

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

### **Decision notice**

**Date:** 1 July 2024

**Public Authority:** Brighton & 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 relating to parking enforcement. Brighton & Hove City Council (the "Council") disclosed some information and confirmed that further information was not held. The complainant believes that the Council holds additional information.
2. The Commissioner's decision is that the Council has provided the complainant with all the relevant information that it holds.
3. The Commissioner does not require further steps.

## Request and response

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4. On 9 November 2023, the complainant wrote to Brighton & Hove City Council (the "Council") and requested a wide range of information relating to parking enforcement.
5. The Council responded on 28 November 2023. It provided some information, addressed some of the complainant's queries and confirmed that some information was not held.
6. Following an internal review the Council wrote to the complainant on 9 February 2024. It stated that it was maintaining its position.

## Scope of the case

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7. On 5 March 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The complainant confirmed that they wished the Commissioner to investigate the Council's response to the following two elements of their request (the Commissioner's numbering):
  - " (i) I believe that the Council has met none of its obligations under the freedom of information legislation in respect of my first information request: namely, for copies of the papers that touch upon the desirability or otherwise of the Council adopting a parking enforcement policy...., and
  - (ii) I believe that the Council has met none of its obligations under the freedom of information legislation in respect of my second information request: namely, for copies of the papers that touch upon the desirability or otherwise of the Council having a policy for the marking of dropped kerbs with white return lines...."
9. The Commissioner contacted the Council and directed it to address the complainant's concerns and, where relevant, to provide any further information held or to confirm that nothing further was held.
10. On 19 June 2024 the Council issued a new response to the complainant. In relation to (i), the Council's response stated:
  - "The council does not have a Parking Enforcement Policy. Enforcement officers have a training manual which sets out what enforcement officers need to produce in evidence to prove a contravention has taken place before issuing a PCN. Such as logging tyre valve positions to prove that a vehicle has not moved during a maximum stay period, photos, who is

exempt such as emergency vehicles etc. Enforcement officers are asked to use their own judgement as to whether a vehicle is parked in such a way as to constitute it being parked across a dropped kerb sufficiently for a PCN to be issued or not. But we don't have a policy saying for example if it's 10cm over then a PCN should be issued but if it's less it's not a contravention, as it could be a very wide dropped kerb with no impact on access, so every case has to be dealt with on its merits and we don't have a policy.

Enforcement officers are made aware of the legal principle of 'de minimis' in their training. This applies to any minor infringement of the regulations such as a vehicle with one wheel on a double yellow line, out of bay markings, slightly over a dropped kerb etc. The concept of 'de minimis' is a long-standing legal principle of a technicality that is so small that it doesn't warrant enforcement. It is not a policy that the council has devised but a principle of law. When appeals are made to the independent parking adjudicator, who are lawyers, they can review PCN cases and cancel them because they feel for example that the car is just parked a few centimetres over the yellow line/dropped kerb which is insufficient in their view for a Penalty Charge Notice to be upheld."

11. In relation to (ii), the Council's response stated:

"When there is a change to enforcement practices, these are discussed at committee and are publicly available on the Council's website such as [Item 28 Double parking and dropped footway enforcement \(brighton-hove.gov.uk\)](http://brighton-hove.gov.uk). The agenda, decision and minutes of the Environment, Transport & Sustainability Committee are publicly available via [Brighton & Hove City Council - Browse meetings - Environment, Transport & Sustainability Committee \(brighton-hove.gov.uk\)](http://Brighton & Hove City Council - Browse meetings - Environment, Transport & Sustainability Committee (brighton-hove.gov.uk)). The latest Parking Policies Update Report is publicly available via [Brighton & Hove City Council - Decision - Parking Policies Update Report \(brighton-hove.gov.uk\)](http://Brighton & Hove City Council - Decision - Parking Policies Update Report (brighton-hove.gov.uk))"

12. The complainant disputes the Council's position that it does not hold a Parking Enforcement Policy and they do not believe the Council has disclosed all the relevant held information.

## Reasons for decision

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### Section 1 - Information held

13. Section 1(1)(a) of FOIA provides that anyone making a request for information is entitled to be told whether a public authority holds the requested information. A public authority must therefore establish

whether it holds the requested information before going on to consider whether it may be disclosed.

14. The Council says that it does not hold any further requested information. The complainant disputes this. In such cases, the Commissioner will apply the normal civil standard of proof in determining whether, on the 'balance of probabilities,' the requested information is held. In deciding where the balance of probabilities lies, the Commissioner will consider the evidence and arguments of both parties, together with any other information as to why it is likely, or unlikely, that information is held.

### **The complainant's position**

15. The complainant has provided lengthy submissions which are primarily concerned with their concern that the Council has wrongly confirmed that it does not have a Parking Enforcement Policy. The complainant's submissions to the Commissioner also suggest that they disagree with the Council's approach in relation to specific parking enforcement matters.
16. The complainant has also raised concerns that the links the Council has provided to information published on its website do not address the focus of their request.

### **The Council's position**

17. The Council has confirmed that it does not have a Parking Enforcement Policy and has provided the complainant with a narrative explaining how enforcement officers carry out their functions in the absence of such a policy. It has also provided links to information on its website which relate to this.

### **The Commissioner's conclusions**

18. The Commissioner recognises that the complainant has genuine concerns about the Council's approach to parking enforcement. However, it is not the Commissioner's role to adjudicate on the question of whether the Council should have a formal policy or to otherwise comment on its approach to parking enforcement matters. These are matters which the complainant may wish to pursue with the Council outside of the FOIA.
19. Having considered the Council's explanations, the Commissioner considers that it is likely that, on the balance of probabilities, it has disclosed all held information falling within the scope of (i) and (ii) of the complainant's identified concerns. The Commissioner has also followed the web links provided by the Council to the complainant and he

considers that these direct the complainant to information which might address their concerns.

20. In view of the above the Commissioner has concluded that the Council has disclosed all the relevant information that it holds and complied with section 1.

## **Right of appeal**

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21. 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)

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**