

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 February 2017

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to Rotherham Metropolitan District Council (RMBC)'s consultation process in relation to its borough plan. RMBC denied holding relevant information.
2. The complainant disputed RMBC's position with respect to some of the requested information.
3. The Commissioner's decision is that RMBC did not hold information within those parts of the request and has complied with its obligations under section 1(1) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### Request and response

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5. On 20 August 2016, the complainant wrote to RMBC and requested information in the following terms:

*"What proportion of adult residents in Todwick, and in Rotherham Borough have access to an internet connected computer at home, broken down by age group (whatever age groups may be available)?*

*What proportion of adult residents in Todwick and in Rotherham Borough have both access to an internet connected computer at home, and the IT skills required to access and use a complex*

*database, such as that used for the Rotherham planning process (including documents such as the 'Core Strategy' and 'Sites and Policies'), broken down by age group (whatever age groups may be available)?*

*How did RMBC decide that a predominantly internet/database based process did not disadvantage/disenfranchise older residents or other minority groups?*

*Given the size and complexity of the database and documents, what was done to optimise these for devices other than PCs (eg tablets, phones)?"*

6. RMBC responded on 14 September 2016. It denied holding some of the requested information and refused to provide the remainder citing the following exemption:

- section 21 information accessible to applicant by other means.

7. The complainant told RMBC:

*"The response to this Freedom of Information request deals with the first part of my question only.*

*I understand that other consultation methods were available, I didn't ask about that. I asked how RMBC decided that a predominantly internet/database based process did not disadvantage/disenfranchise older residents or other minority groups?*

*I also asked given the size and complexity of the database and documents, what was done to optimise these for devices other than PCs (eg tablets, phones)?"*

8. RMBC provided an internal review on 12 October 2016 in which it provided further detail in response to the request.

## **Scope of the case**

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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. In correspondence with the Commissioner, the complainant told her that RMBC's predominantly on-line process "*seems to have prevented a lot of older residents*" from participating.
11. He considered that RMBC had failed to provide information:  
  
*"...explaining how it decided that a predominantly internet/database based process did not disadvantage/disenfranchise older residents or other minority groups".*
12. He also told the Commissioner that RMBC had failed to provide information explaining what was done to optimise the documents for devices other than PCs.
13. In light of the above, the Commissioner wrote to the complainant advising that the scope of her investigation would be with respect to RMBC's handling of parts (3) and (4) of the request.
14. During the course of her investigation, RMBC confirmed that it did not hold the information requested at those parts of the request.
15. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
16. The analysis below considers whether, on the balance of probabilities, RMBC holds information relevant to parts (3) and (4) of the request.

## **Reasons for decision**

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### *Section 1 general right of access*

17. 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".*

18. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
19. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
20. In applying this test the Commissioner will consider:
  - the scope, quality, thoroughness and results of the searches; and
  - other explanations offered as to why the information is not held.
21. In its substantive response to the Commissioner, RMBC explained:

*"In replying to the original FOI request and subsequent review, officers consulted the Council's Online Services Manager".*
22. With respect to the information requested at part (3) of the request, RMBC told the complainant that the use of an internet-based consultation approach was in line with central Government guidelines to adopt a digital first approach.
23. In that regard, RMBC told the Commissioner:

*"The Council does not hold the information requested. There is no information relating to any decision as to whether the Council considered its web-based approach for Local Plan consultation disenfranchised any groups. Government regulations set out how the Council must publicise its Local Plan..... As the Council was following the regulations it had to meet in publicising the Local Plan, the question of whether this was an appropriate approach did not arise..."*
24. With respect to the information requested at part (4) of the request, RMBC explained that the Council's main website is accessible on tablet and mobile devices as well as desktop computers.
25. For example, it told the complainant:

*"The Council's website is optimised for mobile and tablet devices and the Council adopts, wherever possible, a mobile first approach. However, the Council is also required by legislation to publish comprehensive technical information in support of its Local Plan consultation. The Council uses summary information on its main*

*mobile-friendly website to help balance these often conflicting aims. The main webpages can provide an overview, with more detailed technical information available for download if required. The Council's main website, the Local Plan examination website and the Objective Online consultation website all work with desktop, laptop and tablet devices. Obviously with any website that hosts more complex information and PDF documents, the user experience on a mobile phone would be limited by the phone's screen size and capability".*

26. Similarly, in its submission to the Commissioner, RMBC confirmed that the Council's main website is accessible on tablet and mobile devices as well as desktop computers. RMBC further confirmed:

*" ... that the dedicated website hosting the information for the Local Plan Sites and Policies examination and the externally-provided Local Plan consultation website are both accessible by tablet and mobile devices. There was therefore no requirement to optimise the Local Plan material for tablet and mobile devices as the websites providing the material work with these devices".*

27. The Commissioner considers that RMBC contacted the relevant party to consider whether or not any information was held in respect of the request.
28. Having considered RMBC's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that on the balance of probabilities RMBC does not hold the requested information.

## Right of appeal

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29. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

30. 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.

31. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**