

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 December 2021

**Public Authority:** Bristol City Council

**Address:** The Council House  
College Green  
Bristol  
BS1 5TR

#### **Decision (including any steps ordered)**

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1. The complainant requested from Bristol City Council (the council) information about a questionnaire handed to individuals who were arrested following an incident related to the Colston Statue in Bristol. The council said that it does not hold the information as the questionnaire was created independently of the council, and relates to the activities of We Are Bristol History Commission ('BHC'). The council said that it provides administrative services for BHC, however the questionnaire was created and used prior to the BHC being fully constituted. The council has never held it.
2. The Commissioner's decision is that the council does not hold the requested information.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 3 March 2021 the complainant requested the following information from the council:

*"6 people accepted a conditional caution arising from their role in the toppling of the Colston statue in June 2021.*

*Part of this caution involved a completion of a questionnaire devised by the British History Commission set up by Bristol's mayor in the wake of the toppling incident.*

*I would like please to see a copy of this document i.e. the blank uncompleted questionnaire, not of course the completed examples which may well be confidential.*

*Could you please send me a copy or tell me where it might be accessed."*

5. The council responded on 18 March 2021. It said that it did not hold any information falling within the scope of the request and suggested that the complainant contact either a professor, who was the author of the questionnaire, or the police directly, to obtain a copy.
6. Following a request for internal review, the council responded on 1 June 2021. It upheld its position that it did not hold any relevant information.

## Scope of the case

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7. The complainant contacted the Commissioner on 16 July 2021 to complain about the way his request for information had been handled.
8. His complaint was that the council does hold a copy of the questionnaire.
9. Whilst the complainant was awaiting a response from the council, he requested and received a copy of the questionnaire from Avon & Somerset police. However, he argues that he also wishes a copy from the council as he believes that it does hold the information, but it is seeking to distance itself from the BHC by stating that it holds no relevant information.

10. Obtaining the relevant information would normally negate the need for the Commissioner to investigate further, however as the complainant did not hold a copy at the time of the council's response it could not claim section 21 of the FOIA to refuse the request (information accessible by other means). Additionally, the complainant has never obtained a copy of the questionnaire from the council directly.
11. The complainant also raised an issue with a specific sentence in the council's internal review which he sought clarification over. This is not, however, a matter relating to a request for information, and the Commissioner has no powers to consider what appears to have been a simple miscommunication by the council under section 50 of FOIA. The Commissioner has not considered this aspect further within this decision notice.
12. The scope of this case and of the following analysis is therefore whether the council is likely, on the balance of probabilities, to hold the requested information for the purposes of section 1.

## **Reasons for decision**

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### **Section 1 – General right of access to information**

13. Section 1(1) of FOIA requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
14. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

16. The complainant argues that the council, by stating that the information is not held, is seeking to distance itself from the BHC. He believes that, even if the council does not hold a copy of the questionnaire, the BHC will do, and therefore the council was under a duty to provide this to him as BHC is part of the council.

The council's position

17. The council said that BHC was set up by the mayor of Bristol following the toppling of the Colston Statue.
18. It said that the mayor had talked about BHC being set up in the media in the aftermath of the Colston statue being damaged. In June 2020 he invited a local professor to chair the BHC. Work was then done to appoint the rest of the commissioners however the terms for the commission were not set in place until January 2021. These terms are temporarily hosted on the council's website, but the questionnaire was written prior to this point, and there was no council involvement with its production.
19. The council said that it understands that the professor drafted the questionnaire at the request of the police, and at the time that this was done, the BHC itself has not yet been formed. It said that the council was not involved with the drafting, commissioning or otherwise of the questionnaire. The complainant however argues that BHC minutes, held on the council website, refer to the questionnaire on more than one occasion.
20. It said that when the request was first received a search of the mayor's inbox and the folder on the relevant network drive for the relevant months was carried out. It confirmed, however, that it had never received the questionnaire as the professor dealt with the police directly.
21. It said that the mayor does not act as a member of Bristol City Council in his role with this group, and the council has never had sight of, and never held a copy of the questionnaire.

The Commissioner's analysis

22. The Commissioner has considered the Council's position, in conjunction with the request.
23. Whilst the Commissioner recognises that the council hosts the website of BHC, and that the questionnaire is noted in the minutes which are published on its website, this does not necessarily suggest, on the balance of probabilities, that the council has, at any time, held a copy of the relevant questionnaire.
24. It has also clarified that the mayor is not acting as part of the council in his dealings with BHC. The council's website states that:

*"Administration*

  - *The Mayor's Office will provide secretariat support to the commission and Bristol City Council will supply services as required."*<sup>1</sup>
25. The council has confirmed to the Commissioner that it carried out searches of the mayor's records when it first received the request, and that it also carried out searches of the relevant network drive over the relevant period of time.
26. The council has clarified that the questionnaire was created and used prior to the BHC existing, and that it was not involved in that process. In its initial response to the complainant, the council suggested that the complainant contact the professor or the police directly for a blank copy of the questionnaire, and the police did provide a copy of this to him in response.
27. The council's position is that it does not hold, and has never held a copy of the relevant questionnaire. It was created prior to the BHC being formed, and that BHC is a separate entity to the council, albeit that the council does provide some administrative support to it. Where it does provide support, via the mayor's office, it has carried out searches to determine whether the relevant information is held and concluded that it is not.

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<https://www.bristol.gov.uk/documents/20182/5147235/We+Are+Bristol+History+Commission+Terms+of+Reference++January+2021.pdf/6c766e0f-bab9-b100-ec8e-f1dd08ddd6cf?t=1616164166881>

28. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong.
29. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

## Right of appeal

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30. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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 .....**

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**