

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 October 2024

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

Decision (including any steps ordered)

1. The complainant requested information linked to a number of previous FOIA requests and responses they had submitted to Rotherham Metropolitan Borough Council (the Council). The Council informed the complainant that as far as it was aware there were no outstanding requests in their name and advised them to contact the Information Commissioner if they remained dissatisfied. The Commissioner's decision is that the Council has complied with its obligations under section 1(1) of the FOIA. The Commissioner does not require any steps.

Background

2. The complainant had previously submitted three separate FOIA requests to the Council dated 25 December 2021, 3 June 2022 and 17 June 2022. They were not satisfied with the responses they had received to these requests and contacted the Council in respect of all three requests on 4 March 2024 and repeated the requests.
3. The Commissioner is unable to consider the first two requests dated 25 December 2021 and 3 June 2022 as they are not valid complaints in accordance with the provisions of section 50 of the FOIA. As such, this notice deals specifically with the request dated 17 June 2022, which was re-submitted to the Council on 4 March 2024.

Request and response

4. On 17 June 2022, the complainant requested the following information from the Council:

"Whilst you have said that no current members or RMBC personnel have declared their interest in or association with Common Purpose, it is known that some have attended Common Purpose events.

Given that the business model of Common Purpose includes its 'graduates' / supporters being placed in influential positions within public authorities, so as to increase Common Purpose business, it is challenging to believe that there have been no Declarations of Interest.

It would therefore help if RMBC provides its criteria for Declarations of Interest, including a rationale for why elected members or officers do not make such a declaration.

You have said that you do not have records going back 10 years – how many years back do your records go?"

5. Following a request from the Council for clarification, the complainant confirmed the following:

"It would be helpful to provide documents relating to council policy on Declarations of Interest, and how this policy is monitored and implemented and, if necessary, enforced, and as applicable, subject to sanction for errant members and personnel."

And,

"With respect to how far back do your records go that are related to declarations of interest, you are correct, I am asking precisely for the documented information that states how far back to RMBC records go."

6. The Council responded to the request on 27 July 2022, dividing it into the following two parts.

- Policy and Process
- 'Retention'.

7. The Council also attached a number of documents relevant to the request with its response.

8. Following an internal review the Council wrote to the complainant on 12 April 2024, however it is not clear whether this was in relation to the complainant's request of 4 March 2024 or for some other reason. The

review upheld its original response and responded to comments the complainant had raised in their request for an internal review.

Scope of the case

9. The complainant contacted the Commissioner on 16 April 2024 attaching a link to the WhatDoTheyKnow Website of their various requests to the Council.
10. The Commissioner was unclear regarding the scope of the complaint and sought clarification and some key documentation from the complainant before he could write to the Council for further information to assist with his investigation.
11. The complainant sent further links to the WhatDoTheyKnow website and stated:

“It will be self-evident from these threads that RMBC are simply not providing information to which I am entitled.

It is conceded that RMBC have, in my opinion, conflated, obfuscated, delayed and otherwise blocked disclosure of the information required.”
12. The Commissioner wrote to the complainant on 15 August 2024 and explained that he would be unable to consider the requests dated 25 December 2021 and 3 June 2022 as they were not valid complaints under section 50 of the FOIA.
13. In light of the above, the scope of the Commissioner’s investigation is to consider whether the Council has complied with its obligations to provide all relevant information in relation to the request for information dated 17 June 2022.

Reasons for decision

Section 1 – General right of access to information held

14. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
15. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal’s ruling in EA/2006/0072 (Bromley) that

there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.

16. The Commissioner's judgment in such cases is based on the complainant's arguments and the public authority's submissions, and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
17. The Commissioner has considered the Council's original response and notes that the Policy and Process part was further sub-divided into Elected Members and Officers with the Council providing an explanation and attaching various documents relevant to Elected Members.
18. The Commissioner also notes that following an explanation regarding Declarations of Interest, that part one was sub divided into 'general procurement' with links to the Public Contracts Regulations 2015 and the Council's own Financial and Procurement Procedure Rules. It also attached the following two documents:
 - Pre-procurement business case
 - Declaration of Interest form.
19. In terms of Elected Members, the Council provided an explanation of the statutory requirements and details of specific disclosable pecuniary interests. In addition to the explanation, it also provided the following attachments (C through to F):
 - Borough Council Blank RoI Form 2022
 - Parish Council Blank RoI Form 2019
 - Borough Council Register of Interest form Guidance 2022
 - Appendix 6 Code of Conduct for Members and Co-opted Members
20. The Council's response also provided details in respect of the Officers, and confirmed that Human Resources is the service which holds the Declaration of Interest forms for Officers.
21. Part two of the response concerned Retention. Following a general explanation of the retention requirements for Procurement, the Council

confirmed that the retention requirements for both Elected Officials and Officers is six years.

22. The complainant's request for an internal review asked the Council to revisit its past and present employees records, including Commissioners and Elected Members, within the past 10 year period and identify those who are in any way associated with Common Purpose, stating that they can find examples on the internet. The complainant added that it is:

"...known that RMBC personnel have attended Common Purpose events, albeit sometimes with third party organisations, such as South Yorkshire Police."

23. As stated earlier, this notice refers specifically to the request for information dated 17 June 2022. Since information about which individuals, if any, are associated with Common Purpose does not fall within the scope of this request, this is a new request for information and the Commissioner has not therefore considered this part of the Council's response.
24. The complainant also thanked the Council for sending the administrative documents regarding 'Declarations of Interest' but went on to state that those associated with Common Purpose have not made such a declaration on the requisite forms.
25. The Council's internal review confirmed that it had reviewed the documentation provided with its original response as well as the response itself. It informed the complainant that it had provided all the documentation held relevant to the request and it had no reason to believe that any information was either intentionally or unintentionally omitted.
26. The internal review also provided details of the Council's searches, confirming that it contacted Finance & Customer Services, Democratic Services and Member Support in order to locate the information held relevant to the request.
27. The Council subsequently confirmed to the Commissioner that it had also contacted its Human Resources Services in relation to the request.

The Commissioner's conclusion

28. The Commissioner has considered the Council's original response and internal review. In his view, dividing the request into two parts (Policy and Process and Retention) was reasonable. The further sub-divisions under the Policy and Process heading of Elected Members and Officers

was also reasonable. Indeed its response, combined with the documents it disclosed appears to be both appropriate and comprehensive.

29. The Commissioner has also considered the details of the Council's searches outlined in its internal review, and accepts that the Finance & Customer Services, Democratic Services and Member Support were the departments likely to hold relevant information along with the Council's Human Resources Services. The Commissioner therefore considers that the Council's searches were reasonable and proportionate.
30. Based on the above, the Commissioner has concluded that on the balance of probabilities, the Council does not hold any further recorded information falling within the scope of the request dated 17 June 2022 and that the Council has therefore complied with its obligations under section 1(1) of the FOIA.

Other matters

Internal review

31. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
32. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
33. Whilst no explicit timescale is laid down by the FOIA in respect of internal review, the Commissioner considers that they should be completed as promptly as possible and 20 working days from the date of the request would be reasonable. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; and it is expected that this will only be required in complex and voluminous cases.
34. In this case the complainant requested an internal review on 27 July 2022 which the Council acknowledged on 3 August 2022. The complainant sent various reminders between September 2022 and April 2023. However, the Council did not send its internal review until 12 April

2024. The review contained an apology to the complainant for the delay and stated that the review had been written but never sent.

35. The Commissioner considers that in failing to communicate the outcome of its internal review to the complainant within the timescales set out above, the Council has not acted in accordance with the section 45 code. This is a matter that may be revisited should similar outcomes be noted by the Commissioner in any future cases relating to the Council. The Commissioner expects the Council to ensure that reviews it handles in the future adhere to the timescales he has set out in his guidance.
36. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"¹ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"².

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

37. 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

38. 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.

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

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