

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

### **Decision notice**

**Date:** 30 November 2022

**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 ('the council'), information relied upon by a councillor in a statement he made to the council regarding the ethnicity of the perpetrators of child sexual exploitation (CSE). The complainant also requested specific statistical data in respect of this. The complainant also sought metadata relating to that request.
2. The council said that no information is held regarding the councillor's statement, and that the complainant should remake their request to the Police for the statistical data. It disclosed information associated with the request for metadata.
3. The Commissioner's decision is that, on the balance of probabilities, no information is held by the council falling within the scope of the complainant's request for information regarding the councillors statement. He has also decided that the council has responded to the request for metadata. However, the Commissioner has decided that the council did not respond to the request for statistical data as required by section 1 of FOIA.

- The Commissioner requires the council to issue a fresh response to the complainant's request for statistical data which complies with section 1 of FOIA. The response should confirm or deny whether the requested information is held. If information is held, it should either be disclosed, or the council should issue a refusal notice which complies with section 17 FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## **Request and response**

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### Requests 1 and 2.

5. On 11 November 2021 the complainant wrote to the council and requested information in the following terms:

"Today, 11.11.21 , [name of councillor redacted by the ICO] said:

"But what we see today is that perpetrators of CSE in Rotherham are White, British men."

This refers to CSE cases since the Jay Report.

There is no doubt, and it is not contested, white British men have been found guilty of child sex exploitation.

However, the statement, taken as a standalone remark, may give a wrong impression that since the Jay report that only white British men are perpetrators of child sex exploitation in Rotherham.

As horrendous as CSE is, and notwithstanding that the publicised demographic group understandably attracted racist and Islamophobic publicity, the decent people of Rotherham, and the victims and survivors of CSE, are entitled to know the evidence upon which [name of councillor redacted by the ICO] made his statement.

Accordingly, will you please produce the documents supporting the statement of [name of councillor redacted by the ICO].

These include, since the Jay Report and to present records, the number of men convicted and prosecuted for CSE in Rotherham, in each case identifying their ethnic origin.”

6. On 11 November 2021 the council responded. It clarified the actual statement which the councillor had made. However, it said that it did not hold any relevant information as regards the request as elected members make their own decision about what they say, and what information and sources they choose to use in order to inform what they say.
7. As regards the request for prosecution and conviction statistics, the council said that:

“Although the Council may hold some relevant information, information relating to any and all CSE prosecutions and convictions in Rotherham are most likely held by South Yorkshire Police.

If you have not already done so, you may wish to submit your enquiry to South Yorkshire Police.”
8. The complainant requested the council carry out a review of its decision on 20 November 2021.
9. The council responded on 15 December 2021 providing the outcome of its review. It confirmed its decision that no information is held regarding the source of the councillor’s statement.
10. It did not provide any further response as regards the request for background statistics on prosecutions and convictions, including the ethnicity of the individuals involved.

### Request 3

11. On 11 December 2022, during ongoing correspondence relating to request 1, the complainant made the following request for information to the council:

“Please provide all metadata associated with this case.”
12. The council replied on 15 December 2021. It asked the complainant to clarify if they were requesting metadata relating to the original request, and said that, if so, it would log the request and process this as a new request. It said, however, that “We are not fully clear of what you require, as we do not undertake metadata requests for Internal Reviews”.

13. The complainant responded on the same day, clarifying that "I made no distinction between original request, or any review, so a request for clarification is not necessary. "... all metadata...".
14. On 7 January 2022 the council responded. It disclosed redacted copies of the correspondence associated with the request and the review, together with a copy of a case tracker, which logs the activities relating to the request. The redactions were made to the complainant's own personal data as well as council officers dealing with the request.
15. Further information was disclosed by the council on 20 January 2022.
16. The complainant then asked a series of questions regarding why the council had initially responded to the request in the way it had. She asserted that the council had not provided all of the metadata associated with her request.

#### Request 4

17. On 20 December 2022 the complainant made a request to the council for the following information:

"...there is nothing preventing me from asking the modified request such that at least a partial resolution can be made:

Please provide all documentation held by RMBC to support the statement made by [name of councillor redacted by the ICO] at Full Council, in the context of this case, i.e., his statement on 10 November 2021 that, since the Jay Report: "But what we see today is that perpetrators of CSE in Rotherham are commonly; white, British, men.""

