

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 March 2017

Public Authority: Rotherham Metropolitan Borough Council
Address: Riverside House
Main Street
Rotherham
S60 1AE

Decision (including any steps ordered)

1. The complainant requested information relating to the Rotherham Development Plan.
2. Rotherham Metropolitan Borough Council (the Council) cited section 21 of the FOIA (information accessible to applicant by other means).
3. The Commissioner's decision is that section 21(1) is not engaged.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - issue a fresh response under the FOIA or EIR.
5. 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

6. On 21 August 2016, the complainant wrote to the Council and requested information in the following terms:

"The Rotherham Development Plan includes the concept of a Settlement Hierarchy, and within that, a group of villages is brigaded as 'Non-Green Belt Villages'. That collection of villages is scattered across the borough and shares a target number of houses to be developed.

Please provide the information showing how this concept came about, how a shared target was considered practical, what issues and objections were raised about it and how they were resolved. When the target number of homes for the borough was reduced from 17000 to 14371, targets for settlements were revised.

Please provide copies of (or links to) all of the information relating to the revision of the settlement targets, considerations, options and decisions which resulted in the revised targets”.

7. The Council responded on 14 September 2016. It explained that the settlement hierarchy “*was established by the adopted Core Strategy*”. It told the complainant that relevant material was available on its website and provided him with the link. Accordingly it refused to provide the requested information citing the following exemption:
 - section 21 (information accessible to applicant by other means).
8. Following an internal review the Council wrote to the complainant on 18 October 2016 maintaining its original position. The Council provided further detail and additional links to assist the complainant.

Scope of the case

9. Following earlier correspondence, on 14 November 2016 the complainant provided the Commissioner with the relevant information to complain about the way his request for information had been handled.
10. He disputed that the Council had pointed him to the information requested, telling the Commissioner:

“The FOI response provides a link to a library of 317 documents, several of which are well over 100 pages long.

I have already worked through many of these documents before making the request and it's unlikely that the information requested is present in these documents. I already know the 'result', I'm asking for information relating to how RMBC got to it and what the issues and considerations were”.

11. During the course of the Commissioner's investigation, the Council confirmed that while the requested information is accessible to the public it is not accessible via a single document.

12. It told the Commissioner:

“The information requested is wide-ranging and is held within a number of documents which are available on the Council's website”.

13. It also confirmed its view that the requested information is exempt by virtue of section 21.
14. The analysis below considers the Council's application of section 21 of the FOIA to the requested information.

Reasons for decision

Section 21 Information reasonably accessible to the applicant by other means

15. Section 21 of the FOIA provides that a public authority does not need to provide information under section 1 of the FOIA if that information is reasonably accessible to the applicant by other means.
16. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside of the FOIA. In addition, for section 21 to apply, it is necessary to consider whether the entirety of the information is reasonably accessible to the applicant.
17. Information is only reasonably accessible to the applicant if the public authority:
 - knows that the applicant has already found the information; or
 - is able to provide the applicant with precise directions to the information so that it can be found without difficulty.
18. The Commissioner's guidance¹ on the subject explains that, unlike consideration of most other exemptions in the FOIA, a public authority can take the individual circumstances of the applicant into account.
19. The Commissioner sought clarification from the Council in relation to its reasons for relying on section 21 of the FOIA including asking it to explain how the requested information would be accessed by the applicant.

Is the information reasonably accessible to the applicant?

¹ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

20. With respect to how it took the individual circumstances of the applicant into account in this case, the Council told the Commissioner:

"...the requestor has knowledge of the process in terms of the local plan and therefore it was reasonable for us to direct him to documents in the examination library and we did so to assist him in understanding the Council's approach".

Did the Council precisely direct the applicant to the requested information?

21. In order for the Council to be able to rely on the exemption it needed to be able to precisely direct the applicant to the requested information. The Commissioner therefore considered whether the Council gave the applicant sufficiently clear directions so that the requested information could be found without difficulty and not hidden within a mass of other information.

22. As part of its substantive submission to the Commissioner, the Council provided the Commissioner with an Appendix. The Council told the Commissioner:

"In order to assist further please see Appendix 1 attached, which breaks down the requestor's questions and provides relevant web links. The information provided at these links should provide the information the requestor is seeking".

23. An assessment of whether the section 21 exemption can be successfully applied will be dependent on whether or not requested information is reasonably accessible to the particular applicant who requested it. Of particular relevance in this case is that a public authority wishing to rely on section 21 must make it clear how the applicant can access the specific information he or she requested.

24. Having considered the matter, the Commissioner acknowledged that relevant information may be available on the Council website. She also recognised that the Council provided her with a detailed Appendix during the course of her investigation. However, she considered that, in its correspondence with the complainant, the Council did not specify which page or pages of the available website information contained information that falls within the scope of his request.

25. Taking into account all the circumstances of the case and the representations provided, the Commissioner has determined that section 21(1) is not engaged: the information cannot be considered to be reasonably accessible to the applicant as the Council did not precisely direct the applicant to the information requested.

Other matters

26. The request in this case is for information relating to the concept of a Settlement Hierarchy and the target number of houses to be developed.
27. Any public authority that is subject to the EIR must consider carefully the content of requested information in order to ensure that it handles a request under the correct regime: the EIR or FOIA. In light of the subject matter and wide range of the request, the Commissioner would draw the Council's attention to her published guidance².

² https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

Right of appeal

28. 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

29. 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.

30. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF