

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2023

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

Decision (including any steps ordered)

1. The complainant originally 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. The request was investigated by the Commissioner under [IC-172053-T2X6](#) and a decision notice was issued on 23 November 2022.
2. The Council was instructed to issue a fresh response adequate for the purposes of FOIA within 35 calendar days of the issue of the decision notice.
3. The Council responded issuing a fresh response which refused the request under section 14(1) of FOIA (vexatious request).
4. The Commissioner's decision is that the request was vexatious and therefore the Council was entitled to rely upon section 14(1) of FOIA.
5. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

6. On 13 January 2022, the complainant made the following request for information:

"a copy of the communications with the Leader of Rotherham Metropolitan Borough Council (RMBC), Chris Read, about statements to the media connected to the email sent to the Chief Executive of RMBC (Sharon Kemp) at 3.44 pm on 23.8.16."

7. The decision notice referred to in paragraph 1 contains all the relevant information, so is not repeated here.

8. The Council issued its response to the request on 22 December 2022, refusing the request as vexatious under 14(1) of the FOIA.

9. The complainant contacted the Commissioner on 17 January 2023 with the to complain about the Council's response:

"1 I am requesting that the Information Commissioner (IC) makes written certification of RMBC's response (dated 23.11.22) to the High Court pursuant to section 54 of FOIA as a possible contempt of court.

2 I am further requesting that the Criminal Investigations Team (CRIT) investigates the responses by Rotherham Metropolitan Borough Council (RMBC) to the Freedom of Information Act Request (FOIAR) that I submitted to RMBC on 13 January 2022. It is my view that the responses by RMBC provide evidence of a Section 77 offence. As noted on the ICO website."

Scope of the Commissioner's investigation

10. The Commissioner considers the complainant's first request is unfounded as the Council had complied with **IC Decision Notice (DN) IC-172053-T2X6** and the second request is a repeat which has not been evidenced (First Tier Tribunal, Upper Tribunal) and was dealt with under the previously referenced investigation in paragraph one.
11. Therefore, the focus of the Commissioner's investigation is to consider whether the Council were entitled to rely on section 14(1) of FOIA in its response.

Reasons for decision

Section 14(1) – vexatious requests

12. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
13. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)¹ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
14. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) has a high hurdle.
15. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
16. In regard to the request the Council has said:

“This request (FOI-883-21/22) is still hinged on looking for information relating to substantially similar requests that have already been concluded. As the Council has addressed this subject matter with you on several previous occasions, we are now applying Section 14.

Previous requests, searches and responses issued relating to your requests around the referenced statement have already been concluded. The passage of time has no bearing on any information held (i.e. it is information from a specific point in time which will not alter over the passage of time).

Furthermore, it is not in the wider public interest to continue diverting resource to matters that have previously been addressed.

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

The Council originally issued reference number FOI-883-21/22 for this request. We undertook a search for FOI-883-21/22, and it returned no results, as per the original response (re-attached for convenience). The Decision Notice implies this scope was too limited. However, we now feel that any search at all was unnecessary, as we had already undertaken several requests and multiple searches around this subject matter for previous requests.

This request is seen as repetitive and overlapping in nature to previous requests. The Council is therefore applying Section 14 and refusing this request.

The Council has noted the outcome and contents of DN IC-172053-T2X6, has reviewed its position and issued this fresh response to comply with the Notice."

17. In their response to the Commissioner's letter the Council stated:

"The only additional comments we wish to make relate to a statement we made in the revised response, being:

"If you choose to submit further requests on this subject matter, the Council will fairly assess the merit of any request. However, please ensure your reasons for the request are clear and specific, so it can be understood as to why any request relating to communications around media contact is substantially different to work already undertaken. This will then make it clear on how we may be able to assist, in line with legislation, where required. If any request is deemed to be a repeat request, we will notify you this is the case."

There has been no contact from the customer regarding the revised response for FOI-883-21/22 since its issue. The above states that the Council fairly assesses each request on merit, but we would require the customer to provide clear reasons as to why this is different from previous requests.

No new request relating to this subject matter has been received, whether repetitive (which would be refused) or points put forward as to why different (which we would fairly consider).

This strengthens the Council's application of Section 14 for FOI-883-21/22. Previous related requests have been completed and we have assessed FOI-883-21/22 as a repeat request due to it being substantially similar in nature to those previous requests.

We still see this request as repetitive in nature, with no counterarguments put forward to the contrary.

This is not the Council being obstructive or unreasonable, put fairly applying Section 14 due to previous similar requests already being completed.”

18. In the circumstances of this case, and on the basis of the evidence provided which shows the request to be unjustifiably repetitive, the Commissioner is satisfied that the Council was entitled to rely on Section 14(1) of the FOIA to refuse the request as vexatious.

Right of appeal

19. 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

20. 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.
21. 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

Joanna Marshall
Group Manager
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