



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2018/0009& EA/2018/0047**

**Heard at Sheffield MC  
On 28 August 2018**

**Before**

**JUDGE HOLMES**

**Between**

**LIAM HARRON**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**DECISION AND REASONS**

**DECISION**

The Tribunal dismisses the appeals and the decision notices dated 7 December 2017 (EA/2018/0009) and 19 February 2018 (EA/2018/0047) are upheld.

**REASONS**

1. In these appeals the Appellant, Liam Harron, appeals against two Decision Notices issued by the Information Commissioner on 7 December 2017 and 19 February 2018, in which she determined that (save for delay in responding to the requests within the prescribed period) the public authority, Rotherham MBC ("RMBC"), had not failed to comply with s. 10 of the FOIA, on the grounds that in each case RMBC did not hold any further information.
2. The appellant appealed the first Decision Notice by a Notice of Appeal dated 4 January 2018, and the second by a Notice of Appeal dated 12 March 2018. In the first Notice the appellant indicated that he was

content with a paper decision, and in his second that he sought a decision after a hearing.

3. The Commissioner filed her response to the first appeal on 7 February 2018, and to the second appeal on 10 April 2018. The Appellant filed a response to the Commissioner's response dated 21 February 2018 in the first appeal, and dated 24 April 2018 in the second appeal.
4. The Registrar issued case management directions on 13 March 2018 that the two appeals be considered together, and that as a hearing was required for EA/2018/0047, a hearing would be held to determine both appeals together.
5. On 14 March 2018 the Chamber President directed that both appeals be decided by a Judge sitting alone.
6. The Commissioner did not attend the hearing, but submitted written submissions in each appeal. RMBC was not made a party, and made no representations. Its responses to the ICO's enquiries are contained in the bundles before the Tribunal.
7. The Appellant attended the hearing, and addressed the Tribunal. There were two Open Hearing bundles. To differentiate between references, the Tribunal will use the format "[0009/XXX]" and "[0047/XXX]" to refer to page numbers in each bundle. The Tribunal reserved its Decision, which is now given, with apologies to the parties for the delay in its promulgation, occasioned by a mixture of pressure of judicial business, technological issues, and family medical circumstances experienced by the Judge.
8. The Judge would, however, like respectfully to point out to the parties, particularly the party responsible for preparing the hearing bundles, which was presumably the ICO, that his task has been made rather more difficult and time consuming than it need have been by the form of the bundles presented to the Tribunal. They run to 390 and 278 pages respectively, are highly repetitive, and very sparsely indexed. For example, entire sections covering many pages have been included with no specific identification in the Index of the contents by individual document. It is appreciated that this may be a consequence of the use of appendices and annexes in documents passing between the parties, wherein repetition of copies of the various documents may well have occurred, but there appears to have been no serious or effective attempt at the construction of a coherent, easy to follow, document trail showing clearly what information was released in what format at what time, in response to what request. (Only in bundle 0009, section 4, pages 147 and 158 are duplicating documents expressly omitted). Many documents

appear over and over again in the bundles. When the appeals were joined, one single bundle for both appeals (indeed, probably one for all four) would have been preferable.

9. One example of this (and there are doubtless more) occurs on page 57 of the 0009 bundles. This is the final page of RMBC's internal review, apparently (from a handwritten note of page 55/0009) dated 2 February 2017. The (unidentified, but presumed to be Christine Hotson) author concludes (again, this is to be presumed, as the document simply stops, with no form of sign off or conclusion) with this statement:

*"However, upon further detailed investigation the additional information in the form of administrative emails has been identified, which is now included."*

10. The Tribunal, however, cannot tell from this document what documents were, or what information was, or was not, included with it, and has, as it has with much of the other evidence in the case, had to piece this together from other information and a time - consuming trawl through an unnecessarily large bundle (particularly given that there are four linked appeals relating to this subject matter, each with its own bundle).
11. Further, and without wishing to be unduly critical, the Tribunal's, and doubtless the ICO's, task has not been made any easier by the apparent practice, though not a consistent one, of RMBC of not dating, or ascribing any authorship to, important documents. This is particularly true of some of the Internal Reviews, which mostly bear no indication of when they were produced, and by whom. This has led to the unsatisfactory practice of handwritten annotation in the bundles, in some instances. This has not been controversial between the parties, but it is a surprising, and further unhelpful feature of the documentation in these appeals (including the next two that the Tribunal will be dealing with). Be that as it may, the Tribunal has, it considers been able to extract the necessary relevant facts and information from the documents supplied to it in the bundles.

### *The Decision Notices.*

12. The first Decision Notice that is the subject of these appeals is dated 7 December 2017 (No. FS50677230), and this relates to the Appellant's FOIA request of 30 September 2016, given the reference FOI 740-16 by RMBC. The second Decision Notice is dated 19 February 2018 (No. FS50683351), and this goes back, somewhat paradoxically, and slightly confusingly, to his earlier FOIA request of 26 October 2015.
13. The second Decision Notice relates to the Appellant's FOIA request made on 26 October 2015 that requested RMBC to provide him with the

information generated when processing his previous FOIA request, which he referred to as the “metadata”, which included the internal notes emails etc.

14. The Appellant approached the ICO about both matters at around the same time, referring the second request to her on 5 April 2017, and the first on 20 (or 25) April 2017.
15. It is essential to understand that the Appellant’s two requests are linked, and that his second request relates to his first, and indeed, in a way pre-dates it, as it sought information about how his previous request had been dealt with by RMBC.
16. In each case, however, the ICO took the same view, namely, that on a balance of probabilities, RMBC did not hold the requested information, or any further recorded information. Whilst she found that RMBC had in each case failed to comply with s.10 of the FOIA in relation to the time taken to respond to the Appellant’s request, she did not require RMBC to take any steps.

### *The Background.*

17. Common to both appeals is the background to the two requests made by the Appellant which give rise to these appeals.
18. The Appellant is a retired headteacher. In the aftermath of serious Child Sexual Exploitation (“CSE”) in Rotherham, which led to the publication in August 2014 of the Jay Report into CSE in Rotherham between 1997 to 2013, he and a colleague Chrissy Meleady, saw a need to give victims, survivors and their families a voice, to assist them in dealing with their experiences, and to help inform the establishment of systems and procedures that would gain support of those directly affected by CSE.
19. Consequently, the Appellant and Chrissy Meleady between November 2014 and February 2015 received and compiled contributions from victims, and others affected by CSE, and on 15 February 2015 published them in a 44-page A4 softback booklet, entitled “Voices of Despair Voices of Hope” (hereinafter “Voices”). The Appellant and Ms Meleady worked in close consultation with RMBC and South Yorkshire Police in the production of this work. David McWilliams was appointed in January 2015 as Director of Commissioning and Performance for Children and Young People’s Services at RMBC. The Appellant consulted with him during production of the publication.

20. The Appellant funded the production of Voices himself. It was not intended to be a commercial product. The initial production run of the publication was 500 copies.
21. On 10 March 2015 RMBC ordered 1500 copies of Voices. This was unexpected, and the Appellant had to arrange increased production to meet this order. It was anticipated that RMBC would distribute the publication.
22. The 1500 copies were produced and delivered to RMBC in or around March 2015. The Appellant kindly provided the Tribunal with a hard copy of the publication at the hearing.
23. Around February 2015 RMBC the Secretary of State for Communities and Local Government exercised his powers to suspend the Council, and its functions were thereafter carried out by Commissioners, appointed by the Secretary of State. Accordingly, ultimate control of RMBC functions lay in the hands of these Commissioners, and it was to them that RMBC officers reported from February 2015.
24. On 24 July 2015 the Appellant, Chrissy Meleady and David McWilliams met. By then the latter had been appointed Assistant Director Early Help & Family Engagement, but he re-affirmed RMBC's intention to distribute the publication through a planned workforce distribution programme, likely to commence that autumn.
25. On 5 September 2015 far right - wing activists came to hold a demonstration in Rotherham, seeking to exploit the fact that the perpetrators of the CSE that had been uncovered were from ethnic minority groups. This had led to clashes with the Police and anti-fascist groups who had demonstrated against the right - wing groups.
26. Against this background, and to promote racial harmony, the Appellant, still working with Chrissy Maleady, proposed a second edition of the publication, in which he hoped to defuse racial tensions, and to present a more conciliatory approach, to bring together communities. He was concerned that racism was now becoming as big a problem in Rotherham as CSE had been, and the purpose of the next edition of Voices would be to listen to the voices of victims, survivors, and their family members and others adversely and directly affected by racism.
27. He therefore sent an e-mail [page 0009/62] to David McWilliams and Ian Thomas, the Strategic Director of Children and Young People's Services at RMBC, on 11 September 2015 impressing upon them that the second edition of Voices was now a very high priority for himself and Chrissy Maleady. In that email he also asked for a breakdown of the

distribution of the 1500 copies of the original publication that had been supplied to RMBC.

28. On 15 September 2015 [page 0009/61] David McWilliams replied in an email to the Appellant. He summarised the distribution of Voices up to that point, which was around a couple of boxes. In that email, however, he informed the Appellant of RMBC's decision not to distribute the first edition of Voices any further. He explained this decision in these terms in his email:

*"However, before I took this any further we sought independent, expert guidance on the content and after consideration Commissioner Newsam and Ian [Thomas] agreed to keep any further distribution limited to those already mentioned and or any individuals that we felt should be sighted on the publication.*

29. He went on:

*"I thought you might find it helpful if I shared some of the feedback we received."*

30. David McWilliams then set out some seven paragraphs of issues that RMBC apparently had with the publication, which were the reasons that the decision had been taken not to distribute it any further. In the version of this email at page 61 of the 0009 bundle the first two paragraphs are in arial font, but the text of seven paragraphs which followed the words ". the feedback we received:" are in italic, until the end of the email, where the sign - off "Best wishes. Dave" reverts back to arial , non - italic , font.

31. The Appellant replied to him by email later the same day [0009/98], expressing his concern at the change in position. He asked whether there had been any positive feedback. Later the same day Chrissy Meleady wrote an extensive (four and a half pages in print) email in which she addressed the issues that he had raised, and effectively seeking to rebut the negative feedback, particularly by reference to distribution issues, where she argued that some of the concerns expressed could have addressed by selected distribution to professionals and other bodies, with suitable accompanying material to address some of the issues raised.

32. The Appellant on 16 September 2015 raised his first FOIA request to RMBC [0009/67] in these terms:

*"The email from David McWilliams yesterday about Voices of Despair, Voices of Hope is both baffling and distressing.*

*I think it is essential, for the public record, to get to the bottom of all the mistakes that have been made.*

*As a Freedom of Information (FOI) Request, I am asking for a copy of all communications relating to Voices of Despair, Voices of Hope from 2 December 2014 up to 16 September 2015."*

33. This was the beginning of the Appellant's attempts to obtain an explanation of why RMBC, having purchased 1500 copies, had changed its mind about distributing so many copies of Voices, with no warning that this was likely to happen. His reasons for seeking this explanation were, he told the Tribunal, which it accepts, that he felt in a difficult position in relation to those who had contributed to Voices, who had been led to believe that RMBC would be widely distributing it, and who could perceive this decision as a yet further instance of not being listened to by the establishment, one of the central issues in the CSE affair that the publication of Voices was intended to address.
34. This request was given the internal reference no. by RMC of FOI 600. This, of course, would be of 2015. The Appellant's original initial request of 16 September 2015 was given the reference FOI 714, but this was clearly at a later stage. Confusion as to allocation of numbers to requests has been apparent through these appeals.
35. RMBC responded to that request on 23 October 2015 (outside the time limit, but nothing turns on that). The Appellant was provided with some copy documents, but did not consider that his request had been adequately responded to, so he sought, on 26 October 2015, and again on 7 December 2015, a review of the information provided to him under this Request. In this particular request of 26 October 2015 [0009/371 - 372 and 0047/123 - 124] the Appellant had requested, at part 3:

*"Information sent out with the Voices of Despair Voices of Hope publication to those taking part in any appraisal or evaluation."*

He also asked, at part 4, for:

*"... the information generated when processing this FOI request (the metadata) which includes the internal notes, emails etc..."*

In this document he set out 5, non - exhaustive, categories of documents which he considered should be disclosed.

(It appears to be at this stage that this was treated as a new request and given the reference FOI 714).

36. RMBC did not treat this as a review, but as a request for clarification. It responded by letter of 19 November 2015 informing the Appellant that it was being so treated, and that he would receive a further response by 23 November 2015. In fact, he received a further response on 7 December 2015, when he was supplied with further information. Try as it might, the Tribunal has been unable to find in either bundle. It is, however, clear that the Appellant did receive on 7 December 2015 further information, because he responded to it in a document entitled "Comments on the information received on Monday 7 December 2015" dated 15 December 2015 [0047/79 - 85]. It is, however, unclear precisely what the Appellant received, other than a request for further clarification of three areas of six that he had previously referred to. From subsequent documents it appears that he was given the information that two copies of the Voices publication were sent to the "expert", with an explanation about why an independent review was being sought.
37. The further information that the Appellant received appears to have been that which appears at [0009/139 - 141], which had been provided in draft to Commissioner Manzie for comment, and was sent then to Jean Imray for further comment before being released to the Appellant [0009/138].
38. The Appellant also that day, 7 December 2015, sought a review of his request, in the sense of his original request, which he considered had not yet been dealt with. He apparently did so in an email, but again, despite references to it at various points (e.g as Document 8 attached to an email from the Appellant to Eira Owen on 19 July 2016 [0047/230], and [0009/47 and several other locations] where it is again referred to as Document 8, and the email header is set out) the Tribunal has been unable to locate a copy of it in either bundle. It is clear, however, that in that email he used the reference number 714, the one assigned by RMBC in response to what had been his review request of 26 October 2015.
39. Linton Steele, a solicitor with RMBC, was appointed by RMBC to undertake an internal review on or about 11 December 2015. He conducted that review, and sent the results to the Appellant on or about 15 January 2016. His review document is at [0009/200 - 207]. This is entitled FOI - 714 - Internal Review Decision, but Mr Steele acknowledges that there has been some confusion over assigned FOI request numbers, and refers to FOI 600 as well. He reviewed the information that had been provided to the Appellant on 23 October 2015, and the Appellant's response to it of 26 October 2015, which was treated as further clarification of his original request, though also assigned number 714 by RMBC.



40. He confirmed his provisional view, expressed to the Appellant on 17 December 2015, that RMBC had indeed failed to comply with the Appellant's request, within the statutory deadline, and substantively, in that RMBC had not provided the Appellant with, at the very least, a copy of the "expert appraisal" as it was termed that the Appellant had asked for.
41. He went on, however, [0009/202 - 203] to set out the results of his enquiries with Jean Imray, the Interim Deputy Strategic Director of CYPs. He relayed her account of how she had received the expert opinion by telephoning a sexual violence practitioner, and had asked for his or her comments on the Voices publication. This person agreed to provide comment, but on the strict basis that he or she would not be identified.
42. Jean Imray had explained to Linton Steele how these comments had been received by her on her personal Ipad device, and how she then forwarded the same to herself at her RMBC email address. This was on 2 August 2015, and Linton Steele included in his Internal Review document the email of 2 August 2015 that Jean Imray had sent to herself [0009/203 - 204].
43. Linton Steele went on to consider whether non - disclosure of the identity of the expert who had provided these comments would be justified under the statutory exemptions under s.40(2) and 41 of FOIA. He concluded that disclosure would not be just and lawful, and that the absolute exemption under s.40(2) was engaged. Nothing in these appeals challenges that view.
44. The Appellant thus received, by way of this Review, more information, and became aware, he says for the first time, of Jean Imray's involvement, what information she received, and how she had received it. He emailed Jean Imray directly on 15 January 2016 [0047/77] to ask her some further questions. She, by email of 15 January 2016 [0047/77] told Linton Steele, and others in RMBC that she had no intention of replying to the Appellant.
45. On 29 January 2016 Kelly Harrison of RMBC sent an email to a number of RMBC colleagues, including Jean Imray and David McWilliams, referred to the Appellant's FIO request no. 714, and asking for all information generated (the metadata) generated when processing the first FOI request. After some initial querying as to whether this had not already been done, but was confirmed as being outstanding, Jean Imray said on 31 January 2016 that she was pretty sure this had been done and she had nothing to add [0047/86-87].

46. Ultimately, after further activity in 2016, the Appellant made a further request, dated 30 September 2016, which was in four parts It is to be found (amongst several other places in the bundle) at [0009/46-47]. Parts 1-2 and 4 are not the subject of this appeal. In part 3 the Appellant recited the first paragraph of David McWilliams' email to him of 15 September 2015, and the reference to the feedback on the Voices publication that then ensued. He went on to refer to a document sent to the ICO on 25 May 2016. He then made this request:

*"Please can I have a copy of **any** email exchanges led to David McWilliams receiving the so - called independent expert guidance.*

*If there are no email exchanges, please can an explanation be provided as to how David McWilliams received the so-called expert guidance."*

47. This request (i.e all of it) was given the reference number 740-16 by RMBC. RMBC's response, dated, if only by a handwritten note, 1 November 2016, is (for the first time) contained in the bundle at pages 0009/49 - 50.

48. In their response RMBC responded to part 1 of the request by referring to an email provided to the Appellant on 3 October 2016, to part 2 by referring to the Appellant's three previous FOIA requests, referenced as 600, 714 and 989, and the email exchanges disclosed pursuant to those requests, and, in response to part 4 by reference to a response from RMBC sent to the Appellant on 16 May 2016, and to a meeting held between the Appellant and RMBC on 18 July 2016.

49. In response to part 3, the subject of this appeal, RMBC again referred to the disclosure made in response to the three previous FOIA requests referred to, and went on to say:

*"No further information is held."*

50. By letter of 23 December 2016 [0009/51 - 52] the Appellant sought an internal review. In relation to part 2 of his request, he said:

*"There is already overwhelming evidence of how the response to the first ever FOIA Request I submitted to RMBC on 16.9.15 (600) was totally inadequate.*

*To date there is strong evidence that no one in RMBC has shown any serious intent to get to the complete truth. Yesterday I received: **SAR 242 - Liam Harron - Information From Rotherham MBC**. This has provided further evidence of evasion, procrastination and dishonesty by officers of RMBC*

*On page 63, under Q3, there is reference to **an email from Jean Imray**:*

..... subsequently forwarded from her RMBC account to Ian Thomas on 4/8/15

***This email should have been provided as part of my first FOIA request on 16.9.15 and directly relates to part 2 in my FOIA Request on 30.9.16. It clearly shows that information has been withheld. The nature of that information indicates that it has been deliberately withheld.***

51. That, however, it's should be noted, relates to part 2 of his request, not part 3. In relation to part 3, the Appellant said this:

*"The same applies to part 3 in my request on 30.9.16, namely:*

*[the request is repeated]*

and he added:

***"I believe there is overwhelming evidence of dishonesty here."***

52. RMBC provided carried out an internal review, and provided the Appellant with its response dated 2 February 2017 [0009/55 - 57]. In relation to part (Question) 3, the outcome provided was:

*"After conducting further searches we can confirm that RMBC holds no documented evidence regarding David McWilliams receiving the appraisal."*

**The ICO's investigation.**

53. The Appellant referred the matter to the ICO by letter of 5 April 2017 [0009/59 - 60]. In that letter he set out the history of his FOIA requests to RMBC from 16 September 2015 onwards. Whilst he made reference to all the requests he had made, he made it clear that the purpose of his letter was to ask the IC to ask RMBC:

*"... for an explanation as to how officer David McWilliams received what on 15.9.15 he referred to as "feedback" from a so-called (but still unnamed) "independent expert".*

*In an email on 15.9.15 David McWilliams included what appeared to be a long extract from information he had received, either directly or from a colleague at RMBC. However, RMBC state that David McWilliams did not receive this information by email. In my strong view there is very strong evidence that David McWilliams received this information by email and there is evidence that David McWilliams does not want to reveal the contents of this email."*

54. He went on to provide the ICO with some documents, setting out his previous requests, and the responses, and internal reviews, of RMBC to them.

55. In conclusion, he said this:

*“In summary, there remains a further critical piece of information that I believe has been withheld by RMBC – that of how David McWilliams received what he referred to in his email of 15.9.15 as “feedback” from the so-called (but still unnamed) independent expert.”*

He reiterated his request for the ICO to Ask RMBC for an explanation.

