

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2017

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

Decision (including any steps ordered)

1. The complainant requested information relating to Rotherham Metropolitan District Council (the Council)'s Submission Sites & Policies Consultation Statement.
2. The complainant disputed the Council's position with respect to some of the requested information namely information relating to meetings involving community/resident groups.
3. The Commissioner's decision is that the Council did not hold this information and has complied with its obligations under section 1(1) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 21 August 2016 the complainant wrote to the Council and requested information in the following terms:

"RMBC document titled 'Submission Sites & Policies Consultation Statement' includes a statement on each of pages 33, 70 and 95, (relating to different stages of the planning process) that "Upon request, meetings took place with any member of the public/community group, developer or landowner who wished to engage with a planning officer outside of a more open forum".

How were members of the general public advised of this facility at each stage of the process? How were residents living within 100 metres of a proposed development advised of this facility at each stage of the process?

How many such meetings were requested at each stage by members of the public and by residents living within 100 metres? How many such meetings took place at each stage with members of the public and with residents living within 100 metres? How many meetings were requested by community/resident groups at each stage? How many meetings took place with community/resident groups at each stage?

For clarity, please ensure it's clear whether there is an overlap in data provided (eg if residents within 100 metres are also counted as members of the public)".

6. The Council responded on 14 September 2016. It told the complainant that while *"...meetings have been held if appropriate when requested by developers, community groups, town or parish councils or individuals..."* it did not hold a detailed list of those meetings. It also cited the following exemption of the FOIA:

- section 21 information accessible to applicant by other means.

7. The Council provided the complainant with links to some information it considered he may find helpful.

8. The complainant expressed dissatisfaction with that response, telling the Council:

"... Do you mean in your response that there is no record of the number of requests and the number of meetings? If there is some information which might help me to understand the take-up of this facility, could I please see it?"

9. Following an internal review the Council wrote to the complainant on 18 October 2016 confirming that it did not hold a list of meeting requests or meetings held in relation to this matter. No reference was made to section 21 of the FOIA.

Scope of the case

10. Following earlier correspondence, on 14 November 2016 the complainant provided the Commissioner with the relevant information to complain about the way his request for information had been handled.

11. The complainant disputed that the Council did not hold any information within the scope of that part of his request relating to the number of requests for meetings and the number of such meetings held during the Council's consultation period.
12. During the course of her investigation, the Council confirmed that it did not hold information within the scope of those parts of the request.
13. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
14. The analysis below considers whether, on the balance of probabilities, the Council held information relating to the number of requests for meetings and the number of these which were held.

Reasons for decision

Section 1 general right of access

15. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
16. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
18. In applying this test the Commissioner will consider:
 - the scope, quality, thoroughness and results of the searches;
 - whether the Council has a business purpose for which the requested information should be held; and

- other explanations offered as to why the information is not held.

19. In progressing her investigation, the Commissioner asked the Council:

- what searches it carried out for information falling within the scope of the request and why those searches would have been likely to retrieve any relevant information;
- whether any recorded information relevant to the scope of the complainant's request had ever been held but had been deleted/destroyed; and
- whether there were any statutory requirements upon the Council to retain the requested information.

20. In its substantive response, the Council told the Commissioner:

"... the team manager in the Council's Planning Service consulted the two senior officers who have dealt with the preparation of the local plan since its inception in 2006... Had the recording of such meetings taken place these officers in the Council's Planning Service would have been involved in the recording of such meetings".

21. The Council advised the Commissioner that the officers who were consulted would have had personal knowledge of any maintained list of meetings, if such a list existed. The Council confirmed that, having consulted the officers concerned, it was determined that information recording the number of meetings requested and held at each stage of the process was not held.

22. The Council further advised the Commissioner:

"This position is distinct from a record of public meetings, drop in sessions and organised workshops with specific groups held as part of the process of public consultation on the plan. These meetings are recorded and details are provided in the consultation statement that the Council is required to submit to the Secretary of State along with the plan for independent examination. The Council has prepared this statement, made it publicly available and provided the web link to the requestor".

23. While appreciating the complainant's frustration that the Council does not hold the specific information he has asked for, the Commissioner is

mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)¹ that the FOIA:

“does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold”.

24. Having considered the Council's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold the requested information.

¹ <http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Right of appeal

25. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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
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Wycliffe House
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Cheshire
SK9 5AF