

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 22 February 2018

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

Decision (including any steps ordered)

1. The complainant has requested information in relation to the Rotherham Development Plan. Rotherham Metropolitan Borough Council (the council) provided web links to the information it holds. The complainant did not consider these links provided the information sought, whilst the council states that it does not hold any other information other than what it has provided.
2. The Commissioner's decision is that the council holds no further information falling within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 21 August 2016 the complainant made the following request to the council:

"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".

5. The Commissioner issued a decision notice¹, dated 30 March 2017, which found that section 21(1) of the FOIA was not engaged to this request. The decision notice determined that the information cannot be considered to be reasonably accessible as the council did not precisely direct the complainant to the information requested. The Commissioner ordered the council to issue a fresh response in that decision notice.
6. On 27 May 2017 the council provided its fresh response to the complainant, again relying on section 21 of the FOIA, but this time it broke the request down and provided 43 links along with page numbers/ chapters in an attempt to direct the complainant to the information.
7. The complainant requested an internal review on the 23 May 2017 as he was not satisfied with the response provided. The council asked for clarification as to what parts of his request he was not satisfied with and the complainant provided the council with his specific reasons on the 24 May 2017.
8. The council provided its internal review on the 11 July 2017 responding to each of the complainant's reasons, which it set out into 9 different points.
9. For point 1) the council provided the final link again as the initial one given was broken.
10. For points 2) to 8) the council stated no further information is held.
11. For point 9) the council advised the complainant that it had previously provided a link to the inspector's final report with the relevant paragraphs highlighted. The council also provided a link in order for the complainant to contact the Government Planning Inspector for information about the decision making process applied by the inspector.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2013861/fs50657152.pdf>

Scope of the case

12. The complainant contacted the Commissioner on 23 August 2017 to complain about the way his request for information had been handled.
13. The Commissioner considers the scope of the case is to firstly determine whether the information is environmental and if so, it will be considered under the EIR. If not, it will be considered under the FOIA.
14. The Commissioner will then go on to determine whether the council holds any further information falling within the scope of the request.

Reasons for decision

Is the requested information environmental?

15. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR. Regulation 2(1)(c) with (a) are relevant in this case. As the request is for measures, such as (c) *"policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect..."* (a) *"the state of the elements of the environment, such as air atmosphere, water, soil, land, landscape and natural sites..."*
16. The Commissioner notes that the request is in relation to the amount of homes to be developed and therefore the Commissioner is satisfied that this falls under *"measures"* which would have an effect on the land in that it would be developed.
17. The Commissioner will therefore consider this case under the EIR as it is a request for environmental information.

Regulation 5(1) of the EIR – Information held/ not held

18. Regulation 5(1) of the EIR states that:

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."

19. 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. The Commissioner must decide whether on the balance of probabilities the public authority holds any further information which falls within the scope of the request (or was held at the time of the request).

20. As stated above, the council set out the internal review response into 9 points, the Commissioner has adopted this same breakdown within her own analysis.

Point 1)

21. The council provided an alternative link once the complainant had noted that the initial link did not work. On reviewing this alternative link, the complainant states that it takes him to council minutes for 10 September 2014 and whilst there is some discussion of the Rotherham Plan, there is no information relevant to the request.
22. The Commissioner asked the council why it considered this link to be relevant to the complainant's request.
23. The Council has explained to the Commissioner that the complainant's request is about 'the core strategy housing target and its distribution among settlements'. The council resolved to adopt the Core Strategy in September 2014, which incorporates the housing targets and its distribution among settlements. It has said to the Commissioner that this is why the link to this council decision was provided.
24. In addition, the council has explained to the Commissioner that there were many committee reports on the local plan during its preparation and its committee minute's system is publically accessible and these were provided to the complainant following the internal review.

Point 2)

25. The complainant has told the Commissioner that the council reference (Core Strategy 2013-20128, Section 5.2) simply points him back to one of the 'dots'. He knows that this was the current position at the time, but what he is wanting to know is "*how did it get to here from the previously stated 'current position'?*" The complainant considers the council holds information which explains why the information at each point is changed.
26. The council has responded to the Commissioner on this stating that the council's role is to consult on the draft plan and gather information following consultation. The plan was redrafted on a number of occasions and further consultations were carried out thereafter, before the final decision making stage.

27. The council has advised the Commissioner that this final decision making stage is not carried out by the council. The Secretary of State from the Department of Communities and Local Government (the DCLG) appoints an Inspector from the Planning Inspectorate to carry out an 'independent examination' of the draft plan considering the information gathered through consultation.
28. The inspector produced a final report which outlined the final decisions, e.g. approval of the plan with some changes. A copy of this report was provided to the complainant.
29. The council has confirmed to the Commissioner that it does not have access to the detail behind the Inspector's decision, only the information gathered through public consultation and the material produced for the independent examination, which the complainant has been provided with via the appropriate links.
30. The council has further explained to the Commissioner that only after the Inspector has approved the plan can the proposal go to a Full Council meeting to agree to adopt the policy. It points out that in the internal review, the council advised the complainant that no further information is held by the council, but the Inspector acting on behalf of the Secretary of State for the DCLG who made the decisions outlined in the final report may hold information and suggested he contact them directly.

