

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **8 August 2018**

Public Authority: **Brighton and Hove Council**
Kings House
Grand Avenue
Hove
East Sussex
BN3 2LS

Decision (including any steps ordered)

1. The complainant has requested information about action taken by Brighton and Hove Council as a result of the Supreme Court ruling regarding the 'bedroom tax'. The Council initially withheld the information, relying on section 21 – information reasonably accessible by other means and section 22 – future publication, and later released the information intended for future publication. However, the complainant believed the Council held more information than was disclosed.
2. The Commissioner's decision is that Brighton and Hove Council did hold further information and therefore breached sections 1(1)(b) and 10 of the FOIA by initially failing to supply the information it held falling within the scope of the request, and failing to respond to the request within the statutory time for compliance. She also finds that the Council was not entitled to rely on section 21 as the information sought was not reasonably accessible by other means.
3. As the Council has now provided all information held falling within the scope of the request, the Commissioner does not require it to take any steps to ensure compliance with the legislation.

Request and response

4. On 6 April 2017, the complainant wrote to Brighton and Hove Council and requested information in the following terms:

'On 24 March 2017 the DWP issued a revised Housing Benefit Circular A3/2017 with regard to the Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017 that cover important information concerning Local Authority implementation of the "Bedroom Tax"
This circular was unusual in that it contained an apology for issuing misleading original guidance that had been identified as such by the Supreme Court.

An "Urgent Bulletin" (HB U3/2016) was sent to Local Authorities on 9 November 2016 warning of this previous error by the DWP and that guidance would be issued in due course.

The main result of the Supreme Court Ruling is that a number of households who were judged not to meet the Qualifying conditions for an extra bedroom were discriminated against. This includes cases that were decided upon by "Decision Makers" of Brighton and Hove City Council.

Could you please inform me of what action B&HCC has taken to rectify the results of this initial incorrect guidance from the DWP to ensure that the Council meets the requirements of the Supreme Court Ruling?

Have those residents who have been incorrectly subject to the "Bedroom Tax" been contacted including those refused Discretionary Housing Payments and those forced to move home? What arrangements have been made to recompense those affected?

If nothing has yet been done what action is proposed?

Have Members of the Housing and New Homes Committee been informed of the effect of the Supreme Court Ruling?'

5. The Council responded on 11 May 2017. It stated that the information requested was exempt under section 22 of the FOIA - information intended for future publication, and section 21 - information accessible by other means, providing a link to the Council's Housing and New Homes Committee meeting minutes.
6. Following an internal review the Council wrote to the complainant on 13 June 2017. It upheld its application of section 22.

7. On 6 July 2017 the Council wrote to the complainant, providing information previously withheld under section 22.

Scope of the case

8. The complainant contacted the Commissioner on 6 July 2017 to complain about the way his request for information had been handled. He was particularly concerned about the response to his questions and the lack of detail / recorded information provided. He considered that the Council must have more information falling within the scope of his request.
9. The Commissioner considers the scope of the case to be whether the Council met its duties under section 1 of the FOIA by providing all the information it held falling within the scope of the request, and whether it was entitled to rely on section 21 for part of its response.

Reasons for decision

Section 1

10. Section 1 of the FOIA states that:

'Any person making a request for information to a public authority is entitled—

- a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- b) if that is the case, to have that information communicated to him.'*

11. The Commissioner notes that the information requests were worded as questions. Although the FOIA does not require an authority to answer direct questions rather than requests for recorded information, the Commissioner considers that requests framed as questions are valid requests if they describe the 'distinguishing characteristics' of the information sought. In this case the complainant asked questions about action the Council had taken or planned to take to address the Supreme Court 'Bedroom Tax' ruling and the Commissioner therefore considers the request to be for recorded information held on this matter.
12. The information provided to the complainant on 6 July 2017 provided answers to the complainant's first four questions of his request.

However the complainant considered that the information provided was incomplete and that the Council must have further recorded information about the processes the Council had used or planned to use to identify people affected by the ruling and address the previously incorrect application of the 'bedroom tax', such as implementation plans, minutes of meetings, protocols and formulae for compensation.

13. To ascertain if all information held within the scope of the request had been disclosed, the Commissioner asked the Council to provide information about the searches undertaken to identify the requested information. This included specific search terms used and the systems that were interrogated, as well as information about the 'process' it had referred to in its response of 6 July 2017.
14. There then followed a series of exchanges between the Commissioner, the Council and the complainant which resulted in further information being disclosed. However, this took a significant amount of time, and the Council also provided some information that was outside the scope of the request as it pre-dated the Supreme Court ruling.
15. The complainant also asked further questions as a result of information being disclosed, as he considered that either the question hadn't been properly answered, or that the information provided was unclear. The Commissioner agrees that the Council's responses were piecemeal and that the complainant's expectation about what the Council might hold were not unreasonable. However, based on the responses she received from the Council to the search questions and follow-up questions, by the end of the investigation she had no reason to believe that it held further information falling within the scope of the request.
16. The Commissioner finds that the Council breached section 1(1)(b) of the FOIA by failing to provide all the information falling within the scope of the complainant's request when it responded on 6 July 2017. The Commissioner reminds the Council of the need to consider all aspects of a FOIA request on receipt and undertake the necessary searches thoroughly in order to identify information falling within scope.

Section 10

17. Section 10(1) of the FOIA requires a public authority to respond to requests within 20 working days. The complainant made his request on 6 April 2017 and the Council provided its first response on 11 May 2017, which is 22 working days after receipt. The Commissioner therefore finds that the Council breached section 10(1) of the FOIA by providing relevant information outside of the statutory time for compliance.

Section 21

18. The Council applied section 21 – information accessible by other means – to the complainant’s question about whether housing committee members had been informed of the effects of the Supreme Court ruling, and signposted the complainant to minutes of meetings. A review of these minutes did not reveal the information requested (the Council confirmed during the investigation that its Housing and New Homes Committee had not been informed of the ruling and subsequent effects). The Commissioner reminds the Council of the need to properly check any signposting to other sources if it is relying on section 21 to ensure that the requested information can be found there.
19. Additionally, the Commissioner notes that the web address provided by the Council is for numerous sets of minutes with no indication of which might be relevant, so even if the information sought was contained in the minutes, the Commissioner does not consider the Council’s signposting as ‘reasonably accessible’ as required under section 21.
20. The Commissioner draws the Council’s attention to *Christopher Ames v Information Commissioner and the Cabinet Office (EA/2007/0110, 24 April 2008)*, where the applicant requested specific information relating to the executive summary of the Iraq Weapons of Mass Destruction dossier. Section 21 was applied by the public authority on the basis that the information was available on the Hutton Inquiry website. Although the Tribunal found that the information was not in fact on the website, it went on to make the point that should there have been any information on the website that answered the request, “it would not necessarily follow that the material was reasonably accessible to Mr Ames so as to allow the Cabinet Office to rely on section 21.” The Tribunal expressed doubt that, where a public authority is asked for a very specific piece of information which it holds, it would be legitimate for the authority to tell the applicant that the information can be found on a large website, even if the applicant is well informed. In other words, it is unlikely to be reasonably accessible to the applicant if a large amount of searching is required in order to locate the information. In such circumstances, the

authority would be expected to provide a precise link or some other direct reference as to where the information could actually be found.

21. The Commissioner therefore finds that the Council was not entitled to rely on section 21 in its response to this part of the request.

Right of appeal

22. 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

23. 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.
24. 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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