



# Brighton & Hove City Council

## ACCESSING INFORMATION FREQUENTLY ASKED QUESTIONS (FAQs)

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# Subject Access Requests – SAR:

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## **1. What is personal data?**

Personal data is information that identifies a living individual, and which is computerised or is held in a highly-structured filing system. Personal data also includes expressions of opinion about the individual. Personal data is protected by the Data Protection Act 1998.

## **2. What is the DPA?**

The Data Protection Act 1998 (DPA) sets out the rules that organisations must abide by when they process people's personal data. The Data Protection Act applies to all organisations, not just public authorities like Brighton and Hove City Council. The Act states that anyone who processes personal information must comply with eight principles, which make sure that personal information is:

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate and up to date
- Not kept for longer than is necessary
- Processed in line with your rights
- Kept secure
- Not transferred to other countries without adequate protection

## **3. What is a Subject Access Request (SAR)?**

You have a right to access your personal data under the Data Protection Act 1998. You are required to make a request in writing, which is known as a Subject Access Request (SAR).

## **4. How does it differ from the Freedom of Information Act?**

The Freedom of Information (FOI) Act 2000 relates to accessing information from public authorities regarding the work they do and not about personal data i.e. a request for

information on the number of parking tickets distributed by BHCC. An FOI request should be directed to the [freedomofinformation@brighton-hove.gov.uk](mailto:freedomofinformation@brighton-hove.gov.uk).

## **5. How can I access my personal data via a SAR?**

As stated above, a SAR must be made in writing. This can be in the form of a letter, email or fax and does not need to specifically mention the act. A BHCC template is available to aid us in processing the SAR, but it is not mandatory. Requesters will need to provide their full name, date of birth, address and the information they are requesting as a minimum to enable us to process the request.

Requesters must provide proof of identity before any information is released; this is to ensure that the information is not inadvertently released to the wrong person. This can be in the form of a copy of a driving licence, passport, or recent utility bill (less than 3 months old).

Requesters are also required to pay a £10 administrative fee, payable by cheque or postal order to Brighton and Hove City Council or via the Brighton & Hove website. The fee is waived for individuals who are on benefits, if proof of entitlement is provided with the application.

## **6. As a council employee, what should I do if I receive a SAR from a member of the public?**

Send the SAR, along with any other documentation (proof of ID, cheque, postal order etc) to the [Information Governance Officer](#), Information Governance Team, ICT. The SAR will be processed and allocated to the relevant department to complete the request.

## **7. How long does it take?**

The legal requirement is for the request to be completed within 40 calendar days.

## **8. Will I get a copy of all my personal data that I have requested?**

Mostly yes; however, there are exemptions under the Data Protection Act that prevent certain records being released, or that require information to be redacted (removed). The main exemptions are as follows:

- Law enforcement - catching or prosecuting offenders.
- National security.
- Assessing or collection of taxes/duties.
- Adoption records and reports.
- Personal data about someone else, otherwise known as third party information.
- Information which may cause harm or distress to the requester.
- Information that would identify someone who has supplied data in confidence about you.
- Legal Professional Privilege.

In circumstances where data held on you relates to another person, the Council will need to seek their permission before this information can be released or the information will be redacted.

## **9. What if I want to access someone else's information?**

You only have right to access your own personal data under the Data Protection Act. You do not have a right of access personal data about any other individual e.g. your family, friends or neighbours, except in the following circumstances:

- You are a parent requesting information about a child under 16 that you have legal responsibility for; however, there is no automatic right to the data. If a child is old enough to give informed consent and understands the contents of the information, the Council will be guided by their wishes. In most cases children aged 12 and above are regarded as having sufficient maturity to respond to such requests but each case will be judged on its own merits. In all cases disclosure would only occur if it is in the best interests of the child.

- A solicitor is requesting information on behalf of a client - a signed authority form from the person concerned is required.
- An agent (i.e. a family member, friend or a charitable organisation) has written authorisation to act on behalf of the person.

## **10. If the Police approach us for information, under what circumstances should we provide it?**

There is an exemption under the Data Protection Act that can be applied if the police need some information to prevent or detect crime, or catch or prosecute a suspect. However, there are limits on the information that can be released. Any requests for disclosure must be forwarded to [Data Protection Mailbox](#).

## **11. What about records about deceased people?**

The Act only applies to personal information about a living individual. You may access information about deceased individuals through other legislation, please contact the [Data Protection Mailbox](#) for more information.

## **12. What about Data from pre-1997 before Brighton and Hove became a unitary authority?**

Some personal data relating back to when Brighton and Hove were administered by East Sussex County Council (ESCC) prior to 1997 may be held with ESCC and therefore a request may also need to be sent directly to the ESCC Data Protection team ([ESCC Data Protection Website](#)).