Point 3)

31. The complainant has told the Commissioner that none of the links provided for this part relates to the issues at all. He states that there is no indication of when, why or how, what was originally 30+ villages with individually assessed development needs, was transformed to become a collective/shared 'target' of the borough target between just five villages (the other 25 villages being stripped out).
32. The council has advised the Commissioner that, as outlined in point 2, the complainant's request for information relating to the decision in the final Inspector's report would not be directly held by the council.
33. It has stated to the Commissioner that throughout the public consultation stages there would have been indirect discussion, hence why all the links supporting such communication/meetings were provided to the complainant. Again the council states that it has recommended that the complainant contacts the Inspector to determine if the DCLG holds this specific information.

Points 4), 5) and 9)

34. For these points, the complainant has told the Commissioner that he considers there would be a record of a key decision which would underpin all sites and policy activity since mid-2014.
35. The council has responded to the Commissioner on this point stating that the key decision that the complainant refers to (to determine the Core Strategy housing target and its distribution between settlements) was taken by the Inspector.
36. The council has told the Commissioner that it is not aware of the Inspectors reasoning or justification for this decision on settlement targets, that than what was provided in the final report. The Inspectors report being a public document and the link to it was provided to the complainant.
37. The council has stated to the Commissioner that is was a participant in the independent examination of the Core Strategy, as were other interested parties. The council made representations on the Inspector's proposed increase to the housing target and other parties did likewise. The inspector then held a subsequent hearing session in May 2014 to consider these representations. After this stage the examination process allows no further opportunity for dialogue with the Inspector.
38. The council says it then received the final report in June 2014 and links to the relevant documents from this process have previously been provided to the complainant.
39. With regards to the complainant's request for information regarding the "agreement, decision or even discussion" on the issue of settlement targets. The council has told the Commissioner that, as explained above, the council has only the Inspectors report to read at face value and any inference as to the reasoning behind the decision on this issue would be supposition. Again, this is why the council directed the complainant to the Planning Inspectorate for information on the Inspector's decision.

Point 6), 7) and 8)

40. The complainant has told the Commissioner that the council's internal review responses to these points only refer him back to responses already provided to previous requests recorded by the council under references 524-16 and 1367-67. He does not consider that this provides what he has requested.
41. The council has told the Commissioner that it holds no further information on this or the other points above other than that what has previously been provided. Its only other recommendation is still for the

complainant to contact the DCLG and Local Government Planning Inspectorate.

42. As well as asking the council to respond to the above specific points, the Commissioner has asked the council explain the types of searches carried out in order to establish what other information it may hold relevant to the request.
43. The council has advised the Commissioner that it reviewed the documentary evidence base supporting the Core Strategy. The searches were carried out by a senior planner, who was the lead officer on the Core Strategy, and reviewed by the team manager.
44. The council has told the Commissioner that these two officers have had a long standing involvement in the Core Strategy and so were best placed to carry out a comprehensive search for any information held. Only the Planning Department were contacted for any relevant information as this is where the information, if held, would be located.
45. The council has stated to the Commissioner that the information would be held electronically on the council's network and it has confirmed that no information relevant to the scope of the request has been deleted or destroyed. Also, it has advised her that no keyword searches were carried out because the officers reviewing this request have extensive knowledge of the local plan process and the documentary evidence so was able to highlight the relevant documents without the need for search terms.
46. The council has told the Commissioner that it has to produce sufficient evidence, as a general requirement, to support its local plan documents at examination. This information is expected to be made available to meet the requirements of the regulations governing local plan drafting, consultation, examination and adoption. The council's considers that this has been done accordingly and is publically available on the council's website. The links having been sent to the complainant.
47. The council maintains that all the information it holds with regards to this request has been provided to the complainant.
48. On review of the above, the Commissioner sees that the council has provided more focused links for the complainant, following the Commissioner's 30 March 2017 decision notice, in order to try and satisfy the request. However, the complainant does not consider the links to this information provides what he has requested.
49. The council states that this is all it holds with regards to the request and on reviewing the council's reasons why it provided the links it has, and that it used a senior officer and manager involved in the Core Strategy,

the Commissioner is satisfied with why the council provided the information it has and that the council has carried out relevant searches with the most relevant officers.

50. The council has also explained that the DCLG and Local Government Planning Inspectorate may hold further information that could fall within the complainant's request, due to the council not making the final decisions or being privy to the inspector's reasons for decisions made. The council has recommended that the complainant contacts those authorities directly as they may hold this further detail he is after.
51. The council's explanations appear reasonable to the Commissioner as to why no further information is held, other than what has been provided. Therefore the Commissioner finds that, on the balance of probabilities, the council holds no further information falling within the scope of the request.

Right of appeal

52. 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

53. 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.
54. 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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