

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 June 2021

Public Authority: Brighton and Hove City Council

Address: Hove Town Hall
Norton Road
BN3 3BQ

Decision (including any steps ordered)

1. The complainant requested information from Brighton and Hove City Council (the Council) regarding contacts between the Council and a third party between January 2019 and the date of the request. The Council had failed to provide a substantive response to the request by the date of this notice.
2. The Commissioner's decision is that the Council failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response or refusal notice, in accordance with its obligations under the FOIA, to the request.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 7 February 2021, the complainant wrote to the Council and requested information in the following terms:

"We request to see details, including relevant dates and content, of all contacts between BHCC and the Berkeley Group between 1st January 2019 and now."
6. The Council acknowledged the request but did not provide a substantive response.
7. On 8 March 2021, the Council wrote to the complainant to explain that it required additional time to consider the implications of section 43 of the FOIA in relation to the complainant's request. To date, a substantive response to the request has not been provided.

Scope of the case

8. The complainant contacted the Commissioner on 11 April 2021 to complain about the failure, by the Council, to respond to the request.
9. In line with her usual practice, the Commissioner contacted the Council on 7 May 2021 to highlight the outstanding response. She requested that the Council respond to the request within 10 working days.
10. The Council acknowledged this correspondence on 25 May 2021.
11. The complainant contacted the Commissioner on 9 June 2021 to request a decision notice considering the Council's compliance with the FOIA.
12. The scope of this notice and the following analysis is to consider whether the Council has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

13. Section 1(1) of the FOIA states that:

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.*

14. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) *is in writing,*
- (b) *states the name of the applicant and an address for correspondence, and*
- (c) *describes the information requested.*

15. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

16. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

17. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.

18. Although the FOIA does not define what constitutes a reasonable time, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.

19. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a substantive response to the request within 40 working days, the Council has breached section 17(3) of the FOIA.

Other matters

20. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

Right of appeal

21. 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

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

22. 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.
23. 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

Phillip Angell
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Wycliffe House
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Wilmslow
Cheshire
SK9 5AF