

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 April 2019

Public Authority: Brighton and Hove City Council

Address: Hove Town Hall

Norton Road

Hove

BN3 3BQ

Decision (including any steps ordered)

1. The complainant has requested from Brighton and Hove City Council (the Council) information relating to a programme of capital investment to replace old boilers. The Council provided some information and for the remainder it stated that it deemed the request to be repeated and therefore refused to provide the information requested citing section 14(2) of the FOIA.
2. The Commissioner's decision is that the Council incorrectly applied section 14(2) of the FOIA when it refused to respond to the complainant's request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response addressing the first and second part of the information request of 14 August 2018 that does not rely on section 14(2).
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 Act and may be dealt with as a contempt of court.

Background information

5. The previous request was made by the complainant on 13 May 2017 and sought information relating to savings which the Council said that it had made following the introduction of a new gas servicing and maintenance contract. The information request was formulated as follows:

"The Policy, Resources & Growth Committee of the Council met on the 4th May 2017. One of the documents considered was "Targeted Budget Management (TBM) Provisional Outturn 2016/17"

It was reported that savings of £626,000 had been made under "Gas servicing and maintenance". These were referred to as "Contract efficiency savings relating to new gas contract which commenced on 1 April 2016."

In March 2016 B&HCC said the new contract included savings of £90,000 per annum

On 9 January 2017 it was stated that "The new contract is projected to make a significant budget saving in the first year of over £450,000". At the time you were unable to provide any information as to how these savings had been made.

Now that it is reported that £626,000 has been saved over 12 months could you provide information that explains how?

Do these reported savings take into account costs of, and associated with, the additional post to monitor the gas servicing & maintenance contract in the Property & Investment Team?

It was also reported that there has been an underspend of £309,000 in Utility costs

Will this be reflected in service charges to tenants?"

6. The Council provided an explanation of the savings it had made but the complainant argued that it had not supplied information which demonstrated how the savings stated by the Council had been obtained from the introduction of the new contract. The Council argued that it held no further information falling within the scope of the complainant's request of 13 May 2017

7. The Commissioner's decision notice¹ on this matter was issued on 13 August 2018 and found that the Council had provided all of the information it held falling within the scope of the request, and that it had therefore complied with the requirements of section 1(1)(b) of the Act.

Request and response

8. On 14 August 2018, the complainant wrote to the Council requesting information of the following description:

"...would be grateful if you could confirm that the programme of capital investment to replace old boilers is, or is not, part of the "new" contract that resulted in "Contract efficiency savings relating to the new gas contract which commenced on 1 April 2016."

Could you also provide any information held that identifies the approximate contribution made to the (revised) agreed savings of £596,000. In working out the "savings" has the expenditure on the replacement boilers been included in the calculations?

As it is agreed the "savings" figure should have been £596,000, based upon the little information provided under Freedom of Information legislation, could you advise if this revised figure has been reported to Members."

9. The Council provided a response on 14 August 2018, stating that it considered the request to be repetitious and citing section 14(2) of the FOIA, which allows public authorities to refuse requests that are repeated.
10. Remaining dissatisfied with the response received, on 15 August 2018 the complainant submitted a request for an internal review where he outlined his dissatisfaction and provided arguments in support of his position.
11. Following an internal review the Council wrote to the complainant on 5 September 2018. The Council upheld its original position in relation to the first and second part of the request, considering them repetitious. In relation to the third question the Council admitted that the question should have been answered and, therefore, provided the complainant with a response and an explanation on that matter.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259632/fs50687412.pdf>

Scope of the case

12. The complainant contacted the Commissioner on 7 September 2018 to complain about the way his request for information had been handled.
13. During the course of the Commissioner's investigation, the complainant confirmed that the question whether the "*revised figure has been reported to Members*" has been satisfactorily responded to.
14. The analysis which follows considers whether the Council was correct when it refused the remainder of the request as repetitious under section 14(2) of the FOIA.