18. The council responded on 10 January 2022. It said that this request was asking for the same information as in part 1 of the complainant's request of 11 November 2022 (i.e., request 1 above), and referred the complainant back to its response to that request. It confirmed that the information is not held by it.
19. On 13 January 2022 the complainant asked the council to review its position on all cases which were outstanding. The council therefore carried out a review of its response to this request.
20. The council provided its review response on 28 January 2022. It upheld its position that no information is held by it.

## Reasons for decision

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### Requests 1 and 4

21. Section 1(1) of FOIA requires a public authority to confirm whether or not it holds information falling within the scope of the request, and to disclose that information to the applicant if no exemption is applicable.
22. The Commissioner's guidance regarding the status of councillors under the FOIA states that:

“Local councillors are likely to have a number of different roles. Information will not be held for FOIA purposes if it relates to their function as elected members (for example, corresponding with residents in their ward, discussing council business with fellow members in the context of voting strategy or campaigning on behalf of a political party). However, some information will relate to the functions of the local authority and will be held for FOIA purposes (for example, being a cabinet member and having executive responsibility for a service area, carrying out administrative functions or representing the authority, such as on a regional forum).”<sup>1</sup>

23. The council argues that the councillor will have referred to his own sources of information, and made his own mind up as to what his view was prior to stating his opinion.
24. It said that it had asked relevant council officers to confirm whether there is any information held which demonstrates what information the councillor relied upon when making his statement. The officers confirmed that no such list is held. It clarified, therefore, that it does not hold any information falling within the scope of the complainant's request for information.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)

The Commissioner's conclusion

25. The Commissioner recognises the complainant remains concerned that further information may be held by the council. They believe the council was under a duty to ask the councillor to explain what information he had had regard to before making his statement.
26. The FOIA provides a right to individuals to request recorded information held by a public authority. The council has confirmed that it does not hold a list of the background information which the councillor referred to when forming his opinion. It was not under a duty to ask the councillor to list any background reading he made prior to making his statement as this is not recorded information held by the council at the time that the request was received by it.
27. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
28. On this basis the Commissioner has concluded that, on the balance of probabilities, no further information is held by the council falling within the scope of the complainant's requests of 11 November 2021 and 20 December 2021.

Request 3

29. The complainant requested 'all metadata' associated with their request. The Commissioner considers that an objective reading of the request is that they were requesting a copy of all metadata relating to their initial request for information of 20 December 2021 and the associated request for review. The council responded to the request on 7 January 2022, providing a copy of the metadata associated with the request and the review. It provided further metadata to the complainant on 20 January 2022.
30. The complainant wrote to the council on 30 January 2022 stating that the council had not responded to their request for this data, however they did not clarify in what respect the information it had disclosed had failed to comply with the terms of their request. The complainant simply asserted that the request had not been adequately responded to and asked a number of questions regarding the council's earlier responses.

31. The council has sought, on a number of occasions, to clarify with the complainant the metadata they required. However, the complainant did not specify what further information they consider remains to be disclosed beyond asking the council to clarify its earlier responses by providing the relevant section of legislation which it relied upon to formulate its initial response. The council is not, however, under a duty to provide an explanation of its earlier responses.
32. The Commissioner therefore considers that the council has complied with the requirement of section 1 of FOIA in terms of this request for information.

Request 2

33. The council said that whilst it may hold data in respect of this request, it suggested that the complainant remake their request to South Yorkshire Police for this information.
34. The council's response does not comply with the requirements of section 1(1) of FOIA. The council did not confirm whether it does hold relevant information for the purposes of section 1(1)(a). Nor did it communicate the information it holds to the complainant as required by section 1(1)(b) of FOIA, or, alternatively, apply a valid exemption to withhold any such information from disclosure.
35. The Commissioner therefore requires the council to issue a fresh response to this request which complies with section 1 of FOIA.

## Right of appeal

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36. 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)

37. 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.
38. 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 .....**

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