

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **5 September 202**

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 held by Brighton and Hove City Council (the council) relating to the 'Racial Literacy' training sessions delivered to council staff by an external provider.
2. Whilst the council released some information in response to part 1 of the request, it advised that certain other information was exempt from disclosure under section 43 – commercial interests, of the FOIA. The council also confirmed that it did not hold information relevant to parts 2 and 3 of the request.
3. At the internal review stage the council revised its position, releasing information that had previously been withheld under section 43 of the FOIA; however, it advised that it was now withholding some information under section 40 - personal data, of the FOIA.
4. The Commissioner is satisfied that, with the exception of a small amount of personal data that has been withheld under section 40 which the complainant did not contest, the council has, on the balance of probabilities, disclosed all the relevant information that was held at the time of the request.
5. However, the council has breached section 10(1) and section 17(1) of the FOIA, as it did not release all relevant information, or issue a refusal notice, within the statutory 20 working days.
6. The Commissioner does not require the council to take any action as a result of this decision notice.

Request and response

7. On 15 April 2021, the complainant wrote to the council and requested information in the following terms:

“1. Please send me the guidance documents, training materials, notes and written descriptions associated with BHCC commissioned anti-racism training for school Headteachers, 'BAME'/PoC staff and 2 equalities leads (i.e. the order and description of content that applied to recent online training sessions).

2. Also please send me the training materials, notes and written descriptions associated with recent school governor training on unconscious bias (i.e. the order and description of content that applied to recent online training sessions).

3. Please send me the guidance documents, training that has and will be provided to support schools on diversifying / decolonising the curriculum and on supporting pupils and students from racially minoritized backgrounds.

For clarity: (1) I refer to '101 Sessions' delivering:

- An understanding of 'race' and racism in the historical and contemporary context
- An understanding of structural/institutional racism, white privilege and a critical race theory approach
- An understanding of the experiences of children and young people (both in terms of how they learn 'race' and their racialised experiences)
- An overview of the practices in schools that can be examined and developed to address issues of racism and racialisation.
- An outline of the council's strategy

(2) I refer to Governor Support training (as per the BEEM event Jan 26th this year (<https://www.beem.org.uk/Event/128836>))

(3) And email from Sam Beal on all the provision mentioned above.”

8. On 11 June 2021, the council provided its response to the complainant, disclosing some information relevant to part 1 of the request. However, it advised that the training materials were to be withheld under section

43 of the FOIA. The council also advised that it did not hold information relevant to part 2 and part 3 of the request.

9. On 11 June 2021, the complainant contacted the council requesting an internal review in relation to the way it had handled part 1 of their request.
10. On 31 January 2022, the council provided the complainant with the outcome of the internal review. It stated that whilst it was satisfied that it had previously been correct to apply section 43 to the presentation slides that had been withheld in response to part 1 of the request, it had now decided that the public interest lay in favour of the disclosure of this information. However, the council confirmed that some personal information had now been withheld under section 40(2) of the FOIA.
11. The council also provided the complainant with a copy of the 'Resources List' which had been made available to participants at the end of the relevant training.

Scope of the case

12. The complainant contacted the Commissioner on 13 July 2021, raising concerns about the council's failure to respond to their request for an internal review.
13. On 2 February 2022, the complainant advised that whilst they had now received the council's internal review response, they remained dissatisfied with how part 1 of their request had been handled, believing that additional information is held that should have been released.
14. The Commissioner has not considered the council's initial decision to withhold information under section 43 of the FOIA within this decision notice. This is because the information that was subject to this exemption was released at the internal review stage.
15. The complainant has referred to the council's decision to withhold information under section 40 of the FOIA. They do not contest the redaction of information that would reveal the identity of a third party, such as names or images of individuals, but state that they would be concerned if transcripts or other recorded materials, or notes used to assist with the training, had been withheld under section 40 of the FOIA on the basis that they had been created by a third party.
16. The council has confirmed that it has only redacted information which directly identified an individual, such as a name, within the data which has been released to the complainant. It states that there is no

additional information that it holds that has been withheld under section 40 of the FOIA.

17. The Commissioner is satisfied on the basis of the assurances from the council that only minor redactions of material that identifies an individual have been made.
18. Given that the complainant does not contest these minor redactions (but was instead concerned that sets of data had been withheld), the Commissioner does not regard it to be necessary to make any formal decision in relation to the application of section 40 to that part of the information that has already been disclosed to the complainant
19. Whilst the complainant states that he believes that additional information is held directly by the council, he has also indicated that information which has been used to assist with the delivery of the training, such as presentation notes, may also be held by the consultant on behalf of the council.
20. The Commissioner will make a decision on the following:
 - Whether the council is relying on section 40 of the FOIA to withhold any information in addition to names (or images) of individuals, and if so, whether it is entitled to do so.
 - Whether, on the balance of probabilities, there is any other additional information that is held by, or on behalf of, the council that is relevant to part 1 of the complainant's request.

Reasons for decision

Section 3 – information held for the purposes of FOIA

21. Section 3(2) of the FOIA states that information is held by a public authority if –
 - a) it is held by the authority, otherwise than on behalf of another person, or
 - b) it is held by another person on behalf of the authority.
22. The council has advised that it commissioned a third party to provide certain online training sessions to staff. It states that the information used for this training was not produced directly for, or on behalf of, the council. It has explained that it had no control over the content or the author, and that it is a package that is delivered to a range of organisations.

23. The Commissioner is satisfied that the external consultant who presented the training sells a service, that being the delivery of their own training modules, to various organisations. They are not working for the council, or representing the council when conducting the training, and they have 'ownership' of the programme that they have created.
24. It is the Commissioner's opinion that information held solely by the external consultant about the delivery of their training is not information that is held on behalf of the council.
25. The council has already accepted that it does, itself, hold the training slides for the purposes of the FOIA, and whilst it initially indicated that this information was exempt from disclosure under section 43 of the FOIA, it revised its position at the internal review stage and released a copy to the complainant.
26. Whilst the Commissioner is satisfied that any information which is held solely by the consultant about the training is not information that is held on behalf of the council, the complainant has also stated that they believe that further information is held on the council's systems that falls within the scope of part 1 of their request.
27. The Commissioner will therefore go on to consider whether, on the balance of probabilities, any additional information to that previously identified is held by the council that would fall within the terms of part 1 of the complainant's request.

Section 1 of the FOIA– General right of access

28. Section 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 him.
29. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
30. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held, and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is held.

31. The complainant is concerned that they have not received all the information held that was relevant to their request. In particular, they state that they require copies of any audio or visual recordings and any written transcripts of the training that was given, and also any notes that may have been used by the training provider; the complainant believes that this is all information that is held directly by the council.
32. The Commissioner notes that the request did not explicitly refer to audio or visual recordings of the training. However, it is his opinion that if the council did record the presentation, this would form part of its training materials and hence would be within the scope of the request.
33. Whilst the council has questioned whether recordings of the training would fall within the scope of the request, it has advised that it has now conducted searches to establish if it did hold this information at the time that it received the request. The council has confirmed that it has not located any information in addition to that which has previously been identified and disclosed, save for redactions made under section 40(2).
34. When contacting the Commissioner, part of the complainant's reasoning suggested that individual attendees at the training may have taken recordings of it for their own purposes. However, the Commissioner's view is that recordings made by council employees for their own personal use would not be regarded to be information held by, or on behalf of, the council.
35. The council has stated that it did not record the delivery of the online training. It has also confirmed that it holds no additional information relating to the online training that was developed by the third party. It states that (aside from the minor personal data redactions) it has provided the complainant with all the information held that is relevant to the request.
36. The Commissioner has not been provided with any persuasive evidence to indicate that the council is not correct when it states that it does not hold any additional information that is relevant to the request.
37. In this instance, the Commissioner is satisfied on the balance of probabilities that the council has (with the exception of the minor redactions under section 40 of the FOIA relating to the names of third parties) released all the information held that is relevant to part 1 of the complainant's request.

Procedural matters

38. The council received the request on 16 April 2021, and provided its response on 11 June 2021.
39. Given that the council did not release some of the requested information within 20 working days of receipt of the request, and also failed to issue a refusal notice within the same time period, the Commissioner has found there to be breach of section 10(1), and section 17(1) of the FOIA.

Other matters

40. The complainant has provided the Commissioner with details of a number of events that took place following the submission of the request which may have led the council to hold additional information about the relevant online training delivered to its staff.
41. However, as previously stated within this decision notice, the Commissioner can only consider the circumstances relevant to the time of the request. Should the complainant believe that additional information is now held by the council, then he would recommend that they consider submitting a new request to the council for such information.
42. The Commissioner also finds it necessary to record within this decision notice the time taken by the council to provide its internal review response. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice¹ established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed.
43. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances. In no case should the internal review exceed 40 working days.

¹ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/614212/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926.pdf)
(publishing.service.gov.uk)

44. The complainant asked for an internal review on 11 June 2021. On 9 August 2021, the Commissioner then asked the council to provide its internal review response within 10 working days; however, it took until January 2022, for the council to issue its decision.
45. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, the council has not acted in accordance with the section 45 code. This is a matter that may be revisited should similar outcomes be noted by the Commissioner in any future cases relating to this council.

Right of appeal

46. 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

47. 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.
48. 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

Suzanne McKay
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