

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 August 2019

Public Authority: Brighton and Hove City Council

Address: Bartholomew House
Bartholomew Square
Brighton
BN1 1JE

Decision (including any steps ordered)

1. The complainant has requested information relating to properties listed as Homes of Multiple Occupancy (HMO).
2. The Commissioner's decision is that Brighton & Hove City Council has correctly cited section 21(1) of the FOIA in response to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 5 March 2019, the complainant wrote to the public authority and requested information in the following terms:

"Can you please provide the addresses of all HMOs in Coldean Estate."

5. The public authority responded on 15 March 2019 citing section 21(1) of the FOIA and stating that the information was already reasonably accessible to the complainant. It provided a link to its website where the information could be found.
6. Following an internal review the public authority wrote to the complainant on 9 April 2019, upholding its original position.

Scope of the case

7. The complainant contacted the Commissioner on 18 April 2019 to complain about the way his request for information had been handled stating:

"I would like further investigation by the commissioner of my case as I feel strongly about the council has not acted reasonably over this request.

I was given a link from Brighton Council to follow but all you get is 2 lists of 2,276 HMO Licences all in random order, no order whatever.

I do not believe this information to be considered "reasonably accessible".

There are 22 wards in the City of Brighton & Hove, with 2,276 HMO Licences all in random order

I cannot believe that if a member of council wanted to know the information that I requested that they would have to sift through 2.276 licences to find an answer

These licences could be at least in Ward order, but better in Alphabetical street order.

The system as it is now would not be of any use to the older generation with limited knowledge of computers or do not have a computer at all. It would not be "reasonably accessible" to them."

8. The Commissioner wrote to the complainant on 29 July 2019 in an attempt to resolve the matter informally, and advised that her preliminary view was that the public authority had correctly cited section 21(1) of the FOIA.

9. The complainant replied to the Commissioner on 2 August 2019 advising that he wished to proceed with his complaint. He stated:

"..it is unreasonable to expect people, especially our generation the 80s & 90 year olds to have to trawl through such paperwork to find the answer.

If I wanted to know how many HMOs were in a particular road surely the council should know.

If I wanted to know how many HOMs [sic] were in road A and road B it I would have to check all the addresses on the list of 2000+ licences which are in no particular order, just jumbled up to find out. I am not interested in seeing the actual license.

Many old people, like me left school at the age of 14 or 15, we never had computers in those days and do not have the knowledge of computers that the authorities think we have."

10. The Commissioner therefore considers the scope of this case is to determine if the public authority has correctly cited section 21(1) of the FOIA in response to the request.

Reasons for decision

Section 21 – information reasonably accessible by other means

11. Section 21(1) says that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
12. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority, and it is reasonably accessible to the applicant by other means, it is not subject to the public interest test.
13. In this case, the complainant does not consider that the link provided is an appropriate response to his request because the information is not in any particular order. He also considers that not everyone will have access, or the skills, to search for the information they want.
14. The Commissioner accepts that information is reasonably accessible if the public authority:
 - Knows that the applicant has already found the information; or
 - Is able to precisely direct the applicant to the information. In this case the public authority has to be reasonably specific to ensure it is found without difficulty and not hidden within a mass of other information.
15. In its response to the complainant, the public authority provided details and instructions of how to access the information on its website.
16. Subsection (1) describes the fundamental principle underlying section 21, which is that, in order to be exempt, information must be reasonably accessible to the applicant. Unlike consideration of most other exemptions in FOIA, this allows a public authority to take the individual circumstances of the applicant into account. Note the importance of the phrase "*to the applicant*" – in effect a distinction is being made between information that is reasonably accessible to the particular applicant and information that is available to the general public. In order for section 21 to apply there should be another existing, clear mechanism by which

the particular applicant can reasonably access the information outside of FOIA. For example, some people will have access to certain information by means of other legislation, such as the access rights afforded to specific persons under the Access to Health Records Act 1990.

17. An assessment of whether the section 21 exemption can be successfully applied will be dependent on whether or not requested information is reasonably accessible to the particular applicant who requested it. However, this is not to say that all the specific circumstances of an individual requester can override the test of reasonable accessibility. For example, in cases where information is only available by inspection, it may still be possible to regard this information as being reasonably accessible to all applicants on the basis that it is reasonable that information is only available in a certain location. That is to say, although section 21 allows a public authority to consider the circumstances of the individual applicant, it is important to note that the use of the word "reasonable" qualifies what information can be considered to be "accessible" to the applicant.
18. It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public until it becomes aware of any particular circumstances or evidence to the contrary.
19. Even if the requested information is fully in the public domain, this does not mean that it is automatically exempt under section 21. Public authorities should consider an applicant's particular circumstances (if and when they become aware of them) when deciding whether publicly available information is in fact reasonably accessible to that individual. For example, the applicant may not have reasonable access to the internet or there may be special circumstances that mean that the applicant cannot access the information from the public source.
20. The Commissioner acknowledges the complainant's concerns about accessibility for other individuals, however that is not a matter that can be addressed in this decision notice. Should another individual request similar information from the Council, it would have to consider that individual's circumstance at the time of the request.
21. Furthermore, the Commissioner followed the Council's instructions and found the information with no difficulty. She also notes that the Council provided instructions on how to search the information.
22. The Commissioner considers that the information is reasonably accessible to the complainant via the instructions the Council provided. It is clear that the complainant was able to access the information as his

complaint relates specifically to the random nature of the information making it inaccessible rather than not being able to access it at all.

23. Despite the random nature of the information the Commissioner does not consider that it has prevented the complainant from accessing it.
24. Therefore, the public authority has correctly applied section 21(1) of the FOIA.

Right of appeal

25. 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@justice.gov.uk

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

26. 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.
27. 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

Pamela Clements
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