

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

### **Decision notice**

**Date:** 26 September 2022

**Public Authority:** Brighton & Hove City Council  
**Address:** Bartholomew House  
Bartholomew Square  
Brighton  
BN1 1JE

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

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1. The complainant requested information about Brighton and Hove school streets and Westdene school streets taster day. Brighton & Hove City Council (the Council) provided some information in its initial response and subsequently made a number of further disclosures following correspondence from the complainant. The Commissioner's decision is that the Council breached section 10 of the FOIA in failing to provide the information within the statutory time for compliance and failing to confirm that some of the information requested was not held. The Commissioner does not require any steps to be taken.

### **Request and response**

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2. On 9 July 2021, the complainant wrote to the Council and requested information in the following terms:

"Re: Brighton and Hove school streets and Westdene school school streets taster day

I am writing for full information on the methodology used for brighton and hove school streets evaluation and implementation, including for the Westdene school streets taster day on 27th May.

By methodology I mean the specific procedures or techniques used to identify, select, process, and analyze information about school streets.

This includes detail of the methodologies/methods etc. including for all aspects of the evaluation incl.

1. The sustrans survey;
2. the qualitative interviews on the 'taster' day;
3. further planned research and feedback before implementation.
4. Any additional evaluation that measures the stated impact for School streets aims and objectives.

This includes

Methodology (programme and Westdene) to measure the stated aims and objectives of school streets as a programme including stated impact on the neighbourhood: Congestion, Air quality, Safety, Active travel. The aims, objectives and content of the sustrans survey; The aims, objectives, of any qualitative interviewing, including questions asked; The aims and objectives, and content of further 'research and opportunity to comment' before implementation; In relation to Westdene- the planned sample criteria (for 1,2,3,4) In relation to Westdene- the actual sample (for 1,,2, 4 and plans for 3) In relation to Westdene sample distribution (parents/school/residents/other) (for 1 and 2, and the plans for 3) Confirmation of how the sample only included Westdene residents.

There has been some communication with school streets, and a request previous questions were escalated to FOI if any questions were not answerable. Methodology and detail remains unanswered hence this FOI”.

3. The Council responded to the request on 6 August 2021 and provided the information requested.
4. The complainant wrote back to the Council on 9 August 2021 and stated that it had not supplied information on the sample (planned and actual size and representation), or details of the 'further research, and opportunity to consult'.
5. The Council responded on 27 August 2021 and advised that it was unsure what 'further research and opportunity to consult' referred to as this was not required for a one day temporary road closure. The Council stated that the survey in this case was only used to gauge opinion on the school streets taster day not as a method of consultation on any permanent closure. In terms of the sample size the Council advised that the survey was sent to all parents and residents in the vicinity of the school. On the day in question staff also knocked on some doors on Bankside and the lower part of Barn Rise and spoke to a number of

residents on the Green and surrounding roads. The Council confirmed that no 'weighting' was given to any group.

6. The complainant wrote back to the Council on 27 August 2021 and pointed out that it had still not provided information on the sample size. The complainant gave an example of the type of information they were seeking. The complainant also asked what stakeholder groups/category those consulted on the green and surrounding area were in eg parent/resident. Finally, the complainant stated that the Council had still not provided details of the further research and clarified that this referred to research & consultation methodology *before* the implementation of any schools streets project.
7. The Council responded on 9 September 2021 and advised that the survey was an informal one to determine interest and opinion from stakeholders about the school streets project. The Council confirmed that any proposals for future school street closures would be subject to consultation and engagement. The Council advised that details of the school streets programme were in development and subject to approval by the relevant committee and any further research and consultation would be dependent on that process. The Council provided details of the numbers of surveys and responses.
8. The complainant wrote back to the Council on 12 September 2021 and pointed out that Sustrans held details of the survey responses including the number of people they spoke to, whether they were a parent/resident/other and where they were from, how many houses were approached etc. The complainant asked again for information on the number of people spoken to as part of the qualitative interviews, what category they fell into (resident/parent/other), the number of residents' houses approached around the green and the number of people actually spoken to in their own home.
9. On 8 October 2021 in the absence of a response from the Council the complainant wrote again requesting an internal review of the handling of the request and asked for a response within five working days.
10. The Council responded on 11 October 2021, under a new reference number, and confirmed the numbers of people interviewed/consulted as part of the survey and what category they were from.
11. The complainant wrote back to the Council on 12 October 2021 to chase a response to their internal review request. As part of the review the complainant asked the Council to explain why it had treated their communication of 12 September 2021 as a new request.
12. The Council acknowledged the internal review on 29 October 2021.

13. The complainant wrote back to the Council on 8 November 2021 chasing a response to the internal review. They asked the Council to confirm what involvement councillors had had in respect of their internal review request and clarification of the legal basis for the statement that the complainant was unable to share some of the information provided in response to the request without agreement from the Council.

## **Scope of the case**

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14. The complainant initially contacted the Commissioner on 18 October 2021 to complain about the way their request for information had been handled.
15. Following correspondence from the Commissioner to both the complainant and the Council concerning the internal review, the complainant contacted the Commissioner again on 15 December 2021 to confirm that they had still not received the internal review response.
16. In light of the delay in the Council providing its internal review response the Commissioner exercised his discretion in this case and accepted the complaint without an internal review. During the course of his investigation, the Council provided the outcome of its internal review on 25 August 2022.
17. As the complainant has received all of the information they requested, the scope of the Commissioner's investigation into this complaint is to consider procedural matters associated with the Council's handling of the request.

## **Reasons for decision**

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### **Section 1 – general right of access**

#### **Section 10 – time for compliance**

18. Section 1 of FOIA states that "any 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 of the description specified in the request".
19. Section 10(1) provides that a public authority must comply with section 1 promptly and in any event not later than the twentieth working day following the date of receipt of a request for information.
20. In this case the request for information was submitted on 9 July 2021. The Council initially responded on 6 August 2021 and provided some

information. Following a number of queries raised by the complainant about what they considered to be missing information, the Council provided additional information relevant to the request on 6 and 27 August 2021. In failing to provide all the information requested within the statutory timescale the Commissioner finds that the Council breached 10(1) of the FOIA.

21. On 12 September 2021 the complainant advised the Council that it had still not provided all the information requested and pointed out that Sustrans held details of all survey responses. The Council treated this communication as a new request for information. In its internal review response the Council confirmed that it had treated this as a new request as the Sustrans information was not held at the time the initial request was received and it only became available on 13 August 2021.
22. The Commissioner notes that the Sustrans survey was one of the items listed in the original request. If the information was not held at the time of the Council's initial response the Council should have advised the complainant that the information was not held. In failing to confirm the information was not held, the Commissioner finds that the Council breached section 10(1).

## **Other matters**

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23. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

### **Section 45 – Internal review**

24. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
25. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases

26. In this case the complainant requested an internal review on 8 October 2021 and despite correspondence from the Commissioner, the Council did not provide the outcome of its internal review until 25 August 2022, some 221 working days later.
27. It is clear that in this case, the Council failed to complete its internal review within the Commissioner's guidance. The Commissioner expects the Council to ensure that reviews it handles in the future adhere to the timescales he has set out in his guidance.
28. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"<sup>1</sup> strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"<sup>2</sup>.

### **Piecemeal disclosure**

29. The Commissioner believes that it is appropriate to comment on the piecemeal identification of information falling within the scope of the request by the Council.
30. The Commissioner considers that the initial request, as worded, was clear in that it was seeking access to **all** information on the methodology, evaluation and implementation of the project. The request also expanded on this and specified that it encompassed information on all aspects of the evaluation including the Sustrans survey, the qualitative interviews. Despite the broad nature of the request, it was necessary for the complainant to go back to the Council on several occasions before all relevant information was disclosed. This resulted in information being provided to the complainant on a piecemeal basis.
31. In its internal review the Council stated that "there was some confusion with regards to what information was being requested" and that is the reason why information was disclosed on a piecemeal basis. If this was the case then the Council should have sought clarification from the complainant at the outset. The Commissioner recommends that the Council should ensure in future that the first step upon receiving an information request is to identify all the relevant information it holds and

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<sup>1</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>2</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

provide it to the applicant, unless a relevant exemption applies to prevent such piecemeal disclosure of information occurring. If the scope of a request is not clear then the Council should contact the applicant to seek clarification of the information being sought before providing a substantive response.

## Right of appeal

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32. 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)

33. 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.
34. 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 .....**

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