

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2022

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

Decision (including any steps ordered)

1. The complainant requested copies of all communications relating to a particular email that they had sent to Rotherham Metropolitan Borough Council (the Council). The Council initially withheld all the information under section 36(2)(c) (prejudice to the effective conduct of public affairs). During the Commissioner's investigation the Council disclosed the information held relevant to the request, subject to some personal data being redacted under section 40(2) (personal data). The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further recorded information other than that which it has disclosed and the information withheld under section 40(2). The Commissioner does not require any steps to be taken.

Request and response

2. On 30 July 2021, the complainant wrote to the Council and requested information in the following terms:

"This Right Of Access Request - Freedom Of Information Act (RAR-FOIA) Request is for a copy of all the communications that arose as a consequence of my email to officer [name redacted] and then my email to Corporate Comms on 31.7.20.

Please follow any email trail arising from my two emails.

I am requesting that if any telephone conversations took place the following are provided:

the names and positions of the parties in any telephone conversations;
the dates and times of any telephone conversations;
the duration of any telephone conversations.

Also, if any texts were sent please can copies of these be provided”.

3. Following an internal review, the Council wrote to the complainant on 15 October 2021 and confirmed that it considered the information requested to be exempt under section 36(2)(c) of the FOIA.

Scope of the case

4. The complainant contacted the Commissioner on 9 November 2021 to complain about the way their request for information had been handled.
5. During the course of the Commissioner’s investigation, the Council withdrew reliance on section 36(2)(c) and disclosed the information held relevant to the request, subject to some personal data being redacted under section 40(2) of the FOIA.
6. The complainant did not challenge the Council’s reliance on section 40(2), but queried whether the Council held additional information relevant to the request.
7. The following analysis considers whether the Council holds any further information relevant to the request other than that which it has disclosed, and the information withheld under section 40(2) of the FOIA.

Background

8. In 2014 the Independent Inquiry into Child Sexual Exploitation in Rotherham, also known as the Jay report, estimated that approximately 1400 children were sexually exploited in Rotherham during the period of 1997 to 2013.
9. In 2015 the Council reversed a decision it had previously made to distribute 1,500 copies of a booklet called “Voices of Despair, Voices of Hope”, a collection of child sexual exploitation survivors’ stories.
10. The complainant has made a number of requests for information relating to the reversal of the decision.

11. The request in this case refers to communications which arose as a result of an email which the complainant initially sent to a named officer at the Council on 31 July 2020 and then forwarded to the Council's Corporate Communications Department.

Reasons for decision

Section 1 – general right of access

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

The complainant's position

14. The complainant has not submitted any specific reasons as to why they consider the information requested in this particular case is/should be held by the Council.

The Council's position

15. In its initial response to the request the Council provided details of the searches which were undertaken to identify all the information held relevant to the request. It confirmed that searches of the Council's corporate email system were undertaken for a three month time period from the date of the email in question, ie from 30 July to 30 October 2020. The terms used for these searches were the email address of the officer who was the recipient of the original email, the corporate communications email address (the mailbox that the complainant forwarded their email to) and the complainant's surname. As these terms were included in the original emails, any searches would have identified any forwarded emails associated with the initial email.
16. The Council also confirmed that it did not routinely record telephone conversations unless they are within a frontline/customer facing service. As such no information was held in relation to telephone conversations

falling within the scope of the request. The Council also confirmed that no text messages were held relating to the request.

17. When the Council disclosed the information requested during the Commissioner's investigation it again confirmed that, although one of the email communications referred to a text having been sent to its Chief Executive Officer, appropriate checks and searches had been undertaken at the time of the initial request and no text messages were found. The Council also confirmed that, apart from the information disclosed, its original response in respect of any other information held was accurate ie that no notes of telephone calls/conversations and no text messages were held relevant to the request.

The Commissioner's conclusion

18. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
19. The Commissioner understands why the complainant has reason to believe that the information was held as the email in question clearly refers to a text message being sent at the time, ie around 30 July 2020. However, the Commissioner notes that the Council has undertaken appropriate searches in order to locate any text messages and none were identified.
20. Based on the evidence available to him, the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. As a result, the Commissioner's decision is that, on the balance of probabilities, there is no additional recorded information held by the Council that is relevant to the complainant's request

Right of appeal

21. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF