

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 July 2021

**Public Authority:** Brighton and Hove City Council

**Address:** Hove Town Hall  
Norton Road  
Hove  
BN3 3BQ

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Brighton and Hove City Council ("the Council") relating to a "Trans Inclusion Toolkit". By the date of this notice, the Council had not issued a substantive response to the request.
2. The Commissioner's decision is that the Council has failed complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Having confirmed that information is held within the scope of the request, either disclose the requested information or, issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
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.

## Request and response

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5. On 13 January 2021, the complainant wrote to the Council via the What Do They Know website and requested information in the following terms:

*"Please could you supply me with:*

*- A copy of the current draft of the Trans Inclusion Toolkit, version 4*

*- A list of the people and organisations who were invited to participate in the development of version 4 of the Toolkit and an indication of which of these actually did contribute to the process described in para 5.1 of the report to the Children, Young People & Skills Committee on 11/1/21 (<https://present.brighton-hove.gov.uk/doc...>)*

*- Copies of all internal and external correspondence regarding version 4 of the Toolkit*

*- Information on the criteria used to select people and organisations to invite to participate in past and future consultation on the Toolkit*

*- A copy of any equalities impact assessment undertaken by the council in relation to versions 1, 2, 3 or 4 of the Trans Inclusion Toolkit*

*- Any documents concerning the implications of updated government guidance on Sex & Relationships Education for the development of the Trans Inclusion Toolkit"*

6. The Council wrote to the complainant on 14 January 2021 to acknowledge the request. The Council wrote to the complainant again on 28 January 2021 to ask for further clarification on the request. It sought clarification specifically in relation to the final part of the request, stating, *"please confirm what is meant by this point. Is this reference to how the RSHE guidance has informed the review of the Trans Inclusion Schools Toolkit or something else?"*.

7. On 1 February 2021, the complainant wrote to the Council to provide clarification on the request. The complainant stated the following:

*"What I am interested in is any documents in which the Trans Inclusion Toolkit is discussed with reference to the government guidance for schools, issued in September 2020, on Planning the*

*relationships, sex and health education curriculum: <https://www.gov.uk/guidance/plan-your-re...>"*

8. The Council wrote to the complainant on 1 March 2021 and stated that it was extending the time to respond to the request in order to complete its public interest test.
9. The Council stated that it was considering the public interest test in line with section 10(3) of the FOIA. It stated that it was currently assessing the public interest test in relation to section 36 of the FOIA (prejudice to the effective conduct of public affairs) and section 22 of the FOIA (information intended for future publication). The Council stated that it intended to respond to the request in full by 30 March 2021.
10. On 30 March 2021, as no response had been issued, the complainant wrote to the Council to request an update on the status of the request. The complainant wrote to the Council again on 7 April 2021 to request an internal review.
11. The Council wrote to the complainant on 9 April 2021 and stated that it would not be conducting an internal review until it had issued its response to the request.
12. On 4 May 2021, the Council wrote to the complainant and said that it was working on the request and aimed to respond by 7 June 2021 but that, due Covid-19, its response may be further delayed due to staff absence or redeployment to key pandemic response roles. By the date of this notice, the Council had not issued a substantive response to the request.

### **Scope of the case**

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13. The complainant contacted the Commissioner 13 May 2021 to complain about the delay in the Council's consideration of the public interest test.
14. The Commissioner contacted the Council on 9 June 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
15. The Commissioner also contacted the complainant on 9 June 2021 to explain that the Council had been given 10 working days from that date within which to provide a response to their request.
16. The complainant has provided evidence that they have received an acknowledgement from the Council but, by the date of this notice, had not received a substantive response to their information request.

17. The scope of this notice and the following analysis is to consider whether the Council has complied with its obligations in relation to section 17 of the FOIA.

## Reasons for decision

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18. Section 1(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."*

19. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
20. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
21. Although the FOIA does not define what constitutes a reasonable time, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
22. In this case, the total time taken by the Council to respond to this request has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest test within a reasonable timeframe, the Council has not complied with section 17(3).
23. The Council is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

## Other Matters

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24. When a public authority requires additional time to consider the balance of the public interest in withholding relevant information, it must still issue a clear and unambiguous statement that relevant information is held.

## Right of appeal

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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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Sarah Clouston**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**