertake the works once the properties had been identified for transfer for each batch. Once identified a property would remain empty pending transfer to BHSCH. The council explained that in some cases this period was sufficient to enable the refurbishment to be completed, so that the properties could be let quickly, in others not. The council said that those that could not be refurbished before transfer were transferred with the batch and then works were carried out afterwards in accordance with the agreement. The council confirmed that this did not affect the monies paid by BHSCH for the leases.
20. The Commissioner appreciates that the complainant specifically asked to know which of the descriptions was correct at the time of exchange. It is clearly the case however that the council can only respond to this question under the FOIA using the recorded factual information that it held. The council is not obliged to provide statements in response to requests for information under the FOIA unless that information was held in a recorded form. The council's position is that it has provided the information that it believes was correct following appropriate searches and consultation with the relevant team. The council confirmed that no information has been deleted, destroyed or mislaid.
21. There is nothing to suggest that the council held any recorded information relating to a discrepancy between the information it held and information held by other parties. The council's position is that it can only speculate about the source of any contradictory statements because it simply does not hold information about this. BHSCH is an independent company, and the council supposes that information was provided by them to the Land Registry or Companies House. It suggests this was the case based on the limited information provided by the complainant to support his concern about this.
22. It is important to appreciate in this case that it is not the Commissioner's role to become involved in disputes over the accuracy of information, and it seems that this is the underlying concern in this case together with a concern about the transfers that took place and the price paid. While the council can only speculate about the concerns over third party information, it has provided some reassurance about the property transactions that took place and it has explained the nature of the agreement it had with BHSCH in relation to the refurbishment of properties. The Commissioner's role in this particular

case is limited to considering whether the council provided the information it held falling within the scope of the request. The evidence suggests that although the council did not properly consider the request initially, it has subsequently searched and consulted appropriately, and has provided the recorded information held to the complainant. The Commissioner's decision is that no further information beyond that provided was held by the council on the balance of probabilities and there are no steps to order the council to take.

Procedural issues

23. As noted above, the council did not initially provide any information to the complainant but subsequently conceded that it held information falling within the scope of the request. The Commissioner considers that the council breached section 10(1) and 1(1)(a) and (b) for not identifying that it held relevant information and not providing it to the complainant within 20 working days or by the date of the internal review.

Right of appeal

24. 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@hmcts.gsi.gov.uk

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

25. 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.
26. 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

Elizabeth Archer
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF