

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2023

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

Decision (including any steps ordered)

1. The complainant requested information from Rotherham Metropolitan Borough Council ('the public authority'). The Commissioner's decision is that the public authority is entitled to rely on section 40(5B) (personal information) of FOIA to refuse to confirm or deny whether any information is held.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 1 February 2022, the complainant made the following request for information to the public authority:

"This Freedom Of Information Act Request (FOIAR) is for a copy any communications that exist involving the Leader of RMBC, the Chief Executive of RMBC, other officers and external parties about the allegation that a version of the leaked Investigation Report discussed with Leader [name redacted] on 10.7.20 was in a bundle for the defence of [name redacted]."
4. The public authority refused to confirm or deny holding the requested information under section 40(5) of FOIA.

Reasons for decision

Section 40(5) - personal data

5. This reasoning covers whether the public authority was correct to apply section 40(5B) of FOIA to the request.¹
6. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny that it holds particular information if the mere act of confirming (or denying) that information is held would, in itself, reveal personal data about an identifiable individual and would contravene one of the data protection principles.
7. In this case, the Commissioner is satisfied that confirming or denying whether information is held would identify third party personal data, because doing so would reveal whether a defence bundle relating to a named individual exists.
8. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed – or as in this case the public authority can only confirm whether or not it holds the requested information - if to do so would be:
 - a. lawful (i.e. it would meet one of the conditions of lawful processing listed in Article 6(1) UK GDPR);
 - b. fair; and
 - c. transparent.
9. The Commissioner recognises that individuals have a clear and strong expectation that their personal data will be held in accordance with data protection laws. In this case, he is satisfied that the person concerned would not reasonably expect the public authority to confirm to the world at large whether or not it held the requested information in response to a FOI request.
10. He has also determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms, and that

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

confirming whether or not the requested information is held would not be lawful.

11. As there is no lawful basis for doing so, confirming or denying would be unlawful and therefore the public authority is entitled to rely on section 40(5B) of FOIA to neither confirm nor deny that the requested information is held.

Right of appeal

12. 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

13. 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.
14. 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