

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2018

Public Authority: Rotherham Metropolitan Borough Council

Address: Riverside House
Main Street
Rotherham
S60 1AEX

Decision (including any steps ordered)

1. The complainant has requested information created during the processing of a previous information request that he has made. Rotherham Metropolitan Borough Council ("the Council") disclosed held information. The complainant contested that further recorded information was held.
2. The Commissioner's decision is that, on the balance of probabilities, no further recorded information is held. However the Council breached section 10 by providing its response outside of the time for compliance.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 26 October 2015, the complainant wrote to the Council and requested information in the following terms:

Please provide the information generated when processing this FoI request (the metadata) which includes the internal notes, emails etc.
5. The Council responded on 16 May 2016. It refused to provide the held 'metadata' under section 12, but disclosed that information which it held in the form of documents.
6. On 26 October 2016, the complainant asked the Council to undertake an internal review.
7. Following an internal review the Council wrote to the complainant on 27 January 2017. It maintained that its earlier response was correct.

Scope of the case

8. The complainant contacted the Commissioner on 20 April 2017 to complain about the way his request for information had been handled, and specifically that further relevant information was held.
9. The complainant has informed the Commissioner that whilst he has used the term "*metadata*" in his request, he does not seek the information that this term typically relates to. Instead, he only seeks the documents (i.e. "*the internal emails, notes, etc*") that were created by the Council whilst processing his previous information request.
10. The Commissioner recognises that the request has been dealt with under the terms of the FOIA, and information disclosed on that basis. However, it is noted that some of the information (i.e. the requestor's identity) will represent personal data, and will have been disclosed to him under the terms of the Data Protection Act 1998.
11. The Commissioner considers the scope of the case to be the determination of whether further information is likely to be held that should be disclosed. This determination is limited to the terms of the FOIA.

Reasons for decision

Section 1(1) – General right of access to information

12. Section 1(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 relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
13. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
14. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council holds further recorded information that falls within the parameters of the request.

What information has been requested?

15. The request seeks information created in the processing of a previous request (which the complainant submitted on 16 September 2015) about a publication titled 'Voices of Despair, Voices of Hope', of which the complainant is a co-author. The Commissioner understands that both these requests have been dealt with by the Council under the same reference of 'FOI 600'.

The Council's position

16. The Council has informed the Commissioner that the service area involved in the original information request was the 'Children's & Young Peoples Directorate'. This directorate has therefore undertaken searches across both electronic and paper records in relation to the previous information request. The electronic search terms used included the publication title and its authors (including the complainant).
17. All the information subsequently identified was in electronic format. The Council has clarified that this information was recorded for the purposes of operational service delivery (i.e. the processing of the information request) and that it would not typically retain this information after any business need to do so has transpired, but has continued to do so due to ongoing matters raised by the complainant. The Council has confirmed that there is no statutory requirement upon it to otherwise retain the information.

The Commissioner's conclusion

18. The Commissioner has reviewed the information disclosed to the complainant, and has considered the searches undertaken by the Council.
19. It is noted that the information disclosed by the Council on 16 May 2016 was provided in the form of four appendices. Of these, only 'Appendix 2' is understood to contain the information sought by this request. Of the remaining three appendices, 'Appendix 1' contains an example of the metadata withheld under section 12, whilst 'Appendix 3' and 'Appendix 4' are understood to contain information that relates to the earlier information request of 16 September 2015. As such, the Commissioner has concluded that Appendix 2 represents the information disclosed in response to the request.
20. In respect of the searches undertaken by the Council, the Commissioner has noted that these have been undertaken by the directorate with direct involvement in, and knowledge of, the previous request. The electronic search terms used have included the title of the publication (which was the focus of the previous request) and the names of its co-authors, one of whom is the complainant in this case. It is reasonable for the Commissioner to consider that the Council has therefore applied logical search terms in searching for all recorded information that may be relevant to the request. In addition, the Council has also confirmed that the information continues to be held for business purposes, and that no relevant information is known to have been previously destroyed.
21. Having considered the above factors, and in the absence of any contradictory evidence, the Commissioner must conclude, on the balance of probabilities, that no further relevant information is likely to be held.

Section 10 – Time for compliance

22. Section 10(1) of the FOIA states that:

Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

23. In this case the Commissioner has identified that the Council responded outside of the time for compliance provided by section 10.

Other matters

Internal review

24. The Commissioner refers the Council to its obligations under the section 45 Code of Practice, which specifies that a public authority should provide the outcome of an internal review within a reasonable time. The Commissioner considers that, in most cases, this should take no longer than 20 working days, or 40 working days in exceptional circumstances.

The relevant access regime

25. The Commissioner notes that the Council's disclosure to the complainant includes his personal data, and that the Council does not clearly advise under which access regime this information has been provided (i.e. the FOIA or DPA).
26. The disclosure of personal data to an individual under the terms of the DPA is under significantly different terms to the disclosure of official information to the public under the FOIA, and a public authority should ensure that such disclosure is clearly explained. The Commissioner would therefore refer the Council to the published guidance on managing situations where an information request under the FOIA seeks the personal information of the requestor¹.

¹ <https://ico.org.uk/media/for-organisations/documents/1209/personal-data-of-both-the-requester-and-others-foi-eir.pdf>

Right of appeal

27. 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

28. 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.
29. 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
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