56. By letter of 25 April 2017 [0009/147] the Appellant sent six further documents to the ICO relating to his complaint. After a discussion with a case officer at the ICO on 24 May 2017, the Appellant sent further documentation through to him on 25 May 2017 [0009/250].

57. On 14 June 2017 the case officer wrote [0009/257-258] to the Appellant setting out how his requests were being dealt with, and seeking to clarify the confusion that had arisen in relation to what information had been requested under which reference number, and what the scope of the ICO’s enquiry would be.

58. On 22 August 2017 [009/259 – 262] the ICO, through a different case officer, Laura Tomkinson, wrote to RMBC explaining the nature and scope of her investigation, which was stated to be *“to determine whether the council is correct when it says that no further information is held in respect of part 3 of the request.”*

59. The ICO set out in this letter the following questions for RMBC to answer:

“

- *Is there any information held by the council which shows how the feedback referred to in David McWilliams’ email of 15 September 2015 was obtained or created?*
- *Has the council’s (sic) made direct enquiries with David McWilliams regarding this request (or similar previous requests)?*
- *What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?*
- *If the information included electronic data, please explain whether the search included information held locally on personal computers used by*

*key officials and named individuals (including laptop computers) and on networked resources and emails.*

- *If searches included electronic data, what search terms were used?*
- *Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed? If so, does the council hold any information about when it was deleted or destroyed?*
- *If the information is electronic data which has been deleted, might copies have been made and held in other locations, such as paper files of the specified individuals?*
- *Is there a business purpose or statutory requirement for which the requested information should be held? If so, what is this purpose?"*

60. The Appellant was informed of the investigation, and wrote to the ICO on 30 August 2017 [0009/269] informing her of specific questions that he considered David McWilliams should be asked, by way of explanation of when and how he received the feedback. This was in anticipation of a meeting with RMBC he was to have on 13 September 2017. He wrote in similar terms to Marie Buxton, Head of Information Management at RMBC on 30 August 2017 [0009/271]. His letter to the ICO in these terms appears not to have received a response, and perhaps did not require one.

61. The Appellant also wrote directly to David McWilliams on 19 September 2016, seeking answers to his questions [0009/281].

62. RMBC replied to the ICO's questions on 6 September 2017 [0009/281 – 285]. The eight bullet points were enumerated, and responded to.

63. In summary, the responses were:

1. *Yes – the requestor has been informed that the feedback was received from the 'expert' to the Council's Interim Deputy Director of Children's Services via email.*

*(The response then points out that the request was for something different, namely how David McWilliams received the feedback, and continues:)*

*David McWilliams received the feedback referred to in his email verbally from the Interim Director of Children's Services.*

2. *David McWilliams was the first point of contact for this request given that the request relates specifically to him. All enquiries would be directed to him.*

(Reference is then made to David McWilliams being the owner to the FOI request in his service area and therefore was knowledgeable of the relevant legislation.)

3. *"..... both David McWilliams and his secretary carried out separate extensive searches of his current and archive emails.*

*No information was found to answer part 3 of this FOI request as the information was communicated verbally."*

4. *"The information was communicated verbally as part of operational discussions between a manager and employee, therefore the verbal transaction of information would not have been recorded."*
5. *"The request specifically asked for email information therefore David McWilliams searched his current and archived emails."*
6. *"No information was or is held. It was verbal communication."*
7. *"No information was or is held. It was verbal communication."*
8. *"The expert appraisal is currently stored securely on the Council network. "*

Reference is then made to the business need for David McWilliams to "access the information" as he was instructed to action an email to the appellant.

64. This response was copied to the Appellant. He asked Marie Buxton of RMBC, by email on 6 September 2017 [0009/286] if he could have a copy of the expert appraisal as it was stored on RMBC's network. There appears to be no reply to that email, but the Appellant has since received or obtained a copy.
65. By letter of 11 September 2017 to the ICO [0009/291] the Appellant expressed his dissatisfaction with the response of RMBC, and informed the ICO that he had requested a copy of the appraisal. He made reference to two previous FOIA requests, and enclosed further documentation.
66. On 12 September 2017 the ICO wrote further to RMBC, in response to the responses received. She raised two points, the first a minor one, was to clarify that the term "independent expert guidance" meant the same as "expert appraisal". The second was more substantial, relating as it did to the contention that David McWilliams had not received an email containing the expert guidance, but had received the information verbally from the Interim Director of Children's Services (Jean Imray).

She asked if it was reasonable to assume that, as David McWilliams was able to quote directly from the email from the expert to Jean Imray, that he had access to that email in order to copy and quote from it in his email to the Appellant? Was it likely that he had accessed the information (by which she presumably meant the expert's report, now conceded to be on the Council's network) on the Council's network himself? Did the Council hold any information on when any networked documents have been accessed or uploaded by specific individuals?

67. RMBC's response to these further enquiries was made the following day, 13 September 2017, in an email from Marie Buxton [0009/298].
68. She confirmed that the "expert appraisal" and "independent expert guidance" were the same thing. She went on to confirm that David McWilliams had confirmed that "he had had verbal communication to advise Mr Harron regarding the direct quotes from Jean Imray". She also said that he could not, due to the passage of 24 months since the events, remember whether he typed his email to Mr Harron "direct" from information that Jean Imray had with her at the time of the discussion, or whether it was dictated by her to him from that information. He had confirmed that he could not find any email to suggest that he had received an electronic copy by email.
69. She went on to explain the access that David McWilliams would have had to appraisal once it had been secured on RMBC's network, where it would have limited accessibility to senior staff in the Information Governance unit, but this would not include David McWilliams.
70. RMBC's conclusion, therefore was that they could not evidence electronic access to the extracts from the report, which must either have been dictated to David McWilliams, by Jean Imray, or typed from a hardcopy sheet in her possession at the time of the discussion.
71. Marie Buxton referred to the fact that the incident was over 2 years ago, and that staff had moved on. She had not been able to interview Jean Imray to find out more. She did, however, offer to attempt to contact her, if the ICO required this.
72. The ICO investigating officer, Laura Tomkinson, spoke with Marie Buxton after receiving her email on 13 September 2017 (see her note of this discussion at [0009/299]. In this conversation Marie Buxton gave her more details about her enquiries with David McWilliams. She had interviewed him "several times", including during the preceding week. He recalled the conversation with Jean Imray, and being directed to respond to Mr Harron. He, and his PA, had looked through all his systems, and could find no email forwarding to him the details of the

expert appraisal. She went on to say that he also recalled “being required to prepare the email (i.e to Mr Harron) quickly”, but could not recall whether Jean Imray dictated the content or if he copied it from a paper copy. She confirmed to Laura Tomkinson that Jean Imray had left, and so had not been spoken to about the matter.