## **13. What about fostering and adoption records?**

Residents of Brighton and Hove requesting access to their adoption records must be made via the Fostering and Adoption Service, Brighton and Hove Council

([fostering.adoption@brighton-hove.gov.uk](mailto:fostering.adoption@brighton-hove.gov.uk), 01273 295444). Non-residents of Brighton and Hove must apply via their local authority.

Any person may request access to their own foster care records, whilst they were in care within Brighton and Hove, by making a regular subject access request, as per [question 5](#).

## **14. How do I appeal?**

If you are dissatisfied with information you have received, you can request a review, where the request and response is reviewed. Following that, if you remain dissatisfied with the Council's response, you are entitled to appeal the matter to the Information Commissioner's Office. The ICO is the national regulating agency for matters associated with data protection and may undertake to investigate on your behalf. Should you wish to avail yourself of this option, the ICO can be contacted in the following ways:

Website: <http://www.ico.org.uk>

Phone: 0303 123 1113

Post: Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **15. Where do I get help from within BHCC?**

Advice or assistance can be sought from [data.protection@brighton-hove.gov.uk](mailto:data.protection@brighton-hove.gov.uk).

# Freedom of Information – FOI:

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## **1. What is the Freedom of Information Act 2000?**

The Freedom of Information (FOI) Act 2001 provides a statutory right to access information from public authorities, including Central and Local Government, Parliament, NHS, schools, universities, the police and others.

## **2. How do I apply?**

An FOI request must be made in writing and can be accepted via email, letter, fax or through the Brighton and Hove website. The requester is **not** required to provide proof of identification or make a payment or specify the act in the request.

## **3. What are EIRs?**

Environmental Information Regulations (EIRs) are request made to public authorities requesting information regarding environmental data. The request is similar to an FOI, but specifically related to environmental issues and can be made in writing or verbally and must be completed within 20 working days. The reporting period may be extended to 40 working days if the information is particularly complex. An EIR request is processed by BHCC in the same was as an FOI request.

## **4. How does an FOI differ from a Data Protection Subject Access Request (SAR)?**

The Data Protection Act 1998 relates to accessing personal information from organisations, for example, a person wishing to access their housing tenancy file. A request for personal information via the Freedom of Information Act will be declined as a legal exemption; however, the request will be re-directed to the Information Governance Officer and it will be processed in accordance with the Data Protection Act.

## **5. How long does it take?**

An FOI request must be responded to within 20 working days, as specified in the act.

## 6. As a council employee, what should I do if I receive a request from a member of the public?

Forward any relating information you receive as soon as possible to the [Freedom of Information mailbox](#) or through the internal mail to the Information Compliance Officer, Information Governance Team, ICT. The request will be processed and distributed to the necessary team to compile the information.

## 7. What exemptions are there?

There are 23 exemptions which prevent information being released under the act. These exemptions fall within 2 categories – Absolute and Qualified exemptions.

Absolute exemptions prevent the information from being released without any further justification. Qualified exemptions can only be applied if it is within the public's interest to withhold the information.

The most frequent exemptions used by BHCC include:

### Absolute Exemptions – public interest test does not apply:

Section of the FOI Act	Exemption
S(2) 21	Information accessible by other means (e.g. in the Publication Scheme)
S(2) 32	Court records, and information held in relation to court proceedings
S(2) 40 (1)	Personal information – available under Data Protection Act
S(2) 41	Information provided in confidence
S(2) 44	Information whereby disclosure is prohibited by an enactment or would constitute contempt of court

### Qualified Exemptions – public interest test does apply:

Section of the FOI Act	Exemption
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S(2) 22	Information intended for future publication
S(2) 30	Investigations & proceedings conducted by public authorities
S(2) 36	Prejudice to effective conduct of public affairs
S(2) 38	Health & Safety
S(2) 39	Environmental information
S(2) 40 (2)	Personal information relating to a third party
S(2) 42	Legal professional privilege
S(2) 43	Commercial interests

## 8. How do I appeal?

If you are dissatisfied with information you have received, you can request an Internal Review for an independent review of the request. Following that, if you remain dissatisfied with the Council's response, you are entitled to appeal the matter to the Information Commissioner's Office. The ICO is the national regulating agency for matters associated with data protection and may undertake to investigate on your behalf. The ICO can be contacted in the following ways:

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## 9. Where do I get help from within BHCC?

Advice or assistance can be sought from the [freedomofinformation@brighton-hove.gov.uk](mailto:freedomofinformation@brighton-hove.gov.uk) mailbox.