

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2023

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

Decision (including any steps ordered)

1. The complainant requested information about the company Mark Gurrey Consulting Ltd. By the date of this notice, Rotherham Metropolitan Borough Council (the Council) had not issued a substantive response to this request.
2. The Commissioner's decision is that the Council has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - The Council must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The Council must take this step 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 13 October 2022, the complainant wrote to the Council and requested information in the following terms:

"Please provide all documents relating in any way with Mark Gurrey Consulting Ltd, or in which the company or contacted personnel or employees are referenced.

This would include but not be limited to: invoices, referrals, emails, minutes of meetings, memos, etc.

Please indicate who were contracted or employed by Mark Gurrey Consulting Ltd whilst working at RMBC.

Please identify who was the government appointed childrens' commissioner for the period 24.10.2014 and up to at least June 2016.

To assist:

Mark Gurrey Consulting Ltd was first engaged on 24th October 2014 and the engagement was originally due to cease in June 2016."

6. The Council acknowledged receipt of the request on 17 October 2022, providing the complainant with a reference number for their request.
7. On 9 November 2022, the Council wrote to the complainant to explain that it held information relevant to the request, but that it would need to extend the time to complete its public interest test considerations in respect of the exemption under section 43(2) of FOIA. Section 43(2) allows a public authority to withhold information if its release would, or would be likely to, prejudice the commercial interests of any person.
8. The complainant acknowledged receipt of the Council's email on 9 November 2022, and advised about an error in their request, specifically in the sentence "Please provide all documents relating in any way with Mark Gurrey Consulting Ltd, or in which the company or contacted personnel or employees are referenced." The complainant explained that the word "contacted" should read as "contracted".
9. The Council wrote to the complainant on 14 November 2022, asking them to clarify whether their email of 3 November 2022 was a separate request to the one submitted on 13 October 2022, or a clarification of the request submitted on 13 October 2022.

10. The complainant responded to the Council on 14 November 2022 to confirm that their email of 3 November 2022 was sent as a clarification of their request sent on 13 October 2022, as it further explained the scope of the original request.
11. On 22 November 2022, the complainant further clarified that the separate emails can be merged into one request.
12. On 23 December 2022, 13 and 25 January 2023, the complainant sent a follow up email to the Council asking it to provide a response to their request.
13. On 8 March 2023, the Council wrote to the complainant providing some background and the current position of the request and requested some further clarifications.
14. On 20 March 2023, the complainant provided a substantial further response to the Council providing further clarification of their request. For context, this communication is included at Annex 1.
15. On 21 March 2023, the Council wrote to the complainant stating that their response required further clarification. The Council was of the view that the complainant's email of 20 March 2023 seemed to be a new request for information, specifically from paragraph eight onwards of the complainant's email. It provided the complainant with a word document with the complainant's clarification request tabulated and asked the complainant to clarify the scope/search term for the new request for information.
16. The complainant responded to the Council on 26 March 2023 confirming the scope/search terms of the request.
17. The Council responded to the complainant on 27 March 2023 suggesting that an in-person appointment or video call would be helpful in reaching a decision on the scope of the request and to understand what specific information was required. The Council advised the complainant that if they did not wish to have an in-person appointment then it would process the request in regard to how the Council felt appropriate.
18. The complainant responded to the Council on 27 March 2023 stating that all correspondence relating to the request should be done in writing. The complainant explained that that they were of the view that the Council was repeatedly and unnecessarily requesting further clarifications to prevent compliance with FOIA and to avoid disclosures. The complainant reminded the Council that it was now over five months since submitting the request for information and core information remains to be disclosed and politely asked the Council to provide the information requested.

19. On 27 April 2023, the complainant sent a follow up email to the Council noting that it had again failed to respond to their request.
20. To date, a substantive response has not been issued.

Reasons for decision

21. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

22. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
23. On 18 February 2023, the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.
24. Despite this intervention the Council has failed to respond to the complainant.
25. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with FOIA. The Commissioner finds that the Council has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Right of appeal

26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

27. 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.
28. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1 - complainant's clarification email of 20 March 2023

"I will here attempt to provide you with the clarifications you have requested, whilst making observations.

Accordingly, this response also constitutes a request for review which can be answered in the light of the clarification below.

Thank you for identifying a '[name redacted]' as being employed by Mark Gurrey Consultants.

Your comment that there have been other requests for information, the replies to which you considered to be public domain, may be technically true, but the rhetorical question must be: how would a requestor know whether other individuals had requested similar or overlapping information?

If there was information applicable to my request it might help if they were referenced.

I do not agree that the request was a catch-all, but I shall reply anyway.

There would be communications between RMBC and Mark Gurrey Consulting before any contract was placed, then contracts documents, then more communications and invoices.

You have mentioned a '[name redacted]', so any communications or documents either between RMBC and [name redacted], or directly to and from [name redacted] when contracted to RMBC would be expected to be included.

[name redacted] would have taken advice during her tenure, so communications and documents are caught by the request, including any on personal devices such as a mobile when used for work purposes, along with any invoices or communications for any advice from external parties, whether direct to RMBC or via Mark Gurrey Consulting, in turn from [name redacted].

Should [name redacted] have used the services of any external advisor, then there should be permission to do so from her superiors.

Also expected are the communications prior to each appointment of [name redacted], i.e. for the reports to be produced, and then the appointment as Strategic Director, along with any documents relating to contract variations or extensions.

For the above, 'internal operational details' would be expected, (but exempted as detailed below) as these would provide clarity as to how,

through whom, when and why Mark Gurrey Consultants was appointed, and whether the appointments were consequent upon a competitive tendering / best value process, and whether [name redacted] was contracted upon the basis of recommendation.

Should there have been any recommendations for the appointment of [name redacted] these should be included.

These documents would also demonstrate an absence of any potential conflict of interest - it is noted that in 2013 Mark Gurrey was Assistant Director for Children and Families in Doncaster Council, then later retained to establish The Children's Trust and Members Safeguarding seminars.

In answer to a request you have written:

"Given the specialist nature of the work performed and Mark Gurrey Consulting Ltd's experience of improvement activity in Local Authorities requiring rapid changes in Children's Social Care practice and performance they were sourced directly. This was based on their previous work in this area and Rotherham's critical need for support on its improvement journey as identified through external inspection and the Government appointed Children's Commissioner."

You have therefore stated that there was no competitive tendering process, so the remaining information cited above is required.

It could be argued that, as a director of Mark Gurrey Consulting, all material involving [name redacted] as Interim Strategic Director of Children's Services would be caught by the request.

However, such a request could be too onerous, so a limited scope would be appropriate.

Accordingly, where you have helpfully provided some previous requests for information and their responses, there will be no need to provide here any information already included.

You have provided a redacted contract that presumably relates to [name redacted] of Mark Gurrey consulting, and another document showing costs. Therefore, unless there are other invoices, there is no need to produce invoices.

You have provided a cyps financial plan appendix 1. There are eleven relevant documents relating to children in care and one relating to reduction in agency staff. It is not necessary to produce any documents relating to these.

During her tenure, [name redacted] in turn would have received 'advice' or even instruction from RMBC personnel or elected members. These should be included.

Before the second appointment at Strategic Director [name redacted] was required to review about fifteen cases. It is not necessary to provide any of this material."