

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 May 2017

**Public Authority:** Brighton and Hove City Council

**Address:** Kings House  
Grand Avenue  
Hove  
BN3 2LS

#### Decision (including any steps ordered)

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1. The complainant has requested information from Brighton and Hove City Council ("the Council") about Brighton and Hove Seaside Community Housing ("BHSC"). The Council responded that it did not hold any relevant information. The complainant disputed the Council's position.
2. The Commissioner's decision is that the Council does not hold relevant information for part 1 and part 3 of the request. For part 2 of the request there is evidence that relevant information is held.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to part 2 of the request that complies with the Freedom of Information Act ("the FOIA").
4. The public authority 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 Act and may be dealt with as a contempt of court.

#### Request and response

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5. On 25 September 2016, the complainant wrote to the Council and requested information in the following terms (numbering of parts added by the Commissioner):

- 1) *The BHSC Annual Report for 2015/16 states: "In order to be quorate there must be at least five board members present when board decisions are made." Has this been approved by BHCC as it allows, taken with the change to the Memorandum and Articles of Association as amended 28.1.15, for decisions to be taken without the involvement of one of the interested parties as initially determined by BHCC Cabinet of 24.9.08.*
  - 2) *"The company has appointed a managing agent to manage the properties on its behalf". Does this appointment need to be renewed on an annual basis or is the managing agent appointed for a fixed term running from the initial appointment in 2011. Was there competitive tendering for this contract?*
  - 3) *Two sub-committees of the board have been established both of which have a membership of 6 and a quorum of 3. They are Finance Sub-Committee and the Property and Management Sub-Committee. Could you please provide the membership of each sub-committee?*
6. The Council responded on 24 October 2016. It stated that no relevant information was held.
  7. Following an internal review the Council wrote to the complainant on 27 October 2016. It maintained its earlier response.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 8 November 2016 to complain about the way his request for information had been handled, and specifically contested the Council's position that no relevant information was held.
9. The Commissioner considers the scope of this case to be the determination of whether the Council holds relevant information.

### **Reasons for decision**

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

10. Section 1(1) of the 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 within the scope of the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

11. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of Information Tribunal decisions in applying the civil standard of the balance of probabilities.
12. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council holds relevant information.

### The Council's position

13. The Council has explained to the Commissioner that the request seeks information about BHSCH, which the Commissioner has previously considered the status of in decision notice FS50638884<sup>1</sup>. In that decision the Commissioner identified that BHSCH is not a public authority for the purposes of the FOIA.
14. In relation to part 1 and part 3 of the request the Council has confirmed that no recorded information is known to be held that falls within the scope of that specified. Whilst recorded information may be physically held by elected Council members in their role as trustees of BHSCH, this information will not be held for the Council's purposes (as defined by section 3 of the FOIA).
15. In relation to part 2 of the request that Council has informed the Commissioner that it considers relevant information to be held; this is because the management arrangements have been delegated to the Council through a Management Agreement. However, this relevant information is publically available on the Council's webpages and would therefore fall under the exemption provided by section 21.

### The Commissioner's conclusion

#### *Part 1 and part 3 of the request*

16. In respect of part 1 and part 3 of the request, the Commissioner has previously found that BHSCH is a formally incorporated and independent company; distinct from the Council and not a public authority for the purposes of the FOIA. Whilst elected members of the Council may hold relevant information in their role of Trustees of BHSCH, this is not information that is held by the Council for its own purposes.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/1625666/fs50638884.pdf>

17. Having considered the Council's position in conjunction with the previous findings contained in decision notice FS50638884, here is no evidence available to the Commissioner that indicates that relevant information is held by the Council for the purposes of the FOIA. On this basis the Commissioner finds that Council has complied with section 1(1).

*Part 2 of the request*

18. In respect of part 2 of the request, the Commissioner notes that the Council has confirmed that relevant information may be held, but may already be publically available through its webpages.
19. The Commissioner is mindful that the application of section 21 in such circumstances requires the public authority to first confirm that the information is held under section 1(1)(a), and secondly, direct the requestor to where they can reasonably access it. However, these actions have not been undertaken by the Council. On this basis the Commissioner does not consider that the Council has complied with section 1(1).

**Other matters**

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20. The Commissioner's public guidance on the application of section 21 can be found at:

<https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

## Right of appeal

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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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**