

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2018

Public Authority: Brighton and Hove City Council

Address: Kings House
Grand Avenue
Hove
East Sussex
BN3 2LS

Decision (including any steps ordered)

1. The complainant has requested information held by Brighton & Hove City Council concerning any actions and decisions it has taken to ensure that the FOIA legislation is implemented correctly, and information held by the Council which concerns the number of investigations conducted by the ICO into its handling of requests for information compared with similar authorities.
2. The Commissioner has decided that Brighton & Hove City Council has complied with the provisions of section 1 of the FOIA on the grounds that, at the time the Council received the complainant's request, it did not hold any information falling within its scope.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 9 December 2017, the complainant submitted the following request for information to Brighton and Hove City Council via the WhatDoTheyKnow website¹:
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¹ https://www.whatdotheyknow.com/request/brighton_and_hove_city_council_a_2

"Brighton and Hove City Council have had 16 Complaints to the Information Commissioner's Office upheld regarding breaches of legal responsibility. Breaches have included "not providing the information that it held" leading to instructions from the Commissioner to provide information the council had previously denied existed. Of 32 complaints accepted as requiring investigation 50% have been upheld including 2 related to Brighton and Hove Seaside Community Homes (BHSCH) in 2017. There are at least 4 current investigations being pursued. Will the Council please provide any information held by B&HCC on action and decisions taken to ensure that legislation is implemented correctly, particularly concerning BHSCH?"

I would also be grateful for any information held by B&HCC with regard to the number of investigations held by the ICO into our Council's handling of FOI requests and the number of complaints upheld compared with similar authorities. Taking a random sample of 7 London Boroughs and 10 City Councils I found only one London Borough and 2 City Councils with more complaints upheld by the ICO compared with Brighton and Hove."

5. On 23 February 2018, the Council responded to the complainant's request. The Council's response was:

"Will the Council please provide any information held by B&HCC on action and decisions taken to ensure that legislation is implemented correctly, particularly concerning BHSCH?"

Please could you clarify what legislation you are referring to?

Do you mean housing legislation or Freedom of Information legislation?

I would also be grateful for any information held by B&HCC with regard to the number of investigations held by the ICO into our Council's handling of FOI requests.

This is publically available information on the ICO website [link provided]. You are able to filter on Brighton & Hove City Council and it will give you every decision notice received where an investigation has taken place.

Number of complaints upheld compared with similar authorities.

We do not hold this information as this is not recorded information. However, this information is publically available on the ICO website."

6. On receipt of the Council's response, the complainant provided the Council with the following clarification of his request:

"The legislation referred to is the FOI Act.

My apologies for not making my request for information clearer as I was not asking for information "held by B&HCC with regard to the number of investigations held by the ICO into our Council's handling of FOI requests" which I already have. My request concerned the performance of B&HCC compared with other authorities. I had assumed that your department was subject to Key Performance Indicators and that you would therefore hold this information. If you do not hold such information that is obviously robust and accurate as determined by the ONS then I will have to pursue the matter with the ICO as my own analysis would not have the authenticity of approval from the Office of National Statistics."

7. On 28 March 2018, the Council provided the complainant with the following response to his request:

"Compliance with Freedom of Information Request handling is monitored through the following mechanisms:

The Weekly List: Each week a report is generated from the FOI Database, outlining which request are currently open, which are approaching the statutory disclosure date and which are overdue. This list is sorted by Directorate for easy reference for the Council's FOI directorate coordinators and is also sent to the Executive Assistants for the Executive Directorates for monitoring. The Executive Assistants will chase up any requests which are overdue with the named responsible officer.

However, the above process is currently being superseded by the implementation of a new FOI case handling system (i-casework) which offers improved reporting and dashboard views enabling staff to get both a comprehensive macro view of overall FOI performance within directorates, combined with the ability to quickly review any case handling progress on individual requests.

In addition to streamlining of case handling and reporting, the system allows us to quickly publish any data issued under FOI which is of wider public interest, thereby improving compliance with both the FOI Publication Scheme and the Re-Use of Public Sector Information Regulations.

This system has been in place for less than a month at this stage, but we are confident that it will prove to be a significant development in improving the Council's FOI performance.

Executive oversight of the Council's FOI performance is conducted through the Information Governance Board. This board operates under the chairmanship of [...], the Executive Director of Finance and Resources. The Board has previously reviewed KPIs approximately four times per year, but this will be changed to bi-monthly due to the improved KPI reporting which is made available through i-casework.

We are pleased to note that since i-casework was put into production, there has been a marked uptick in the number of requests received and read this to mean that the increased ease of making requests online, has removed an obstacle to the public seeking information from us. It is at an early stage, but we are confident that this initiative will open up a new era of transparency between the Council and the public."

8. The complainant wrote back to the Council on receipt of its latest response. The complainant thanked the Council for the information provided but asserted the Council had made no attempt to answer his request of 9 December 2017. The complainant stated:

"It would appear that the information is held by the Council through the Information Governance Board that "has previously reviewed KPIs approximately four times per year" and is now being changed "to bi-monthly due to the improved KPI reporting which is made available through i-casework."

9. The Council responded to the complainant's last post by informing him that, "If you are not happy with your response please refer your concerns to the ICO".
10. The complainant wrote back to the Council, also on 28 March, and asked it to carry out an internal review of its handling of his request.
11. The Council's internal review response was:

"I have now reviewed the responses to the questions in this freedom of information request and uphold the initial responses.

Question 1: You asked what actions the Council has taken with regard to compliance with ICO. The information provided in response detailed both initiatives in FOI processing and the mechanism for corporate oversight. We do not believe there is any further relevant information to disclose with regard to this question.

Question 2: you asked how many investigations the ICO holds with regard to the Council's FOI handling. The Council does not hold this information. When the ICO receives a concern, it will often sit with them for a while whilst they consider both the specific complaint and any

others which may be arising. The complaints go through a triaging process and may be allocated to a case officer following a process of consultation/clarification with the person raising the concern. Therefore the Council will not always be aware if (or how many) complaints are pending investigation. I would recommend that you redirect this question to the Information Commissioner's Office.

Question 3: you asked how many complaints have been upheld compared with other local authorities. The Council does not hold this as recorded information. We have not done an assessment on this issue and therefore hold no information which can be disclosed relevant to this question. However, the Information Commissioner's Office publishes all of their decision notices on their website. Accordingly, it may be possible for you to extract the information you seek from that source."

Scope of the case

12. The complainant contacted the Commissioner 29 March 2018 to complain about the way his request for information had been handled. The complainant indicated his dissatisfaction that the Council had refused or only partly fulfilled his request
13. Having examined the documents which the complainant supplied to her, the Commissioner decided that her investigation should be focussed on whether the Council holds the information which falls within the scope of the complainant's request. This information can be summarised as:
 - Information held by Brighton & Hove City Council which concerns any actions and decisions it has taken to ensure that the FOIA legislation is implemented correctly, and particularly information which concerns the Brighton and Hove Seaside Community Homes (BHSC),
 - Information held by the Council which concerns the number of investigations conducted by the ICO into the Council's handling of requests made under the FOIA and the number of complaints upheld compared with similar authorities, effectively comparing the Council's compliance and non-compliance with the FOIA against similar authorities.

Reasons for decision

14. Section 1 of the FOIA states 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.

15. The Commissioner has sought to determine whether the Council holds the information which the complainant has asked for. To make this determination the Commissioner applies the civil test which requires her to consider the question in terms of ‘the balance of probabilities’: This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
16. The Commissioner has investigated whether the Council holds any information falling within the scope of the complainant’s request. She has done this by asking the Council questions about the searches it has made to locate relevant information and questions about the possible deletion/destruction of relevant information.
17. The Council has informed the Commissioner that it did not hold any relevant information at the time the complainant submitted his request on 12 January 2018.
18. The Council has explained to the Commissioner why it did not hold relevant information at the time it received the complainant’s request.
19. The Council has advised the Commissioner that, at the point when the complainant made his request, the Council was in the early stages of developing its new i-casework FOI handling system. At that time, request handling by the Council was done using a SharePoint library which had no reporting functionality. This meant that constructing a performance report for the Council’s Information Governance Board required the data to be extracted to a .csv² spreadsheet requiring substantial manipulation to produce the report.
20. This meant that reporting of FOI performance did not happen at that time as it now does following the introduction of the i-casework system.

² A CSV file is a comma separated values file commonly used by spreadsheet programs. It contains plain text data sets separated by commas, with each new line in the CSV file representing a new database row and each database row consisting of one or more fields separated by a comma.

21. Since deploying the i-casework system, FOI performance has become a regular agenda item for consideration by the Information Governance Board with recommendations for performance improvement measures being made to the Senior Information Risk Owner (SIRO).
22. The deployment of i-casework was discussed at the Information Governance Board on 12 February 2018 and subsequently the SIRO directed that all members should pro-actively support the system and the following steps have been taken to improve FOI performance:
 - An additional Information Compliance Officer has been appointed to provide cover during the implementation phase of i-casework;
 - A review of the Council's publication scheme and disclosures log, currently in its foundation stages, to pro-actively publish government data rather than wait for requests;
 - The commissioning of additional staff guidance on the application of the FOIA's exemptions and guidance for request handling for staff; and
 - The commissioning of guidance on timelines and steps for effective FOI case handling.
23. In addition to asserting that it held no relevant information at the time the complainant submitted his request, the Council has also confirmed that there have been no specific decisions or actions taken with regard to FOI requests which concern Brighton and Hove Seaside Community Homes. The Council told the Commissioner that 'This subject accounts for a tiny percentage of the Freedom of Information Requests received by the Council (two requests out of a total of 1,663 received during financial year 2017-2018)'.
24. In respect of whether the Council holds any recorded information concerning the number of investigations conducted by the ICO into the Council's handling of FOI requests and how the Council's performance compares with similar authorities, the Council referred the Commissioner to its initial response made to the complainant.
25. That response informed the complainant that the Council is aware only of those investigations where the ICO had notified the Council. Consequently, the Council advised the complainant that it could not provide a conclusive response and explained why this was the case. The Council made clear to the complainant that any response to that part of his request would be qualified out of necessity. The Council maintains that its response to the complainant was accurate at that time.

26. On the issue of comparison with other local authorities, the Council confirmed that at no stage has it undertaken this analysis and therefore this information is not held. On the grounds that resources are both finite and limited, the Council says it must necessarily prioritise its customer-facing services.
27. The Council has advised the Commissioner that it is aware of instances where other Local Authorities have been subject to ICO monitoring, but otherwise it has no source of information which would enable it to make a comparison of performance: If the Council were to undertake such an analysis, it could only be done based on the same information available to the complainant through publicly available websites.
28. When asked about the searches it had carried out to locate the information requested by the complainant, the Council provided the following explanation:
29. 'Prior to the deployment of i-casework, all Freedom of Information cases from receipt of request, through response, internal review and ICO Casework stages were managed in a SharePoint library. This library is still in use for outstanding ICO cases pertaining to that period in time. All documents pertaining to ICO cases are saved in a separate casework portion of the document library in folders labelled with the ICO case reference number. Accordingly, all ICO cases can be identified via a process of navigation to the relevant section of the library.' And,
30. 'From 7 March 2018, the new i-casework system has been used for all new requests. The new system enables the Council to get greater visibility and management information about case performance and the number of cases referred for internal review and/or ICO casework.'
31. The Council informed the Commissioner that, apart from the FOI case handling systems themselves, the only other potential sources of information about FOI performance, including decisions and actions to improve this would be the minutes and papers of the Information Governance Board and the meeting notes from the monthly meeting between Information Governance Managers and its SIRO.
32. All of these documents are owned and controlled by the Information Governance Team Manager and therefore no additional consultation was required. The nature of the issues reported to the SIRO have been "hot topic" FOI subjects rather than performance issues and therefore they are outside the scope of the complainant's request.
33. On the grounds that the information required to answer the complainant's request would be held in limited and structured document libraries, the Council asserts that there is no need to use keyword

searches to discover whether the information is held as it could be accessed by navigating through these structured libraries. Accordingly no searches were required.

34. The Council assures the Commissioner that it is satisfied that all relevant information has been identified due to the limited number of staff involved in its FOI strategic processes and the manner in which the information is structured. Furthermore, the Council says that all relevant information would be held as electronic documents and it has confirmed that no information within the scope of the request has been destroyed.
35. The Council's Corporate Retention Schedule does not include retention categories for ICO Casework, Information Governance Board Meetings or SIRO Meetings. That said, the Council has advised the Commissioner that it proposes to develop retention periods for these classes of information in the future.
36. The Council recognises that the information requested by the complainant would be of specific corporate evidence benefit. It has identified that it would assist the Council to understand, analyse and improve its FOI performance through the identification of repeat issues and to indicate gaps in training and guidance which can be addressed. Further, it would help the Council to understand changes to the resource impact of FOI Request handling across the Council and identify where additional resources or changes to handling processes are required. Finally, it would inform the Council of patterns of FOI topic interest which could inform its proactive publishing schedule and help to identify and reduce the workload impact of repeated requests.
37. With the above in mind, the Council, through its analysis of management reports from its i-casework system, is now seeking to realise the benefits described above and it is currently running a variety of reports in test to determine which ones provide the most useful information to senior management.
38. To substantiate its representations to the Commissioner, the Council has provided her with an extract from its Information Governance Board minutes of 12 February 2018 and a copy of a presentation document. This information concerns the implementation of the Council's i-casework case management system.
39. The minutes include a statement which concerns the aims of the i-casework roll-out and indicate that the system was expected to go live on 6 March 2018.

The Commissioner's decision

40. The Commissioner has carefully considered the representations made by the Council in respect of the complainant's request. It is clear to the Commissioner that the information which the Council held at the time it received the complainant's request – and which it still potentially holds, was limited to its handling of individual information requests from their receipt to the Council's final response.
41. Essentially the information held by the Council is individual case management information. This information does, to some extent relate to the Council's compliance with the provisions of the FOIA. However, it is not information which meets the terms of the complainant's request.
42. In his request, the complainant made clear that he seeks information which concerns the actions and decisions taken by the Council to ensure that the FOIA legislation is being implemented correctly.
43. In view of what the Council has told her, and in the absence of any information to the contrary, the Commissioner has decided that, on the balance of probabilities, the Council does not hold information relevant to the complainant's request.
44. This is also the Commissioner's decision in respect of the complainant's request for any information which concerns the Brighton and Hove Seaside Community Homes (BHSCH). The Commissioner must accept the Council's assurance that at the time the complainant made his request it did not hold any information concerning decisions or actions taken specifically with regard to Seaside Homes. Indeed the Council's position is that this information is still not held.
45. The Commissioner has also decided that the Council does not hold any information which concerns the number of investigations conducted by the ICO into the Council's handling of requests made under the FOIA and the number of complaints upheld compared with similar authorities.

Other matters

46. The Council has informed the Commissioner that it has now created information which would fall within the scope of the complainant's request. This information has been created since the implementation of the Council's i-casework system and the Council has informed the Commissioner that it would be happy to disclose it to the complainant should he wish to ask for it.

47. The Commissioner recognises the good work done by the Council in upgrading its procedures for handling FOI requests and for monitoring its compliance with the FOIA. She acknowledges the potentially positive impact of the Council's new systems and its desire to improve transparency and access.

Right of appeal

48. 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

49. 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.
50. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF