

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 June 2014

Public Authority: Rochdale Metropolitan Borough Council

Address: One Riverside
Smith Street
Rochdale
OL16 1XU

Decision (including any steps ordered)

1. The complainant has made a request to Rochdale Metropolitan Borough Council ("the council") for information about a market charter. The council provided held information in response. The complainant subsequently contested the completeness of the response.
2. The Commissioner's decision is that the council has provided all held information falls within the scope of the request. However, the Commissioner identified that the council provided its response outside of 20 working days, and therefore breached the requirement of section 10(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 31 July 2013, the complainant wrote to the council and requested the following:

The Royal Market Charter for the area of Rochdale was granted to the "populous" of the town and was usually held in trust, on their behalf by the local "Lord of the Manor" or a similar person of stature

in the area. On the incorporation of the town as a Borough this responsibility was taken on by the then Council. The Charter rights are not a tangible commodity that can be "bought and sold" therefore I would be obliged if you would answer the following simple questions:-

- 1) Are RMBC still the custodians of the Market Charter?*
- 2) Have the Council sold the said Charter to a third party?*
- 3) If so when, and to whom was it sold?*
- 4) Do the Council have to obtain the permission of the present "custodian" of the Charter before the market's location can be changed?*
- 5) Under what legal right did the Council use for the transaction of the sale of the market rights which were granted to the public of this town?*

5. The council responded on 30 August 2013 and provided held information in response.
6. The council provided an internal review on 20 December 2013 in which it upheld its position that all held information had been disclosed.

Scope of the case

7. The complainant contacted the Commissioner on 6 November 2013 to contest the accuracy of the held information that the council had provided. Specifically, he contested that the council no longer held the market charter, and that the council's response was therefore incorrect.
8. The terms of the FOIA only relate to the provision of held information, regardless of its accuracy. As such, the Commissioner's role does not extend to considering disputes about this quality. However, in circumstances where the provision of held information is disputed, the Commissioner may consider the wider circumstances of a matter if these are relevant to his decision.
9. The Commissioner considers the scope of this case to be the identification of whether the council has fulfilled its obligations under section 1 of the FOIA by providing all held information that it holds in response to the request.

Reasons for decision

Section 1(1) – Duty to make information available on request

10. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.
11. The FOIA provides a right of access to information in recorded form, and only that which exists at the time of the information request. The FOIA does not require a public authority to generate new information, such as in the form of an explanation of opinion, in order to respond to a request.

The complainant's position

12. The complainant has informed the Commissioner that he understands the council has previously sold the market charter that his request pertains to, and on this basis, contends that the council's response to his request for information was not complete. To support this assertion, the complainant has referred to a discussion with a former senior officer of the council, in which it was alleged that the council was no longer the holder of the market charter. Additionally, the complainant has provided a newspaper article dated 30 October 2013 that refers to the market charter being sold by the council to a third party for £800,000 in 1996.

The council's position

13. On 24 March 2014, the Commissioner wrote to the council to request information about the steps that the council had taken to ensure that all held information had been disclosed. The council has since provided the Commissioner with a contextual background to the requested information, and arguments why the council's response was therefore complete.

The history of the market charter

14. The market charter was granted to the Lord of the Manor for the region in 1251, and contained within it individual rights; namely the rights to hold markets, fairs, and cattle markets. In 1872 the Rochdale Corporation (the predecessor to the council) came to purchase the rights to hold fairs and cattle markets from the Lord of the Manor, and in 1936 purchased the right to hold markets (from a third party who had purchased the right from the Lord of the Manor in 1822). As a result, the Rochdale Corporation became the holder of all exclusive rights that

the market charter contained, and these then came to be owned by the council upon its formation.

15. In 1996, the council entered into an agreement with a third party that transferred the right to hold markets, with a clause that the council would not hold a competing market without compensating the third party the sum of £800,000. The agreement also included a clause that should the third party no longer wish to hold markets, then the right to do so would be transferred back to the council for no charge.

The council's response

16. On this basis of the above history, the council has confirmed to the Commissioner that it remains the holder of the market charter, and that it was only the specific right to hold markets that came to be transferred (rather than sold) in 1996, and that this right has since been returned to the council by the third party.
17. The council therefore considers that its response to the complainant disclosed all held information that fell within the scope of the request, namely that it provided information about who was the current holder of the market charter, and information about the legal right by which the council could transfer a right contained within the market charter.

Conclusion

1. In the circumstances of this complaint the Commissioner must decide, on the balance of probabilities, whether the council has provided all held information that falls within the scope of the complainant's request.
2. The council has provided a detailed contextual explanation to the Commissioner which confirms that no sale of the market charter has taken place, and that the council would not therefore expect to hold recorded information about this.
3. Equally, the council's explanation has specified that the council would not reasonably expect to hold information beyond that which it has already provided to the complainant, which comprised of information about the current holder of the market charter, and information about the legal right by which the council can transfer a right contained within the market charter.
4. While the Commissioner has noted the complainant's position and concerns, there is no clear evidence that would suggest to the Commissioner that the council is likely to hold further information that would fall within the scope of the complainant's request.

5. Having considered these circumstances, the Commissioner has concluded that it is unlikely the council holds further information that falls within the scope of the request.

Section 10(1) – Time for compliance

6. Section 10(1) of the FOIA requires that a public authority must issue a refusal notice within the time for compliance, which is 20 working days following the date of receipt.
7. In this case the Commissioner has identified that the council provided its response outside 20 working days, and therefore breached the requirement of section 10(1).

Right of appeal

8. 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: GRC@hmcts.gsi.gov.uk

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

9. 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.
10. 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

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