

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 19 October 2022

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

#### **Decision (including any steps ordered)**

---

1. The complainant requested attachments to a specific email they had received in response to a previous request for information. Rotherham Metropolitan Borough Council (the Council) stated that the information was not held. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information. However, the Commissioner finds that the Council breached section 10(1) of FOIA as it failed to provide its response to the request within the statutory timeframe of 20 working days. The Commissioner does not require any steps to be taken.

#### **Request and response**

---

2. On 11 August 2021, the complainant wrote to the Council and requested information in the following terms:  
  
"This Right Of Access Request - Freedom Of Information Act Request is for a copy of the "e-mails which came from the Commissioners" which were attached to the email sent to [name redacted] (and [name redacted] on 26.10.15 at 1.56 pm"
3. The Council responded on 17 September 2021 and stated that all information held relating to the matter had been provided via previous requests and legal processes and no additional information was held.

4. On 1 October 2021 the complainant requested an internal review of the handling of the request. The complainant referred to previous tribunal hearings which highlighted the fact that the Council had failed on a number of previous occasions to provide all the information held relevant to a request in its initial responses.
5. The Council provided the outcome of its internal review on 28 October 2021 and upheld its position that it did not hold the emails from the Commissioners referred to in the email in question.

### **Scope of the case**

---

6. The complainant contacted the Commissioner on 29 October 2021 to complain about the way their request for information had been handled.
7. The following analysis considers whether the Council was correct to say that it does not hold any information falling within the scope of the request.

### **Background**

---

8. In 2014 the Independent Inquiry into Child Sexual Exploitation in Rotherham, also known as the Jay report, estimated that approximately 1400 children were sexually exploited in Rotherham during the period of 1997 to 2013.
9. In 2015 the Council reversed a decision it had previously made to distribute 1,500 copies of a booklet called "Voices of Despair, Voices of Hope", a collection of child sexual exploitation survivors' stories.
10. The complainant has made a number of requests for information relating to the reversal of the decision.
11. The request in this case refers to attachments to an email within a chain of internal emails. The email chain relates to an internal review request the complainant submitted in October 2015 in respect of an earlier request for information they submitted to the Council.

### **Reasons for decision**

---

#### **Section 1 – general right of access**

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

### **The complainant's position**

14. The complainant has not submitted any specific reasons as to why they consider the information requested in this particular case is/should be held by the Council. However the complainant referred to previous First Tier and Upper Tribunal cases involving earlier requests they had submitted to the Council. The complainant pointed out that these tribunal cases found that the Council had not disclosed information at the outset on receipt of previous requests they had submitted. However, additional information was located following queries and concerns they had raised. The complainant considers that this demonstrates that the Council has a history of disclosing information on a piecemeal basis in response to their requests. Some information has only come to light as a result of their persistence in pursuing information held relevant to their requests.
15. The complainant considers this request to be a simple one, and asks for information attached to a specific email which they believe was sent in response to their internal review request on an earlier request for information submitted in 2015.

### **The Council's position**

16. The Council advised that the request in this case is part of a series of requests stemming from an initial request in 2015. The original request was the subject of a Tribunal case, which is currently subject to ongoing legal proceedings.
17. The Council advised the Commissioner that, new and repeated searches have been undertaken relating to multiple inter-related enquiries and requests for information about the subject matter of "Voices of Despair, Voices of Hope". Searches have included electronic communications, network folders, text messages and information held locally. In effect, the Council confirmed that searches have been undertaken of all

information held by all relevant places and officers. The Council confirmed that all relevant information has been disclosed to the complainant and it does not hold the information requested in this case.

18. The Council confirmed that no information in respect of this or any previous related requests has been deleted. All information has been retained "due to previous work undertaken and associated requests...(or associated FTT cases). These have been kept as a record due to ongoing legal matters".
19. The Council explained to the Commissioner that the email chain (which the email referred to in this request is contained within) was disclosed to the complainant in response to an earlier request for information. The document disclosed was entitled "L2". The Council has provided the following explanation as to why the attachments to the email within this chain are not held:
  - "The attachments referred to in the email of 26/10/15 were not attached to that version of the email in the disclosed email chain.
  - At some point in time there would, of course, have been a version of the 26/10/15 email with the attachments (i.e. when the author first sent it). However, that first email ('original email') was not held at the point of receiving a request for such information.
  - The version of the 26/10/15 email held was part of the disclosed email chain (i.e. the attached redacted version of the 'L2' document). The original email version was not held – just the version contained within an email chain.
  - It is not a case that the attachments were withheld. The 26/10/15 email that forms part of the email chain did not have any attachments.
  - It is the version of the 26/10/15 email within the wider email chain that is held; not the actual original 26/10/15 email".
20. To further explain why the attachments are not held, the Council provided the Commissioner with a 'scenario example', as detailed below:
  - "John sends Email 1 with Attachment A to Harry. Email 1 refers to Attachment A.
  - Harry replies to John (Email 2) to acknowledge receipt of Email 1. Email 2's reply does not contain Attachment A

- John forwards Email 2 to Sally. The original Email 1 still refers to Attachment A, but Attachment A is not attached to Email 2 or any subsequent forwards / replies.
  - 6 months later Email 2 gets disclosed in a FOI request. Email 1 with Attachment A was not retained. Therefore, although Attachment A is referenced in the email chain, it doesn't exist any more".
21. In essence, the Council has confirmed that although the full email chain containing the email dated 26 October 2015 is held, it does not hold a copy of the original email in question, containing the attachments. The Council has also confirmed that the original email was not held at the time the Council received the original request from the complainant, at which time the email chain was disclosed.

### **The Commissioner's conclusion**

22. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
23. The Commissioner understands why the complainant has reason to believe that the information was held as the email in question clearly refers to attachments. However, the Commissioner notes that although the Council holds a copy of the email within a chain of emails, it does not hold a copy of the original email to which the documents were attached to. The Commissioner also notes the Council's position that a copy of the original email (containing the attachments) was not held at the time of the complainant's previous request when the email chain was disclosed.
24. Based on the evidence available to him, the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate information falling within the scope of the request.
25. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any recorded information relating to the request.

### **Section 10 – time for compliance**

26. 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."
27. Section 10 of FOIA states that: "...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."
28. In this case, the complainant submitted their request for information on 11 August and the Council issued its response on 17 September 2021. In failing to respond within 20 working days the Council breached section 10(1) of FOIA.

## Right of appeal

---

29. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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 .....**

**Joanne Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**