

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **21 November 2022**

Public Authority: **Rotherham Metropolitan Borough Council**

Address: **Riverside House
Main Street
Rotherham
S60 1AE**

Decision

1. The complainant requested information from Rotherham Metropolitan Borough Council ("the Council") about communications between two named individuals at the Council, over a specified three month period, relating to complaints about a particular matter referenced within the request.
2. The Commissioner's decision is that the Council failed to provide an adequate response to the request. Consequently the Commissioner finds that the Council breached section 1(1) and section 10(1) of FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must issue a fresh response to the request which is adequate for the purposes of FOIA.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 7 January 2022, the complainant wrote to the Council and requested information in the following terms:

"This Freedom Of Information Act Request (FOIAR) is for a copy of the communications, if any communication exist, between [xx name redacted xx] and [xx name redacted xx] during July, August and September 2016 about the complaints that led to the LGO Decision [xx reference redacted xx]. If any such communications exist, they will be a matter of considerable public interest. As there is an extensive record of RMBC missing important communications that should have been included as part of FOIAR responses, it will be helpful if the search terms used are included in the response to this FOAR. (I suggest search terms include: [xx redacted xx])"

6. On 4 February 2022, the Council responded. It confirmed that it had conducted a search to identify "any emails held dated between and including dates of 01/07/16 and 30/09/16" that contained four of the five search terms suggested by the Complainant. The fifth search term was the name of a third party individual and the Council advised that it "did not feel it is appropriate to use" but that its omission "does not adversely affect the search". The Council advised that "no emails for your request were identified and therefore the Council does not hold any information for your above request".
7. On 21 February 2022, the complainant requested an internal review, questioning the Council's search for "documents". The complainant referenced an email dated 23 August 2016, which was within scope of the request and pointed out that the Council was aware of its existence.
8. On 27 April 2022, the Council provided its internal review outcome to the complainant. The Commissioner has highlighted in bold a key sentence to help explain his decision below. The internal review explained that:

"To search for information held the Council uses search terms. These search terms are in order to be able to identify and locate information that may be relevant to the scope of the request. You identified and specified the search terms yourself, within your request. With the exception of one term, your suggested terms were used, as the original response discusses ...In your request for an Internal Review you advise you are unhappy about the search undertaken, but you neither provide suggested amendments nor specifically comment on whether you are satisfied / dissatisfied with the search terms. Therefore no new search has been undertaken. However, for assurance, the original search was re-run. I can confirm the outcome remains the same as per the original response.

It is noted that you identify an email dated 23.8.16. You submitted that email with your Internal Review request and I have reattached it to this Internal review for ease. I can only advise that the stated email would not have come up in the email search undertaken, if it is no longer held within the email system. Emails within the email system are not held indefinitely, as it is not an appropriate store. There is no requirement to retain emails unless they form part of a necessary processing task (e.g. a FOI request). When an email is held and is identified to be of value to a task (e.g. a FOI request) it will be saved within that FOI reference (i.e. saved to the network folder and not left in email system). That email will then remain within that network folder (i.e. the relevant FOI folder). The Council can undertake manual trawls of relevant network files to identify information relevant to a request. I have undertaken some manual trawls myself as part of this Review. The logical starting point was within previous requests made by yourself, as the attached email of 23.8.16 was provided ...

I have dip sampled several of your requests, but I have not found anything further within scope. **I have not looked in every potential location.** There are two key reasons for this: 1. I have dip sampled several of your previous requests and found no new email to provide. 2. If I were to suggest logging a new request to specifically focus on a network trawl for documents within potentially relevant files then this would engage Section 12 ("cost of compliance"). The volume and history of your enquiries are significant and for an officer to undertake an analysis of all the contents would take far in excess of the permitted time.

The Council has clearly identified information to satisfy previous requests, issued you this information, then saved this information against the relevant reference.

If emails are identified as relevant to a specific request then they are retained in the relevant file and (where appropriate) disclosed. It does not mean a copy of the email in the email system has to be retained as duplicate.

Any information requested, to which you were entitled, has been released to you under your requests (whether this request or previous requests).

The searches undertaken of the email systems are correct. You feel more information should have returned in the search results, but the above narrates why emails identified for previous requests may not always be identified for later requests.

If the logging of a FOI to trawl the network were viable then I would recommend this as an outcome and/or already be instructing officers to undertake this task. I do not see this as viable (time compliance).

The Council completed this request, in good faith, using your search terms. The Council cooperated with your request and undertook the search you suggested. The approach taken by the original officer was correct, albeit the network position was not communicated.

The original case officer did state there were no results from an email search, however the officer did not explicitly state this was of the email system (not network). My narrative above covers this point further."

Scope of the case

9. The complainant contacted the Commissioner on 19 May 2022, to complain about the way their request for information had been handled. The complainant stated that "It is a fact however that RMBC did hold relevant emails that included [xx names redacted xx]".
10. As evidence, the complainant provided the Commissioner with copies of two emails sent between the two named individuals on 23 August 2016; one of these having been provided by the Council in response to a previous request.

11. In addition, the complainant provided the Commissioner with copies of emails not between the two named individuals but instead between third party individuals and one or other of the two named individuals. It is considered that these particular emails were not within scope of the request as it is clear that the request only asked for communications between the two named individuals and not between them and third parties.
12. The complainant further advised that they believed there to be "further communications that have not been disclosed by RMBC".
13. The scope of this complaint is therefore to consider whether or not the Council provided an adequate response to the information request.
14. The Commissioner wrote to the Council on 19 October 2022 asking it to provide its full and final reasoning as to why its handling of the request was compliant with FOIA.
15. The Council replied to the Commissioner on 26 October 2022, maintaining that its handling of the request was compliant with FOIA. The Council said this was because it had conducted the search based on four of the complainant's five suggestions and that the omission of the fifth search term did not adversely affect the search as, it advised, to have included it would have narrowed the scope of the search. Additionally, that the search terms had been communicated to the complainant.
16. The Council further advised the Commissioner that:

"The electronic search was undertaken on the entire email network of the Council; it was not limited to any specific officer(s).

As the Internal Review states, the search did not include the network. This was not made clear in the original response, however the Internal Review clarified this.

Network searches can not be undertaken in the same way as email system searches. However, the Internal Reviewer did manually investigate relevant folders (as covered on Page 3 of the Internal Review document).

As indicated within the Internal Review, this request is related to a history of multiple and inter-related requests with the specific customer. To undertake a manual trawl of every document held in every potential associated file, to determine whether relevant, would far exceed Section 12. A specific calculation isn't possible, but it is days and weeks, not hours."

Reasons for decision

17. This reasoning covers whether the Council has complied with its obligations under section 1(1) (general right of access to information) and section 10(1) (time for compliance) of the FOIA.
18. The position of the Council is that it considers that it conducted reasonable searches for information in scope of the request as it used the search terms suggested by the complainant. The Council further advised that "to undertake a manual trawl of every document held in every potential associated file, to determine whether relevant, would far exceed section 12".
19. The complainant considers that the Council has not complied with their request and does hold information within scope of the request and provided evidence in the form of two emails within scope of the request.
20. The Commissioner considers that the Council did not provide the complainant with an adequate response to the request for the following reasons.
21. The complainant provided evidence that information within scope of the request was held by the Council but was not provided within the response to this request, albeit provided in response to a previous request.
22. The request referred to 'communications' but did not limit the scope to electronic records. However, the Council has confirmed that only a search of electronic records was conducted.
23. The original response was provided following a search of only the email system rather than the whole network.
24. The Council explained that when an email is identified as being of value to a task (e.g. an FOI request), it will be moved to the network folder for the task and not left in the email system. It is therefore clear that a search of only the email system will not necessarily locate all information within scope of a request.

25. The Council advised that searches of the network could not be undertaken in the same way as email systems searches but that as part of the internal review, a "manual trawl" had been undertaken through a "dip sample" of some of the files held for the complainant's previous information requests but that nothing further within scope had been found.
26. The Council further advised that it had "not looked in every potential location" as this would engage section 12 of FOIA "cost of compliance".
27. The request did not ask the Council to limit the search to the suggested search terms provided but rather it asked the Council to include details of what search terms it had used within the response. It is therefore considered that the 'suggestions' made by the complainant should not have placed limitations on the scope of the search.
28. It is considered that the search should have had more regard placed on the subject matter of the information being sought. The Council should have taken into account the LGO decision reference number included within the request and checked to see if there were any files relevant to that matter rather than limiting the search to "dip sample" checks of the complainant's previous information requests (as they already had that information) and a narrow search of the email system using only the two named individuals email addresses and the words "complaint" and "[xx redacted xx]".
29. The Commissioner's decision is that the Council has failed to provide the complainant with an adequate response to the request and, therefore, the Council has breached section 1(1) (general right of access to information) and section 10(1) (time for compliance) of FOIA.
30. The Commissioner requires the Council to provide the complainant with a fresh response to their request which relies on thorough and comprehensive searches. The Council should either provide the complainant with the requested information, if held, or an adequate refusal notice. Should the Council's fresh response rely on section 12 of FOIA, it will need to provide a detailed explanation of its reasonable estimate for calculating that the cost would breach the limits under the legislation.

Right of appeal

31. 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@justice.gov.uk

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

32. 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.
33. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF