

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 December 2017

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

#### Decision (including any steps ordered)

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1. The complainant has requested emails from Rotherham Metropolitan Borough Council (the council) that resulted in a specific email being sent to him in September 2015. The council maintains that no information is held within the scope of this request.
2. The Commissioner's decision is that the council does not hold the requested information, and has therefore complied with section 1 of the FOIA. However, in responding to the initial request outside 20 working days, the Commissioner finds that the council has failed to comply with section 10 of the FOIA.

#### Request and response

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3. On 30 September 2016 the complainant made a four part request for information under the FOIA for specific email exchanges. A copy of the request is included in the annex to this decision notice.
4. The council responded on 1 November 2016 giving the request the reference FOI 740-16. In respect of parts 1-3 it detailed when the requested information had been provided previously, and gave the reference numbers for the requests where such information had been provided. With regard to point 4, it advised that to locate and retrieve the information would exceed the 18 hour limit specified in the Regulations, but that the council had previously provided him with some of the information falling within the scope.

5. The complainant requested an internal review on 23 December 2016. The council provided an internal review on 2 February 2017 in which it explained that an email the complainant referred to as falling within the scope of part 2 had been withheld as a result of human error. With regard to part 3, the council confirmed that following further searches, no information was held. For part 4, it provided some additional information following a thorough review for the information held and the information previously provided.

## Scope of the case

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6. The complainant initially contacted the Commissioner on 5 April 2017. He specified to the Commissioner that he was concerned that the council has not provided him with any information as to "*how David McWilliams received what on 15.9.15 he referred to as "feedback" from a so-called (but still unnamed) "independent expert".*" This is part 3 of the request as written in the annex.
7. The scope of this case therefore is to determine whether the council is correct when it says that no further information is held in respect of part 3 of the request.

## Reasons for decision

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### Section 1 – Information held

8. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
9. 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.
10. 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).
11. The Commissioner asked the council some specific questions about the searches it had undertaken for the information in question, and the reasons it was sure that it had provided the complainant with all the

information it held within the scope of this request on the matter of how David McWilliams received the feedback from the independent expert.

12. The council initially explained that David McWilliams received the feedback verbally from the Interim Deputy Director of Children's Services (Jean Imray), and that Ms Imray had previously received it by email. The council said that the complainant has been informed of this. The council confirmed that it has contacted David McWilliams regarding this request, and that both he and his secretary have carried out separate searches of their current and archive emails. It states that as the request specifically asked for email exchanges which led up to David McWilliams receiving the feedback, no information was found to answer the request.
13. The Commissioner asked how the requested information would be held and the council confirmed that the feedback was communicated verbally as part of an operational discussion, and this has not been recorded. It confirmed that no information was held which has since been destroyed or deleted.
14. The council copied its response on these matters to the complainant, and he then contacted the Commissioner to raise concerns about it, particularly with regard to how the information came to be in the email to him if it was communicated to David McWilliams verbally.
15. The Commissioner then sought further detail from the council on the matter of what information is held, and what searches or enquiries have been carried out. It explained that it interviewed David McWilliams about this matter on a number of occasions, including in the week prior to replying to the Commissioner, to try to establish how information from the appraisal came to be included in the email. The council explained that David McWilliams can recall meeting with Jean Imray regarding the matter, and that he was directed to respond to the complainant. It states that David McWilliams also remembers that he had to prepare the email quickly, but cannot recall whether the content was dictated to him, or whether he copied it from hard copy of the document in the possession of the Jean Imray (which has not been retained). The council has confirmed that Jean Imray no longer works for the council and therefore it has been unable to interview her regarding the matter.
16. In applying the civil standard of the balance of probabilities 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).
17. The complainant argued that in his view, on the balance of probabilities, it is likely that David McWilliams received the feedback extracts by email. He also argues that there are important public interest factors to

consider in this case concerning the Independent Inquiry into Child Sexual Exploitation in Rotherham, and also the “evidenced dishonesty of Jean Imray” and the “evidenced evasion and procrastination” of David McWilliams.

18. The Commissioner understands the complainant’s strength of feeling in this case. However, she points out that the request was narrow in asking specifically for emails exchanged on the matter of the feedback from the independent expert. She also notes that determining the likelihood of a public authority holding information is not subject to a public interest test. The question therefore to be answered in this decision notice is whether it is more likely than not that the requested information is held. In this regard, it must be stressed that the FOIA only entitles a requester to information that is held, it does not entitle a person to explanations unless such already exist as recorded information.
19. The Commissioner would also like to address the complainant’s concerns that the council should have contacted Jean Imray to ascertain her recollections on the matter. The council has stated that she no longer works for the council. It has also stated that the email in question was sent to the complainant some two years ago, although the Commissioner notes that at the time of the request, the email was a year old. The council has provided information to the Commissioner in order to support its position that the requested information is not held. The council’s explanations are based on the recollections of relevant staff members and have been provided to assist the complainant’s understanding of the matter. The Commissioner is not convinced that contacting an ex-member of staff on the matter would lead to uncovering emails that are held by the council and have not previously been identified. It may be the case that she will recall how the feedback information was communicated to David McWilliams, but the FOIA provides access to information that is recorded and held by a public authority, it is not a right to explanations and recollections.
20. Based on the information available in this case, from both the complainant and the council, on the balance of probabilities the Commissioner finds that the council does not hold any email exchanges to David McWilliams containing the expert appraisal.

### **Section 10 – time for compliance**

21. Section 10 of the FOIA states that a public authority must respond to a request promptly and in the event not later than the twentieth working day following the date of receipt.
22. From the evidence provided to the Commissioner it is evident the council did not respond to the complainant within the statutory timeframe in

respect of this request. The complainant submitted his request on 30 September 2016 but did not receive his response until 1 November 2016, which is over 20 working days.

## Right of appeal

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23. 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)

24. 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.
25. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex

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### FOI Request 30 September 2017

1. On Friday 9 September 2016, I emailed [freedomofinformation@rotherham.gov.uk](mailto:freedomofinformation@rotherham.gov.uk) and requested a copy of an email sent to Children and Young People's Service on 27 October 2015 for action.

Wayne Singleton (Access to Information Officer) emailed me on Tuesday 13 September 2016:

Dear Mr Harron,

I acknowledge receipt of your e-mail and will endeavour to send you a response to this as soon as possible.

Yours Sincerely

Please can I have the requested email at the very latest within 20 working days of my original request, so by Friday 7 October 2016.

I will also be grateful if an explanation is provided about why it has taken so long to provide a single email.

2. On 5 August 2015, Ian Thomas emailed the Commissioners:

"Dear Commissioners, Please find below an expert appraisal by ... of the document 'Voices of Despair Voices of Hope' produced by ... The authors are pressing the council for widespread publication, which was never the intention when copies of the publication were purchased earlier this year. Clearly, given the advice below we will be in creditably selective in how we use the publication. Please let me know if you need any further information. Regards, Ian".

Please can I have a copy of any email exchanges that involved Ian Thomas receiving the so-called expert appraisal.

If there were no email exchanges, please can an explanation be provided as to how Ian Thomas received the so-called expert appraisal.

3. On 15 September 2015, I received an email from David McWilliams which stated:

I know that much earlier on in the year we had discussions with ... about a more systematic approach to distribution through a planned workforce development programme. However, before I took this any further we sought independent, expert guidance on the content and after consideration Commissioner Newsam and Ian agreed to keep any further distribution limited to those already mentioned and or any individuals that we felt should be sighted on the publication. I thought you might find it helpful if I shared some of the feedback we received;

I referred to the email on 15.9.15 in the information I sent to the Information Commissioner's Office on 25.5.16 as Document 2.

Please can I have a copy of any email exchanges that led to David McWilliams receiving the so-called independent expert guidance.

If there were no email exchanges, please can an explanation be provided as to how David McWilliams received the so-called independent expert guidance.

4. On Tuesday 13 September 2016, I emailed Christine Pike, copying in Sharon Kemp and Dermot Pearson. I attached a letter for Ian Thomas. On Friday 16 September I forwarded this email to Kelly Harrison, as I was informed that Kelly Harrison was now PA to Ian Thomas.

In my email I wrote:

it would be very helpful if someone in CYPS could send me a copy of the email sent to CYPS on 27.10.15 and let me know who it was forwarded to within CYPS.

I am now making a formal FOI Request for a copy of all emails that were sent as a consequence of the email that was sent to Children and Young People's Service on 27 October 2015 for action, right up to the email I received on 7.12.15.