73. In this conversation Marie Buxton also made reference to the number of requests that the Appellant had made, and how RMBC would not be responding to any more. This relates to another matter under appeal, heard the day after this one, and being considered in a separate Decision.
74. Laura Tomkinson wrote to the Appellant the same day [0009/ 300 to 302]. In this letter she set out the enquiries she had made, and the information provided by RMBC in response, in effect, summarising the information set out in the preceding paragraphs. She made reference to the fact the Appellant had received a copy of the expert appraisal. She explained the enquiries she had made with RMBC and their responses. She stressed that the FOIA only entitles a requester to information that is (or was at the time of the request) held. She explained the test that the ICO applied to the issue of whether a public authority held the requested information, and how the ICO had concluded, on the balance of probabilities, that RMBC did not hold any email exchanges to David McWilliams containing the expert appraisal.
75. On 19 September 2017 Laura Tomkinson spoke to the Appellant by telephone, following her letter to him. Her note is at [0009/303]. He explained how he considered that on a balance of probabilities RMBC did hold the information, and that David McWilliams and Jean Imray had lied. He firmly believed there was an email to David McWilliams. He was asked to put his thoughts in writing, which he did, firstly in an email of 20 September 2017 [0009/304-305], and further in an email of 2 October 2017 [0009/306-307].
76. In his letter of 20 September 2017, the Appellant had asked the ICO to request that RMBC to provide a copy of the report as it appeared on its network, the date it was placed there and the name of the person who put it onto the network. He also questioned whether Jean Imray was no longer employed by RMBC, having seen her at a public meeting in the RMBC Chamber on 6 September 2017, where she was sat next to the Chief Executive.
77. Laura Tomkinson replied to both these documents on 3 October 2017 [0009/308 - 309] . She explained how it was outside the scope of the ICO’s remit to request the information the Appellant had suggested about the report being placed on the RMBC network. She reiterated the



test that was to be applied, and how nothing in the Appellant's letter changed the position. She emphasised that the enquiry was into what information RMBC held at the material time, not what it had held, but no longer did. She made reference to information that was held by a public authority in the past, but was no longer held "for example as a result of retention policies."

78. In relation to his letter of 2 October 2017 she referred to the other requests that Appellant had made, and his request for more information about how and when the appraisal had been put onto the network. She pointed out how FIOA did not compel organisations to create recorded information to answer questions or to provide explanations. She did appreciate that there were issues with the time it took RMBC to respond to the Appellant's request of 30 September 2016, but she remained of the view that there was no information, in the form of any email to David McWilliams, that the Appellant had requested.

79. A Decision Notice, largely in these terms, dated 7 December 2017 was then issued [0009/1 - 8]. In the Notice, the ICO also addressed the Appellant's suggestion that the ICO should take up the suggestion made by RMBC to contact Jean Imray, to ask her to provide more information as to how she supplied the information to David McWilliams.

80. The Appellant appealed on 4 January 2018. Having received the Appellant's appeal, the ICO made further enquiries of RMBC. By email of 1 February 2018 [0009/341] asked Marie Buxton some specific questions. She sought clarification of why no hard copy of the sheet in Jean Imray's possession had been retained. She went on to ask if RMBC could provide its hardcopy retention policy. She went on to ask her to clarify:

- "1. Whether the Council has any of Ms Imray's emails still?*
- 2. If not, why not?*
- 3. Was a search on Ms Imray's email archive ever conducted? "*

81. Marie Buxton replied the following day [0009/343], pointing out that the Decision Notice only said that Jean Imray may have used a hardcopy, RMBC had never stated that she had. She went on to refer to what David McWilliams had stated, that he could not remember if Jean Imray read out the information or he copied it from a hard copy of the expert appraisal. That document was available. She said she would make a request of the IT department to determine if Jean Imray's mailbox had been decommissioned. RMBC policy was for decommissioning 3 months from the leaver's departure date, but exceptions may have been made.

82. On 5 February 2018 Marie Buxton rang the ICO legal team, speaking this time to Zachary Whiting, who made a note of the conversation [0009/342]. They discussed the possibilities of how David McWilliams came by the information. The third possibility, that Jean Imray emailed a copy of the feedback (i.e. the report) to David McWilliams, seemed the least likely.
83. They discussed the RMBC retention policy. For FOI purposes the policy was retention for three years. Standard procedure, however, when a member of staff left, however, was that their email account remained open for three months, at which point it would be closed. If it had not already been “scoured” by that time, it would not generally be possible to view “sent” items. Whilst there could be exceptions, where a senior member of the Council requested that the account remains active, that did not appear to have occurred in this case.
84. Marie Buxton then sent by email a copy of the RMBC Records and Retention and Disposal Schedule 2017 – 2018 [0009/344 – 346].

*The Appellant’s grounds of appeal, and submissions.*

*The First Decision Notice - 7 December 2017 (No. FS50677230)*

*i)The initial request of September 2015, leading to the request of 30 September 2016.*

85. The Appellant contended, in his written submissions, and his oral argument that, in relation to his initial request, that there is, on the balance of probabilities, more information that RMBC have, and should be required to provide to him. He took the Tribunal through the history of his initial request, back in September 2015. He pointed out that the email from David McWilliams bore the appearance of containing quotations from some other source. This was clear from the terminology (he was expressly relaying the opinion of an expert), and the appearance of the email, and it was thus highly likely that David McWilliams was reading from, and repeating part of the contents of, some document.
86. RMBC’s responses had evolved over time, and he took the Tribunal through the various documents that were, over a period of time, released by RMBC, notwithstanding that it had previously stated there was nothing more that it had.
87. He explained how he had maintained pressure upon RMBC to provide further information by further FOIA requests. He had been encouraged

in this approach by the discovery, by extraneous routes, of other information and documents, and had used this as the basis for making further FOIA requests.

88. This led to him making a further FOIA request dated 30 September 2016 to RMBC. This request is in four parts. It is in relation to part 3 of that request that the Decision Notice of 7 December 2017 relates, and which the Appellant appeals in EA/2018/0009.

89. The terms of part 3 of this request [0009/46 & 47] were as follows:

“On 15 September 2015, I received an email from David McWilliams which stated:

*I know that much earlier on in the year we had discussions with ... about a more systematic approach to distribution through a planned workforce development programme. However, before I took this any further we sought independent, expert guidance on the content and after consideration Commissioner Newsam and Ian agreed to keep any further distribution limited to those already mentioned and or any individuals that we felt should be sighted on the publication.*

*I thought you might find it helpful if I shared some of the feedback we received;*

I referred to the email on 15.9.15 in the information I sent to the Information Commissioner’s Office on 25.5.15 as **Document 2**.

Please can I have a copy of **any email exchanges that led to David McWilliams receiving the so-called independent expert guidance**.

If there were no email exchanges, please can an explanation be provided as to how David McWilliams received the so - called *independent expert guidance*.”

90. Part 2, it should be noted, was a similar request in relation to email exchanges with Ian Thomas.

91. The response of RMBC to that request (i.e. part 3 of it), dated 1 November 2016 [0009/48 – 50] was that no further information was held. Reference was made to the email exchanges previously disclosed to the Appellant pursuant to his three previous FOIA requests, number 600, 714 and 989.

92. The Appellant sought an internal review of this response, not limited to part 3 of his request, but all of it, by letter dated 23 December 2016 [0009/51 – 52]. In this document, in relation to part 3, he referred to information he had acquired through a Subject Access Request.

Reference was made in that material to an email from Jean Imray “subsequently forwarded from her RMBC account to Ian Thomas on 4/8/15”. He made the point that this email should have been provided to him in response to his first FOIA request on 16 September 2015. He contended that this should have been provided pursuant to part 3 of his request of 30 September 2016, and said that there was “overwhelming evidence of dishonesty”.

93. The review was completed, and the response (undated, but apparently sent on 2 February 2017, [0009/55 – 57] in relation to part 3 was that RMBC held no documented evidence regarding David McWilliams having received the appraisal. It is of relevance, however, that it was acknowledged, in relation to part 2 of the request, which related to Ian Thomas, that the Appellant had, since his original request, been provided with a 3-page email thread, which it was accepted, had not been previously disclosed to the Appellant because of “human error”.
94. The Appellant relies upon further information that was disclosed to him, either pursuant to other FOIA requests, or through other sources, in support of this appeal.
95. In a document entitled “FOI 714 – Internal Review Decision” [0009/200 – 207] Linton Steele, the internal reviewer, included further information he had received from Jean Imray. This set out more detail of how she had received the expert appraisal, and had then further communicated it on. After an initial telephone conversation, the expert was asked to send her written comments, which he or she did, using Jean Imray’s private email address on her Ipad device. She then sent herself, at her RMBC address, on 2 August 2015, a copy of the comments, but not forwarding the email itself, as this would reveal the identity of the expert, which, it had been agreed, would not be revealed. Her email to herself is at [0009/240-241]. Whilst the order of the paragraphs is different, and there is one more bullet point or paragraph, the text of this email is virtually identical to the terminology of David McWilliams’ email to the Appellant. This was the first time the Appellant had learned of the role of Jean Imray in these matters.
96. The response to the Appellant’s FOI 600 RMBC was dated 27 January 2017 [0009/235 – 236]. At the same time, RMBC provided the Appellant with its Internal Review of the response to his FOI 600 [0009/237 – 239]. The former contained 4 Appendices... Appendix 1 relates to metadata, but Appendices 2,3 and 4 contained copy emails. Some of these the Appellant had not previously seen.
97. In particular, RMBC disclosed an email [0009/240] from Ian Thomas to the Commissioners dated 5 August 2015 in he included the expert

appraisal on Voices (with the author's name redacted). He did so including as part of this email Jean Imray's email to herself, which contained the expert's comments sent to her on 23 July 2015, which she had sent to Ian Thomas on 4 August 2015. In his email to the Commissioners he said:

*"Clearly, given the advice below we will be incredibly selective in how we use the publication."*

**The ICO's conclusions.**

98. As a result of the internal reviews carried out by RMBC, the further information that was disclosed, and the enquiries subsequently made by the ICO of RMBC, the following has been established, in the view of the ICO:
- a) David McWilliams was likely to have received the information in the form of the expert feedback upon the suitability of Voices for wider distribution in verbal, not written form, from Jean Imray, the Interim Deputy Director of Children's services;
  - b) He received this information as part of an operational discussion, and there was no separate recording of it.
  - c) David McWilliams and his secretary had searched all archived and current emails and had not found anything relevant to the request.
  - d) Jean Imray had received the expert feedback by email.
  - e) There was no evidence of David McWilliams accessing the RMBC email network in relation to the expert feedback, nor of him receiving any email containing it from Jean Imray. The information was therefore most likely to have been dictated to him by Jean Imray.
  - f) Jean Imray ceased to be an employee of RMBC, which is unable to search the archive of former employees more than 3 months after their leaving date.
99. In his response [0009/25 - 29] the Appellant clarified that he was not disputing that Jean Imray had ceased to be an employee of RMBC. He did, however, contend that she clearly still had some connection with RMBC in September 2017 because of her involvement in a webcast broadcast on 6 September 2017. RMBC had, in its response to the ICO offered to interview her, but the ICO had not required RMBC to take this step. This failure was, in fact, the central ground of the Appellant's appeal as originally advanced.

100. He did, however, later accept however, despite this ground of appeal, that he could not require RMBC to , or the ICO to require RMBC to , carry out further specific enquiries of , in particular, Jean Imray as to what information she received in what form from whom, which she then relayed to David McWilliams, and upon which he relied to make the decision not to distribute the copies of Voices which RMBC had purchased.

101. This is a welcome and sensible concession, as the ICO and hence this Tribunal, can only be concerned with information that is held by a public authority, and whether it should be disclosed pursuant to FOIA. The enquiry in these appeals is whether the conclusion that RMBC did not hold such information is correct, not whether RMBC or the ICO should have made, or directed, further enquiries into what further information there may have been. That said, the extent of, or absence of, specific enquiries that were made or were not made may well be relevant matters that the Tribunal can take into account when arriving at its own view of whether, on a balance of probabilities, RMBC did or did not hold the requested information.

#### Discussion and Findings: EA/0009/2018.

102. Once it is accepted that the ICO, and hence this Tribunal, can only order disclosure of information, and cannot order the provision of explanations or the making of further enquiries, the Tribunal's task is a simple one. As is clear from the authority of *Bromley v I C and the Environment Agency EA/2006/0072* the Tribunal's task is to determine whether, on the balance of probabilities, the public authority held the requested information. It is to answer that question by reference to the quality of the public authority's initial search based on the request, the scope of that search, the rigour and efficiency of that search and the discovery of any materials which point to there being more.

103. In relation to the first of these, the information relating to the searches conducted by RMBC has been provided to the ICO by RMBC. The Tribunal has also had sight of email communications passing between RMBC officers on the topic of the Appellant's specific request under FOI 600 for metadata, as it was put, and all other material generated when responding to his initial FIO request.

