

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2024

Public Authority: Brighton and Hove City Council
Address: Hove Town Hall
Norton Road
Hove
BN3 3BQ

Decision (including any steps ordered)

1. The complainant requested information from Brighton and Hove City Council ("the Council") relating to the Valley Gardens bus gates.
2. The Commissioner's decision is that with the exception of information located by the Council during the course of his investigation, on the balance of probabilities the Council does not hold further information within the scope of the request. He also finds the Council breached section 10(1) (time for compliance) by failing to respond to the request within the statutory timeframe of 20 working days.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must either disclose the information located during the course of the Commissioner's investigation, or issue an appropriate refusal notice which complies with FOIA.
4. The Council must take these steps within 30 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

5. On 25 September 2023, the complainant wrote to the Council and requested information in the following terms:

"I wish to make a Freedom of Information request about the bus gates in the new Valley Gardens scheme.

- Please name all external bodies which get involved with inspecting or approving new bus gates like this, either at the design stage, or after installation. Please state their roles, in the design or approval process, inspecting sites, adjudicating on appeals, etc.
 - Please provide the full text of all reports that these bodies have submitted, relating to these bus gates. Please draw attention to any passages where they indicate the signage provisions 'go above and beyond', or words to that effect.
 - Where signage or road markings have been added or modified since the bus gates' initial installation, please itemise each individual new/revised sign/markings, and provide its installation date, along with a photo, video link, or other resource which shows what it looks like."
6. The Council responded on 2 November 2023 and provided the complainant with information within the scope of the request. However, it redacted some information citing section 40(2) (personal information) as its basis for doing so.
7. On 20 November 2023 the complainant requested an internal review. At the same time, they asked the Council to clarify parts of its response. The Council responded on 3 January 2024 and provided the complainant with further information to clarify its initial response to the request.
8. On 7 January 2024 the complainant wrote to the Council again to complain about its handling of the request. The Council provided the complainant with the outcome of its internal review on 2 February 2024 in which it provided the complainant with further information within the scope of the request.

Scope of the case

9. The complainant contacted the Commissioner on 22 January 2024 to complain about the way their request for information had been handled.

The complainant stated that they consider the Council to hold further information within the scope of their request specifically information relating to road markings.

10. Therefore, the Commissioner will consider whether the Council holds further information within the scope of the request.

Reasons for decision

11. In its submissions to the Commissioner, the Council explained that information relating to road works is held on the Highways Maintenance team's network drive under the relevant street and categorised by the month and year that the works were raised. Therefore, it has conducted searches of the Highways Maintenance team's network drive for information within the scope of the request using the search terms 'Valley Gardens', 'Marlborough Place', 'York Place' and 'A23'. The Council explained that it has also searched the Highways Maintenance Team's SharePoint site and the email inboxes of officers within the Highways Maintenance team using the same search terms.
12. The Council explained that during the course of the Commissioner's investigation it conducted further searches of the email inboxes of officers within the Highways Maintenance team for information relating to road markings using the name of the relevant contract manager as search terms. These searches located further information within the scope of the request, specifically three plans which show what specific road markings look like and where they will be located.
13. Based on the explanations provided by the Council, the Commissioner is satisfied that the Council has carried out reasonable searches for information within the scope of the request. He considers that the Council used appropriate and relevant search terms when conducting its searches.
14. However, the Commissioner notes that during the course of his investigation, the Council located further information within the scope of the request which has not been disclosed to the complainant. He considers that the Council should have either disclosed this information or issued a refusal notice.
15. The Commissioner's decision is that with the exception of the information located by the Council during the course of his investigation, on the balance of probabilities the Council does not hold further information within the scope of the request. He requires the Council to either disclose the further information located during the course of his investigation to the complainant or issue an appropriate refusal notice.

Procedural matters

Section 10 – Time for compliance

16. Section 1(1) of 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.”

17. Section 10(1) of 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”.

18. In this case, the complainant submitted their request for information to the Council on 25 September 2023 and the Council did not respond until 2 November 2024. Therefore, the Commissioner finds that the Council breached section 10(1) of FOIA by failing to respond to the request within 20 working days.

Right of appeal

19. 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

20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF