

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2017

Public Authority: Brighton and Hove City Council

Address: Kings House
Grand Avenue
Hove
BN3 2LS

Decision (including any steps ordered)

1. The complainant has requested information from Brighton and Hove City Council ("the Council") about heating and gas services contracts. The Council disclosed held information. The complainant disputed that further information was held.
2. The Commissioner's decision is that the Council has disclosed all held information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 19 December 2016, the complainant wrote to the Council and requested information in the following terms (numbering of parts added by the Commissioner):

- 1) *In the response to FOI 6129, dated 24.3.16, it was stated that the main difference between the previous contract and the new one as of 1.4.16 "is that this contract will cover the entire city." It is now stated that differences between the PH Jones/BHCC contract and that agreed between BHCC and K&T Heating Services (Lakehouse) include £90,000 in savings. Given that the transfer of staff under this contract for both incumbent Service Providers is subject to TUPE regulations, that K&T Heating have new uniforms, identification cards and branded vehicles, and that legal obligations for gas servicing, maintenance and installations have not changed where are the £90,000 in savings being made?*
- 2) *Could you also advise as to how BHCC ensures gas servicing and maintenance for whole blocks including those that contain properties for which the leases have been sold?*
- 3) *To what extent is K&T Heating involved in checking gas services and installations following and during Major Works?*
- 4) *What savings towards the £90,000 have been achieved during the first 6 months of the contract?*
5. The Council responded on 9 January 2017. It provided held information.
6. Following an internal review the Council wrote to the complainant on 9 February 2017 and provided further held information.

Scope of the case

7. The complainant contacted the Commissioner on 16 February 2017 to complain about the way his request for information had been handled. The complainant specifically contested that the Council had not provided the information which was requested.
8. The Commissioner considers the scope of this case to be the determination of whether the Council holds further recorded information.

Reasons for decision

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

9. 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 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.

10. 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.
11. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council holds further recorded information.

The complainant's position

12. The complainant disputes that the Council has not provided the information which has been requested.

The Council's position

13. The Council has informed the Commissioner that in response to the request, it has undertaken searches for recorded information which it considered relevant to it.
14. The Council has confirmed that all such information would be held electronically. Searches for relevant information have therefore been undertaken within:
 - The 'targeted budget management' ("TBM") folders held on a network drive in SharePoint;
 - The process maps relating to the Major Works process on the Bristol Estate, which are held on a shared drive;
 - The gas safety procedure which is held on a network drive in SharePoint.
15. Specific documents that have been searched for relevant information have included 'The Housing and New Homes committee reports and approvals' for the re-procurement of the new contract, and the TBM reports that were relevant to the gas contract.

The Commissioner's conclusion

16. The FOIA relates only to that information which is held in recorded form. Whilst requestors may phrase their request as a question, the public authority is only required to consider that recorded information that is held and which addresses the request. A public authority is not obligated to answer a question if this would mean creating new information or giving an opinion or judgement that is not already recorded.

17. Whilst it is recognised that the content of a public authority's response may be challenged by the requestor, who may receive information that is different to that which is expected, the Commissioner's determination is limited only to the provision of recorded information and not its content.
18. In the circumstances of this case the Council has informed the Commissioner of the searches for relevant recorded information it has undertaken. These searches have spanned the electronic folders and documents that relate to the subject matter of the request, and which contain the information that allows the request to be addressed.
19. Whilst the Commissioner recognises that the complainant does not consider that the Council has fulfilled the request, the Council has provided a clear explanation of the searches that underlay its responses. No evidence is available to the Commissioner that indicates that the Council's searches have been insufficient, or that further recorded information is held that addresses the request.
20. Having considered the above factors, the Commissioner finds that the Council has complied with section 1(1).

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Andrew White
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