

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** **6 September 2021**

**Public Authority:** **Rotherham Metropolitan Borough Council**

**Address:** **Riverside House  
Main Street  
Rotherham  
S60 1AE**

#### **Decision (including any steps ordered)**

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1. The complainant has requested from Rotherham Metropolitan Borough Council information regarding statements made to the press. The council denied that the information was held.
2. The Commissioner's decision is that, on the balance of probabilities, Rotherham Metropolitan Borough Council did not hold the requested information at the time of the request.
3. The Commissioner does not require any steps.

## Request and response

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4. On 29 July 2020 the complainant wrote to Rotherham Metropolitan Borough Council ('the council') and requested information in the following terms:

*"Please can I have a copy of any statements made to the Press/Media related to the Media Statement from [redacted] on Thursday 30 July 2020.*

*It will help provide clarity to the media if [the chief executive] quickly provides an answer to [redacted]'s question on Wednesday 29 July:*

*"Please can you explain how a Star article published at 5 am on Friday 2.9.16 stated: "The Star has spoken to four people who say they have raised concerns .... two of the three people who have made official complaints and two more who say they are in the process of doing so.""*

5. The council responded on 7 August 2020 and denied holding the requested information:

*"The Council cannot definitively state whether discussions were or were not held on that specific date. All we can advise is that there is no recorded information held."*

6. The complainant requested an internal review on 7 August 2020.

7. Following an internal review the council wrote to the complainant on 23 August 2020 stating that the original position was upheld. However it also advised that after the internal review request date of 7 August 2020:

*"the Council has been contacted by an external party. This information is the record of an email sent by the Council (Communications Team) to the press"*

8. The council provided the complainant with a copy of the email, dated 23 August 2016, with the sender and recipient details redacted on the basis of section 40(2) (personal information). The redacted information was latterly provided to the complainant in response to a separate FOIA request.

9. The council provided further explanation of its position to the complainant:

*"The external source confirms that this single sentence is the extent of any press release provided. The external source confirms that no other statement, or details, were provided, just that single statement..*

*...The results of the search showed that the email had not been missed in any previous search; it was simply not held. Again, this leads to me to conclude that the original response, based on information held at the time, was accurate."*

## **Scope of the case**

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10. The complainant contacted the Commissioner 9 October 2020 to complain about the way his request for information had been handled. The complainant stated that the council had either suppressed information that was held at the time of the request, or had deleted the information.
11. The allegation of deleting records has been considered separately and is outside of the scope of this decision notice (see case background below).
12. The following analysis covers whether, on the balance of probabilities, the council failed to disclose information that was held at the time of the request.

### Case Background

13. The Commissioner gave consideration to the section 77 allegation (the offence of altering or deleting records with intent to prevent disclosure) and found that no action was required due to insufficient evidence. The section 77 consideration does not form part of this decision notice, it is provided as background information.

## **Reasons for decision**

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### **Section 1 general right of access**

14. Section 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."*

15. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that 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.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
17. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the council and other information or explanation offered by the council which is relevant to her determination.

#### *The complainant's view*

18. The complainant states that there has been a concerted campaign by officers of the council to prevent access to the requested information.
19. The complainant received information from a source external to the council, who stated that they had a copy of the requested information, being an email from the council to the press.
20. The complainant states that the email is evidence that the council's response had missed a communication. They state that this is further evidence of how the council is withholding information about a range of matters.

#### *The council's response*

21. All press and media contact is made by the Communications Team. Therefore searches were undertaken by that team to see if any contact had been made with the media in relation to the scope of the request.
22. The relevant dates and subject matter of the request were used as the basis for searches. Searches were carried out on all relevant record stores which includes a database and email systems. The council confirmed that all records are held in electronic format.
23. The council confirmed that no records were deleted following receipt of the information request.

24. The emails in question were exchanged in 2016, being between a former council employee, who left in February 2018, and an external journalist. The email account was deleted 3 months after the employee's departure, which is in accordance with council policy. The deletion of the account in 2018 included the emails in scope of this request.
25. The council received a copy of the 2016 emails, sent by the council to the press, from an external source on 28 August 2020. This is after the response was issued to the complainant.
26. On receipt of the 2016 emails, the council undertook a further search, using more specific terms from the emails, to ensure that information was not held elsewhere. No information was identified, which corroborated the council's stated position that no information was held at the time of the response to the information request.
27. However the council confirmed to the complainant, as part of the internal review, that the information had been received, also providing extracts from the emails.

### *Conclusion*

28. The Commissioner has considered the council's position in conjunction with the request and the information that was provided to the complainant following the internal review request.
29. There is no contradictory evidence available to the Commissioner which indicates that the council's position is wrong.
30. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that at the time of the request, the council did not hold any recorded information falling within the scope of the request.
31. On this basis the Commissioner has concluded, on the balance of probabilities, that the disclosed information was not held at the time of the request and no further information was held which was in scope of the request.

## Right of appeal

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32. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

33. 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.
34. 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 .....**

**Janet Wyles**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**