

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2024

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

Decision (including any steps ordered)

1. The complainant requested information relating to a property that they own. Rotherham Metropolitan District Council (the Council) stated it had provided all information relevant to the matter and that no further information was held. The Commissioner's decision is that section 40(1) (personal data of the requestor) of the FOIA applies as the information requested constitutes the complainant's own personal data. The Commissioner does not require any steps to be taken.

Request and response

2. On 21 September 2023 the complainant wrote to the Council expressing concerns about its actions in relation to their property. They also confirmed in this email that they would be making a complaint under the Council's complaints procedure. In this communication the complainant requested information in the following terms:

"1. I would like to know what powers/legislation they acted on which allowed the sitex to remain on the basis it being linked to works? I would like clarity as the sitex was installed due to it being an insecure property.

2. I would also like to know why I or others were not given proper information from the start in relation to sitex being removed on the basis it was secured by means of a lockable door/windows.

3. Does the council have any written risk assessments/impact risk assessment or safety procedures with regards to their sitex procedures during that time or presently? If so please make available in relation to this FOI request”.
3. The Council responded on 29 November 2023 and stated that:
- “We have discussed your above questions with officers in the Council’s Community Protection and Environmental Health Service. Responses to your questions have already been issued directly to you by officers in that Service and there is no further information to provide in response to your questions”.
4. The complainant wrote back to the Council on 1 December 2023 requesting an internal review of the handling of the request.
5. Although the Council initially acknowledged it would conduct an internal review, it wrote to the complainant on 9 December 2023 and 30 January 2024 and stated that the issues they had raised in their email of 1 December 2023 were not actually challenging the FOIA response itself, but rather the service they had received in respect of their property and how the service area in question had implemented legislation in respect of the property. In light of this, the Council stated that it would not be conducting an internal review.

Scope of the case

6. The complainant initially contacted the Commissioner on 11 November 2023 to complain about the way their request for information had been handled. The complainant wrote to the Commissioner again on 8 January 2024 to express their continued dissatisfaction with the Council’s handling of the request.
7. The Commissioner initially wrote to the complainant and advised that, in his opinion most, if not all, of the information they had requested constituted their own personal data as it related to the Council’s actions in relation to a property they owned. The Commissioner confirmed that he had already dealt with a data protection complaint for the same request. The Commissioner invited the complainant to withdraw their complaint on the basis that all of the information requested was likely to constitute their own personal data.
8. The complainant wrote back to the Commissioner and asked him to continue to investigate whether the Council had provided all of the official recorded information held relevant to the request.

9. During the course of the Commissioner's investigation, he asked the Council to confirm which access regime it had handled the complainant's request under. The Council confirmed that it considered all of the information requested to constitute the complainant's own personal data. It acknowledged that it should have therefore cited the exemption at section 40(1) of the FOIA in its responses to the request. The Council also confirmed that it was in the process of dealing with the request as a subject access request.
10. In light of the above, the scope of the Commissioner's investigation is to determine whether the Council has correctly applied section 40(1) of the FOIA to the request.

Reasons for decision

Section 40(1) – personal information

11. Section 40(1) of the FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.
12. Section 3(2) of the Data Protection Act 2018 (the DPA) defines personal data as: "any information relating to an identified or identifiable living individual".
13. The two main elements of personal data are therefore that the information must relate to a living person, and that the person must be identifiable.
14. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
15. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
16. In this case, the request is for information relating to a property which is owned by the complainant and the Council's actions in relation to that property.
17. The first two questions clearly relate to the complainant's own property. Whilst on the face of it the third question appears to be a general question about assessments and safety procedures it specifically asks for such information "during that time of presently". In light of this, the

Council advised that it has interpreted this to mean that the request relates to specific assessments and procedures relating to the complainant's own property. The Council pointed out that the complainant has also raised a related service complaint relating to actions in respect of the property in question.

18. The Commissioner accepts the Council's interpretation of the request. He has considered the request and the matter to which it relates – actions by the Council in respect of a property that the complainant owns. It is clear to the Commissioner that the complainant is identifiable from the information and the information is significant and biographical to them.
19. When deciding whether a request relates to an individual, it is important to consider the circumstances in which the relevant information is held. For example, it may be the case that certain information held by a public authority may not be personal data when held in isolation. However, if it is subsequently used for another purpose, for example, in order to make decisions that directly affect or have an impact on an individual, or individuals, it could then become personal data.
20. Having considered the complainant's request and the purposes for which it has been made, the Commissioner is satisfied that it relates to the complainant. It is a request for information that is connected to, and reveals something about them; it concerns matters that directly affect the complainant, and would be processed for purposes that will have an impact on them.
21. Therefore, the Commissioner concludes that as the request for this type of information identifies and relates to the complainant, it is a request for their own personal data. Therefore, any information falling within the scope of the request would be the personal data of the complainant.
22. As the Commissioner is satisfied that the request relates to the complainant's own personal data, he finds that the exemption at section 40(1) of the FOIA is engaged in relation to the request.
23. As the exemption provided by section 40(1) is engaged the Council was not obliged by the FOIA to disclose the requested information.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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