#### Findings.

*i)The request at part 3 of the request of 30 September 2016 for copies of email exchanges that led to David McWilliams receiving the expert advice.*

104. It has to be observed that the scope of the Appellant's request which is the subject of this appeal was a narrow one. It is predicated on the existence of at least one email, i.e. one passing between Jean Imray and David McWilliams sometime between late July and 15 September 2015.
105. The starting point therefore has to be whether it is more likely than not that there was such an email. RMBC's responses to the ICO, and all the other information which has been disclosed to the Appellant, may lead to a suspicion that there may have been such an email, but no more than that. There are, it seems to this Tribunal, two possibilities. The first is that there was such an email, and it from this that David McWilliams was able to draft his email to the Appellant. The other possibility is that there was not, and either David McWilliams saw a hard copy of the report, possibly in the presence of Jean Imray, or she told him, in a telephone conversation, or in person, what it said.
106. Given that Jean Imray and David McWilliams worked for the same organisation, and were likely to meet (and David McWilliams told the RMBC investigation that he had indeed met her to discuss this matter) or speak on the telephone, the Tribunal cannot find that the communication of the extracts from the contents of the report by Jean Imray to him was more likely to have been by means of email than by direct oral communication, or him seeing a copy of the report.
107. In other words, communication by email is no more than equally likely as by other means. No other email communication passing between these two RMBC officers has been identified at any stage during this process.
108. That finding, in itself is sufficient to dispose of this appeal, as the balance of probabilities is not tipped in favour of there ever having been such a document. For completeness, however, and if the Tribunal were to be in error in holding that it has not been established on a balance of probabilities that there ever was such an email, the next issue would be whether, at the time of the request (i.e 30 September 2016), that information was held by RMBC. The enquiries made by the ICO after the appeal from her Decision Notice had been lodged expressly addressed retention policies of RMBC, and made enquiries as to whether Jean Imray's email account had been searched. The response was that her account would have been closed three months after she ceased to be an RMBC employee, and it was unlikely that it would be possible to search for sent emails.
109. Other than his suspicions, the Appellant has been unable to point to any other evidence which would support the likely existence of, or

the retrievability or accessibility of, any such email at the time of his request. Whilst he initially appeared to suggest that Jean Imray had not ceased to be an RMBC employee, by reason of her appearance at the public meeting on 6 September 2017, he did not press that point and made it clear in his Response document [0009/25] that he was not making such a suggestion.

110. Jean Imray left RMBC, the Appellant believes, in June 2016. Her email account will have been closed therefore in or about September 2016.

111. Thus, even if an email had been sent by her to David McWilliams, it would probably not be available from that Jean Imray's RMBC email account by 30 September 2016, the date of the Appellant's request.

112. Finally, the Appellant has discovered, by various routes, much about the process whereby RMBC arrived at its decision not to distribute Voices as widely as it had originally agreed to do so. This includes the fact that, unbeknownst to him, this was being discussed in late July 2015, allegedly independent expert feedback was received by Jean Imray on 23 July 2015, which was then relayed to Ian Thomas on 4 August 2015. The "expert" report (by which the Tribunal assumes that is meant the document upon which Jean Imray relayed what become David McWilliams' emailed comments) has been disclosed to the Appellant. From Malcolm Newsam's comments on 5 August 2015 [0009/240] it seems that it was the final part of the expert's appraisal (not included in David McWilliams' email to the Appellant) which may have been significant in RMBC's decision. That part is an implied criticism that the Appellant, as an informal and unofficial "organisation", working with survivors and victims, was not recognised as practising within a sufficiently robust governance framework. Malcolm Newsam appears to have been influenced by that, and this may be at the heart of the change of heart by RMBC. That is, however unfair the Appellant considers it to be, bye the bye.

113. All this, however, does lead the Tribunal to question what purpose, in these circumstances, would be served by RMBC continuing to conceal any email between Jean Imray and David McWilliams, in which, at most, he was instructed to relay the contents of the feedback to the Appellant. In short, the Appellant knows virtually everything else about this process, the "cat" as it were, is "out of the bag", so what would be the point of suppressing this particular email, if it ever existed?

114. In summary, therefore, whilst the Appellant's suspicions are understandable, and were fuelled doubtless by the slow, and piecemeal



manner in which RMBC provided him with information, and not always directly in response to his FOIA requests, this Tribunal agrees with the ICO that, on a balance of probabilities the public authority does not, and did not at the time of the request, hold the requested information. The Decision Notice is accordingly upheld.

(ii)The second appeal - the request in relation to the response to the Appellant's previous FOIA request.

115. This is a separate and distinct issue, though one that is clearly inextricably linked to the issues raised in the other appeal. Its focus is slightly different, however, as there is no involvement of any external agencies or persons, the information sought relates solely to how RMBC dealt with the Appellant's FOIA requests, which are purely matters internal to RMBC.

116. The second Decision Notice (FS50683351) relates to the Appellant's FOIA request made on 26 October 2015 that requested RMBC to provide him with the information generated when processing his previous FOIA request, which he referred to as the "metadata", which included the internal notes emails etc. created or circulated by RMBC in the preparation of its response to his previous FOIA request of 16 September 2015, which was given reference no. FOI 600 by RMBC, and is referred to above. Whilst RMBC accepted the Appellant's request of 16 September 2015 as FOI 600 (presumably of 2015), the subsequent request he made on 26 October 2015 [at pages 0047/123 - 124] was not treated as a fresh request (though at one time it appeared that it had).

117. It was in the last paragraph of this request, or clarified request, in which the Appellant asked:

*"Please provide the information generated for this FOI request (the metadata) which includes the internal notes, emails etc."*

118. RMBC eventually provided its response on 16 May 2016 [0047/127 - 189]. The first part responded to the Appellant's request for metadata, which was partly granted, and disclosed at Appendix 1. Further provision was refused on the basis of the cost and time limits under s.12 of FOIA. It was confirmed that there no internal notes held relating to the processing of the Appellant's request.

119. RMBC did, however, provide at Appendix 2, emails sent between the Information Governance Team, and the RMBC departments relating to the Appellants request.

120. Further, RMBC provided at Appendix 3 emails exchanged between the relevant PAs. Those contained attachments which may have been relevant to the information requested in the Appellant's original request for information, i.e that made on 16 September 2015. At Appendix 4, RMBC provided copies of the documents referred to, which it was believed had previously been provided to the Appellant, but which were included for completeness.
121. The Appellant replied by letter to RMBC of 29 June 2016 [0047/190]. In this letter he complained of the delay, and requested a review, expressly of the decision not to provide him with the metadata.
122. The Appellant subsequently withdrew his application for a review on 19 July 2016, pending the issues being dealt with under the "Business as Usual" approach. That, however, was not satisfactory, and by letter of 26 October 2016 [0047/191] the Appellant reinstated his request for an Internal Review.
123. That review was carried out, and on 27 January 2017 (according to a handwritten note on the documents) was sent to the Appellant [0047/193 - 197]. It is largely concerned with the Appellant's request as originally framed, for metadata, which has since been withdrawn. RMBC refused this request, and maintained that refusal on Review, on the grounds of s.12 of FOIA, that the processing would exceed the appropriate limit. This has now ceased to be an issue, given the Appellant's clarification of his request, and basis upon which his appeal has proceeded. The other two points made in the Appellant's renewed request for a Review of 26 October 2016 related to a request for a review of the Business as Usual approach, and for information that was provided under that process to be included in the Review. These were treated as Points 2 and 3 in the application for a Review, and rejected as being out with its scope.
124. The Appellant contacted the ICO on 25 April 2017 in connection with this matter [0047/200]. He formally raised his concerns, referring to the Internal Review Response dated 27 January 2017. This was acknowledged (though different dates are referred to) by the ICO on 25 May 2017 [0047/202]. After some clarification, the ICO contacted RMBC, in relation to the Internal Review relating to FOI 600 - 16 (though it was probably of 2015) indicating it would be investigating the matter. By letter of 16 October 2017 [0047/211 - 214] the ICO wrote to RMBC to say that the scope of the complaint was whether the Council had correctly applied s.12 FOIA.
125. The Appellant subsequently, in communication with RMBC and the ICO on 16 and 17 October 2017 [0047/218 and 224], confirmed that

by use of the term “metadata” in his request, he was not seeking the type of information to which that term usually refers, i.e data about data, which shows the properties of other information held or created on computer systems, such as when data was created or accessed, and other properties. Rather he was merely seeking other information generated, including notes and emails etc., relating to how RMBC responded to his previous request, which he considered existed, but had not been provided to him.

