

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 January 2013

**Public Authority:** Rochdale Metropolitan Borough Council  
**Address:** Municipal Offices  
Smith Street  
Rochdale  
Lancashire  
OL16 1YR

### Decision (including any steps ordered)

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1. The complainant asked Rochdale Metropolitan Borough Council (the Council) to provide copies of emails received into his work account during a specified period. Although the Council provided copies of those emails not already in the complainant's possession, the Information Commissioner felt it was appropriate to consider section 40 (personal data) of the FOIA in relation to this request.
2. The Commissioner has concluded that the requested information constitutes the personal data of the requester and the exemption provided by section 40(1) should therefore have been applied. He does not require the Council to take any steps.

### Background

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3. This request was one of three associated requests which were the subject of a decision notice issued on 17 May 2012 (*references FS50443005, FS50433225 & FS443026*) which ordered the Council to provide the complainant with a response to all three requests as it had failed to respond to any of them.

## **Request and response**

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4. On 2 August 2011 the complainant wrote to the Council and requested the following information:  
  
*"I formally request copies of all the emails received in my Rochdale email account from 2 Jan 2009 to date."*
5. Following the issuing of the aforementioned decision notice, the Council responded to the complainant on 20 June 2012 and provided him with copies of the emails in his account from 1 January 2009 to 1 April 2009 by special delivery which it said totalled almost 2,000.
6. On 21 June 2012 the complainant contacted the Council to advise he had in his possession the emails which the Council had previously disclosed to the police which covered the period 1 April 2009 to 18 June 2009.
7. On 4 July 2012 the Council wrote to the complainant again and provided him with the emails received in his account from 19 June 2009 to 30 June 2009.
8. The Council advised the complainant he had clearly indicated in his letter of 2 August 2011 that he already had in his possession emails from July 2009 to December 2009, such that by 4 July 2012, the complainant had copies of all emails received into his account from 1 January 2009 to December 2009.
9. It further advised the complainant that 112 emails had been received into his account from 1 January 2010 to April 2011 at which point the account was closed down. The Council said that although the complainant was no longer employed by it during this period, it had decided to send him copies of 104 emails received into this account which were non-work related, the remaining eight being work-related emails.

## **Scope of the case**

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10. The complainant contacted the Information Commissioner (the 'Commissioner') to complain about the way his request for information had been handled.
11. The complainant also raised other issues that are not addressed in this notice because they are not requirements of Part 1 of FOIA.

12. Based on a number of emails received from the complainant, the Commissioner formed a view that his concerns centred on the emails from April to June 2009. He therefore wrote to the complainant on 5 November 2012 to ascertain if this was indeed the case and the complainant confirmed it was.
13. During the Commissioner's investigation he clarified that the Council had not sent the complainant copies of the emails for the period April to June 2009 because the complainant had advised he already had them in his possession. At the Commissioner's request, and with a view to trying to resolve the case informally, the Council provided these emails to both the Commissioner and to the complainant.
14. On 4 December 2012 the Commissioner wrote to the complainant to outline his view that the request should have been made under the Data Protection Act as opposed to the Freedom of Information Act as the emails requested constituted the complainant's personal data. He explained that any decision notice would record that view.
15. The complainant expressed dissatisfaction about the emails he had received, stating that a number had not been disclosed. It should be noted that the complainant refused to provide the Commissioner with any details of these allegedly undisclosed emails to enable the Commissioner to investigate further.

## **Reasons for decision**

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### **Section 40(1)**

16. Although the Council has not at any stage cited section 40, having viewed the subject matter of the emails the Commissioner believes it appropriate to consider this exemption. The Commissioner will not proactively seek to consider exemptions in all cases, but in cases where personal data is involved the Commissioner believes he has duty to consider the rights of data subjects. These rights, set out in the Data Protection Act, are closely linked to article 8 of the Human Rights Act and the Commissioner would be in breach of his obligations under the Human Rights Act if he ordered disclosure of information without having considered these rights, even if the public authority has not cited the exemption.
17. The Data Protection Act 1998 (the 'DPA') defines personal data as:  

*"...data which relate to a living individual who can be identified*

*a) from those data, or*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual.”*

18. At the Commissioner's request, the Council provided him with a list of all the emails received into the complainant's former work account from January 2009 until April 2011. The list shows the senders, the subject matter of the emails, the time the emails were received and the size of the emails. The Commissioner is satisfied that all the emails identify and relate to the complainant because they were all addressed and sent to him using his name. These emails are, therefore, the personal data of the complainant in accordance with the definition given in the DPA.

### *Conclusion*

19. Section 40(1) provides an exemption for information that constitutes the personal data of the requester. The Commissioner has found that the information in question is the personal data of the complainant and, therefore, the exemption provided by section 40(1) is engaged in respect to this information.

### **Other matters**

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20. The approach of the Commissioner where a request is made for information which is the requester's own personal data is that the public authority should deal with the request as a subject access request made under section 7 of the DPA. This action should be taken without it being necessary for the requester to make a further request specifying section 7 of the DPA.
21. In this case the Commissioner is aware that the Council has provided copies of the requested emails to the complainant outside of FOIA and without the complainant having to make a separate subject access request. He does not, therefore, believe that any further action on the part of the Council is necessary.

## Right of appeal

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22. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

23. 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.
24. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**