

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

### **Decision notice**

**Date:** **23 November 2022**

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

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

### **Decision**

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1. The complainant requested information from Rotherham Metropolitan Borough Council ("the Council") for copies of communications with the leader of the Council about statements made to the media in connection with a particular email referred to in the request.
2. The Commissioner's decision is that the Council failed to provide an adequate response to the request. Consequently the Commissioner finds that the Council breached section 1(1) and section 10(1) of FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - The Council must issue a fresh response to the request which is adequate for the purposes of FOIA.
4. The Council 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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5. On 13 January 2022, the complainant wrote to the Council and requested information in the following terms:

"This Freedom Of Information Act Request (FOIAR) is for a copy of the communications with the Leader of Rotherham Metropolitan Borough Council (RMBC), [xx name redacted xx], about statements to the media connected to the email sent to the Chief Executive of RMBC ({xx name redacted xx}) at 3.44 pm on 23.8.16.

The email sent to the Chief Executive of RMBC ([xx name redacted]) at 3.44 pm on 23.8.16 stated:

I have made SYP aware of what our statement would be.

A spokesman for Rotherham Council confirmed that the council has received three complaints, adding: "An independent investigation is now underway, and as such we are unable to comment further at this stage."

6. On 7 February 2022, the Council responded. It confirmed that it had conducted a search:

"to identify any email sent or received between (and including) the dates of 20/08/16 and 27/08/16 that contains the following terms: [xx email address redacted xx] and [xx email address redacted xx]. Following the search, it can be confirmed that no emails relevant for your request were identified and therefore the Council does not hold any information for your above request".

7. On 22 February 2022, the complainant requested an internal review of the Council's handling of the request. The complainant stated that they were concerned that "There appears to be something wrong, possibly seriously wrong, with the method RMBC uses to search for documents in response to requests under the FOIA" and that "The response, in effect, states that there was no communication with the Leader of Rotherham Metropolitan Borough Council (RMBC), [xx name redacted xx], about statements to the media connected to the email ...".

8. On 27 April 2022, the Council provided its internal review outcome to the complainant, in which it advised that it had "assessed the search terms used for the email system search" and that "In your request for

an Internal Review you neither provide suggested amendments nor specifically comment on whether you are satisfied / dissatisfied with the search terms. Therefore no new search has been undertaken ... The outcome of this investigation has not found any information to provide. No emails have been identified relevant to your request”.

9. The internal review response of 27 April 2022, also referred the complainant to a separate internal review response (issued in relation to another request made by the complainant) advising that “That Review addresses matters regarding email system searches and network system searches. The same applies to this reference”.
10. The earlier internal review response had advised the complainant that an:

“email would not have come up in the email search undertaken, if it is no longer held within the email system ... When an email is held and is identified to be of value to a task (e.g. a FOI request) it will be saved within that FOI reference (i.e. saved to the network folder and not left in email system) ... The Council can undertake manual trawls of relevant network files to identify information relevant to a request ... If the logging of a FOI to trawl the network were viable then I would recommend this as an outcome and/or already be instructing officers to undertake this task. I do not see this as viable (time compliance) ... The original case officer did state there were no results from an email search, however the officer did not explicitly state this was of the email system (not network). My narrative above covers this point further.”

### **Scope of the case**

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11. The complainant contacted the Commissioner on 20 May 2022, to complain about the way their request for information had been handled.
12. The scope of this complaint is to consider whether or not the Council provided an adequate response to the information request.

### **Reasons for decision**

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13. This reasoning covers whether the Council has complied with its obligations under section 1(1) (general right of access to information) and section 10(1) (time for compliance) of the FOIA.
14. The position of the Council is that it considers that it conducted a reasonable search for information in scope of the request as the search

terms used were confirmed to the complainant and the complainant did not question the search terms used.

15. The complainant considers that the Council has not complied with their request and that the internal review did not adequately address the complainant's concerns.
16. The Commissioner considers that the Council did not provide the complainant with an adequate response to the request for the following reasons.
17. The request referred to 'communications' but did not limit the scope to electronic records. However, the Council has confirmed that not only was the search limited to electronic records but that it was restricted to a search of the email system only rather than the whole network.
18. The Council has explained that when an email is identified as being of value to a task (e.g. an FOI request), it will be moved to the network folder for the task and not left in the email system. It is therefore clear that a search of only the email system will not necessarily locate all information within scope of a request.
19. The search terms used by the Council were limited to the email addresses of two individuals and the search would therefore only have brought up emails that contained both of these email addresses within them. However, the scope of this request was not limited to emails between these two individuals and therefore it was not appropriate to restrict the the search terms in such a way.
20. It is considered that the search should have had more regard placed on the subject matter of the information being requested and in addition to using wider search terms within the email system, the Council should also have made checks to see if it had any network files relevant to the issue involved.
21. The Commissioner's decision is that the Council has failed to provide the complainant with an adequate response to the request and, therefore, the Council has breached section 1(1) (general right of access to information) and section 10(1) (time for compliance) of FOIA.
22. The Commissioner requires the Council to provide the complainant with a fresh response to their request which relies on thorough and comprehensive searches. The Council should either provide the complainant with the requested information, if held, or an adequate refusal notice. Should the Council's fresh response rely on section 12 of FOIA, it will need to provide a detailed explanation of its reasonable estimate for calculating that the cost would breach the limits under the legislation.

## **Right of appeal**

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23. 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@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)

24. 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.
25. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**