126. On 2 November 2017 the ICO wrote to the Appellant [0047/238 - 240] to clarify his complaint, and that he did not now seek the metadata, but did seek internal notes, emails etc. that were generated in managing his earlier request. He replied later that day, confirming that the situation had been accurately stated by the ICO [0047/241].

127. Having received and clarified the Appellant’s request, the ICO wrote to RMBC on 3 November 2017 [0047/245-248], conveying this clarification of what the Appellant was seeking. She asked RMBC to provide answers to 12 specific questions [0047/247], namely:

*“1) What searches have been carried out to check no information was held within the scope of the request and would these searches have been likely to retrieve any relevant information?”*

*2) Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.*

*3) If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials and named individuals (including laptop computers) and on networked resources and emails.*

*4) If no or inadequate searches were done at the time, please rectify this now and let me know what you have done*

*5) If recorded information were held would it be held as manual or electronic records?*

*6) Was any recorded information ever held relevant to the scope of the complainant’s request but deleted/destroyed?*

*7) If recorded information was held, but is no longer held, when did the Council cease to retain this information?*

*8) Does the Council have a record of the document’s destruction?*

9) *What does the Council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the Council describe the way in which it has handled comparable records of a similar age?*

10) *If the information is electronic data which has been deleted, might copies have been made and held in other locations?*

11) *Is there a business purpose for which the requested information should be held? If so, what is this purpose?*

12) *Are there any statutory requirements upon the Council to retain the requested information?"*

128. The ICO, in summary, required RMBC to provide a thorough response to these questions.

129. RMBC responded on 4 December 2017, in a document in tabular form in which each question was answered [0047/266 – 268] . Without repeating the questions, but using that enumeration, the responses of RMBC were, in summary, as follows:

1. The relevant Directorate was the Children & Young People's Directorate, which had coordinated specific searches across both electronic and paper records in relation to the scope of FOI 600. A second search was also carried out at the independent internal review stage.
2. The Directorate staff used the request criterion "Voices of Hope Voices of Despair", in relation to both electronic and paper records.
3. The search terms used included reference to the publication and the authors. The searches included information held on key official work laptops/devices, network and emails.
4. RMBC was satisfied that adequate searches were undertaken at the time of the request and the internal review, which were undertaken for the original request, the internal review and all overlapping request from Mr Harron relating to this subject.
5. All information held and disclosed was held as an electronic record.
6. No recorded information had been deleted or destroyed.
7. Not applicable.
8. Not applicable.

9. All official records of RMBC were retained and destroyed in relation to RMBC's Retention Schedule, and no information assets are destroyed without the approval of the Asset Owner, in accordance with RMBC's disposal procedure.
  10. Not applicable.
  11. The information in question related to operational service delivery. The publication did not fall within any statutory remit of the service, and there would be no business purpose to retain the information beyond operational use in 2015. The documentation that was held was still being retained due to this ongoing request.
  12. No, and the previous answer is referred to.
130. After some delay, the Decision Notice was issued on 19 February 2018.
131. In the response to this Appeal [0047/61 - 66], the ICO submits that there is considerable overlap between this appeal, and the appeal under reference EA/2018/0009. She highlights how the two notices of appeal seek the same remedy (or did do, for the Appellant now accepts the limitations of this process).
132. In his response to the ICO's response, the Appellant referred to three documents which he had submitted on 8 March 2018. This appears to be a reference to the Notice of Appeal, actually dated 12 March 2018. The three documents referred to appear to be the first three referred to in Box 8, "Supporting document" which were attached to the Notice of Appeal. As far as the Tribunal can tell, for it is not clear if these are the correct references, they are

A Letter from himself to the ICO of 5 April 2017 [0047/14- 15]  
RMBC's Internal Review of 2 February 2017 [0047/16 - 17]  
Internal Review response to Freedom of Information request 740 - 16, 2 February 2017

[Note: - the Tribunal has had difficulty in identifying this document in the bundles. It appears to be document 8 which was originally attached to the Appellant's letter of 5 April 2017 to the ICO at 0047/14 -15, but it is not attached thereto in the bundle. It is described as an email, but no email with that date can be located.

It seemed possible that this is a reference to another RMBC document, an Internal Review, but one which relates to Request 600. The document

is undated, but has the handwritten legend "27/1/17" in the top left-hand corner, and is at pages 0047 194 - 197. It is largely concerned with the Appellant's request as originally framed, for metadata, which has since been withdrawn. RMBC refused this request, and maintained that refusal on Review, on the grounds of s.12 of FOIA, that the processing would exceed the appropriate limit. This has now ceased to be an issue, give the Appellant's clarification of his request, and basis upon which his appeal has proceeded.

It transpires, however, that this document is not in the bundle for EA/2018/0047, but for EA/2018/ 0009, where it appears at pages 55 to 57. It is not dated, but is likely to be dated (from the handwritten note on the preceding page) to have been sent on 2 February 2017.]

### Discussion and Findings.

133. In relation to this appeal, the issue is the same as that raised by the other appeal, namely whether, on the balance of probabilities, RMBC holds, or did hold at the time of the request, the requested information. The same legal test as set out above in *Bromley v I C and the Environment Agency EA/2006/0072* applies. The Tribunal has considered the scope of the enquiries made of RMBC by the ICO, and the answers provided. Again, other than a suspicion or feeling, understandably fuelled by the delays and piecemeal fashion in which RMBC did eventually provide information to the Appellant, he has been unable to point the Tribunal to any material which suggests that there is likely to be more information that has not been disclosed. It is to be remembered that this is a somewhat secondary, or "parasitic" request, in that it is a request for information as to how a previous request was responded to.
134. Having applied the legal test, the Tribunal is satisfied, having regard to the enquiries made by the ICO of RMBC, their answers, and all the other information put before the Tribunal, that, on the balance of probabilities RMBC does not, and did not at the time of the request, hold any further information relating to the processing of the Appellant's previous FIOA request, and the ICO's Decision Notice in this regard too is upheld.
135. With thanks to the Appellant for the courteous and helpful manner in which advanced his appeals before the Tribunal, and gratitude for his patience, the appeals are dismissed.

Signed:

Judge of the First-tier Tribunal

Dated: 24 January 2019.