Reasons for decision

Section 14(2) – repeated requests

15. Section 14(2) of the FOIA states that where an authority has previously complied with a request for information, made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person, unless a reasonable interval has elapsed.
16. As covered in the Commissioner's guidance on section 14(2)² A public authority may only apply section 14(2) where it has either previously;
 - provided the same requester with the information in response to an earlier FOIA request; or
 - confirmed the information is not held in response to an earlier FOIA request from the same requester.

The complainant's position

17. The complainant states that the information request that is the subject matter of this decision notice has not been properly addressed.
18. The complainant argued that the scope of the request of 14 August 2018 differed from the previous request and this matter was not considered in the Commissioner's previous investigation due to the fact the response to this request falls outside of the period considered by the Commissioner.

² <https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

19. The Complainant claims that the subject matter of the present information request, which is "capital investment to replace old boilers" cannot be deemed as covered by section 14(2) as it was not referred to prior to 6 August 2018.

The Council's position

20. The Commissioner wrote to the Council requesting a submission in respect of a number of questions relating to the allegations raised by the complainant. The questions were focused on the factors that the Council took into account when it decided to refuse the complainant's requests for information.
21. The Council stated that it agrees that as originally scoped, the two requests are not identical. However, it added that *"...as is usual with [complainant's name redacted], the original request response has been subject to multiple clarifications, the answers to which have shifted the scope of what was originally asked."*
22. The Council confirmed that its position stating that in the course of responding to the ongoing correspondence, *"...it has provided [complainant's name redacted] with information, which has had the effect that the current request is fundamentally similar."*
23. In its response to the Commissioner's queries regarding the interval between two requests, the Council stated that it consulted the Commissioner's guidance on section 14(2) and focused on whether any of the information caught within the scope of the request differs or has changed from that previously provided. In this respect, the Council explained that *"as the information within the scope of the request was collated in association with the 2016/17 budgetary and financial reporting cycle, the Council had not continued to accrue additional information on the subject. Accordingly, the reasonable interval test is not applicable in this instance."*

The Commissioner's conclusion

24. The Commissioner has examined the submissions and the arguments put forward by both parties. In addition, due to the nature of the specific provision cited by the Council, it was also required to examine the relevant submissions in the previous case (FS50687412) in order to conclude whether the Council was correct in its application.
25. *The first requirement* for the application of section 14(2) is to establish whether the parties in dispute are the same as in the previous request.

In this respect, the Commissioner can confirm that both requests are submitted by the same individual to the same public authority.

26. *The second requirement* is to establish whether the request is identical or substantially similar with the previous one. The Council admitted that the requests are not formulated in an identical manner, therefore the Commissioner's task was to establish whether they were substantially similar as per the requirements of section 14(2) of the FOIA.
27. The Commissioner considers that a request will be substantially similar to a previous request if a public authority would need to disclose substantially similar information to respond to the request, even if the wording of the request is not identical.
28. Having viewed the correspondence between the complainant and the Council in the course of handling both requests, the Commissioner notes that both requests seek information in relation to savings resulting from a gas servicing and maintenance contract.
29. As explained in paragraphs 5 to 7 of this decision notice, in the previous case, the Commissioner concluded that the Council had disclosed all the information it held within the scope of the earlier request.
30. The Commissioner notes that the present request originates from a piece of information which was disclosed to the complainant during the course of the Commissioner's investigation of the earlier request, which stated "*...the Council had embarked on a programme of capital investment to replace old boilers with new ones across a substantial portion of the Council's portfolio.*"
31. The Commissioner considers that the complainant's questions as formulated in the present information request are focused on this "*capital investment to replace boilers.*"
32. The Commissioner is aware that in the handling of the previous request, the Council provided information and subsequent explanations regarding the relation between the savings accrued and maintenance of boilers. However, the issue of the capital investment in replacement of boilers was not considered before.
33. Taking into consideration the above, the Commissioner's decision is that the Council incorrectly applied section 14(2) of the FOIA when it decided to refuse to respond to the request of 14 August 2018 considering it repetitious. At paragraph 3 above, it is now required to issue a fresh response to the request that does not rely on section 14(2).

Right of appeal

34. 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

35. 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.
36. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF**