

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 Borough Council (the Council)'s *'Final Sites and Policies'* document.
 2. The Council cited section 21 of the FOIA (information accessible to applicant by other means). It also provided the complainant with advice and assistance, citing section 16 of the FOIA.
 3. The complainant disputed that the Council had provided the requested information.
 4. During the course of the Commissioner's investigation, the Council confirmed that, contrary to its original responses, it did not hold the requested information.
 5. The Commissioner has investigated whether the Council held information within the scope of the request. Her decision is that, on the balance of probabilities, the Council did not hold the requested information. However, by failing to inform the complainant that it did not hold information of the description specified in his request, the Council breached section 1(1)(a) of the FOIA.
 6. The Commissioner requires no steps to be taken as a result of this decision.
-

Background

7. By way of background to his request for information, the complainant wrote to the Council saying:

"RMBC's 'Final Sites and Policies' document consultation process generated a number of responses pointing out that the newly added proposed employment allocation site LD830 was in fact in Todwick, not in Dinnington as the document claimed, and that referring to it as Dinnington and arranging all information about it in document sections relating to Dinnington was confusing and had caused it to be overlooked in the consultation process by residents of Todwick, and no doubt others. In spite of this information and the concerns flagged, the 'Publication Sites and Policies' document, continued to claim that the site was in Dinnington. Nothing was added to the Todwick section to alert readers that they may also want to cross reference the Dinnington section".

Request and response

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

"Could I please have a copy of all information, including meeting minutes and email exchanges relating to how RMBC reacted to the information that site LD830 was in Todwick, what was considered, how and why it decided to continue to refer to the site as in Dinnington, and what efforts were made to ensure that Todwick residents and others were not confused by the continued use of geographically inaccurate labelling".

9. The Council responded on 14 September 2016. It told the complainant:

"Under Section 21 of the Freedom of Information Act 2000, the Council is not required to provide information in response to a request if it is already reasonably accessible by other means. However, when exercising the use of the exemption the Council is also obliged under Section 16 of the 'Act' to provide advice and assistance where possible.

The settlement groupings used in the Local Plan are based on functional geography; they are not based on parish boundaries...".

10. It explained that relevant information was publically available and provided the complainant with several website links.

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

"I don't know what 'functional geography' means, and neither does Google. I can't find any reference to it in either Sites and Policies or Core Strategy documents. I suspect though that that is the crux of the matter. As the responses during consultation came from people who live in and recognise 'real geography', I want to understand how RMBC decided to continue with descriptions which you knew 'real geography' residents would not recognise – hence my request."

12. Following an internal review the Council wrote to the complainant on 12 October 2016. It provided him with additional information "to provide clarity" to its initial response.

Scope of the case

13. 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.

14. He told the Commissioner:

"...Thousands of people have been repeatedly misled during consultation processes by RMBC's deliberately inaccurate designation and I want to know how they came to decide to call it Dinnington when they knew it was Todwick. I made a very specific request for meeting minutes and email exchanges. These have been withheld in both the original response and the Review response".

15. During the course of her investigation, the Commissioner asked the Council to clarify its response. In particular she asked it to confirm whether it held information of the description specified in the request. She also asked the Council, in relation to its citing of section 21 of the FOIA, to explain how the requested information would be accessed by the applicant.

16. In its substantive response to the Commissioner the Council revised its response, no longer relying on section 21. Instead it confirmed that it did not hold the requested information. The Council told the Commissioner:

"the information requested has never existed".

17. 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.
18. In light of the above, the analysis that follows considers whether, on the balance of probabilities, the Council held information within the scope of the request.

Reasons for decision

Section 1 general right of access

19. Section 1(1) of the 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".

20. 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.
21. 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).
22. 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.

23. In its substantive response the Council told the Commissioner:

"The Council did not agree with the requestor's premise that the way in which the specific development site (LDF830) was referred to in consultation on the Local Plan would have caused any confusion. As such, there are no meeting minutes or email exchanges relating to that perceived issue so there is no information that answers the request".

24. It told the Commissioner:

"The Council's response to the original request sought to explain this The weblinks provided were not an attempt to provide the specific information requested. They were intended as background information to supplement the Council's response".

25. In correspondence with the Commissioner, the Council told her that it had:

"consulted with senior officers in our Planning Department".

26. In that respect , the Council advised the Commissioner that:

"... it was apparent that there would be no "meeting minutes or emails" relating to this issue as the two senior officers would have been the officers to create any such material".

27. Similarly, it told her that the individuals consulted:

"...would have had personal knowledge of any relevant information, if it existed".

28. The Commissioner also asked the Council to respond in respect of whether there is a business purpose for which the requested information should be held.

29. The Council told the Commissioner:

"No. The Council is required to prepare and submit a consultation statement on how the local plan has been subject to public consultation to the Secretary of State, along with the plan itself for independent examination. The Council has prepared and submitted this statement".

30. Having considered the Council's submission, and on the basis of the evidence provided to her, the Commissioner is satisfied that the Council contacted the relevant parties to consider whether or not any information was held in respect of the request. She is also satisfied that, on the balance of probabilities, the Council did not hold the requested information.

31. However, her investigation has shown that the Council failed to respond correctly to the complainant in that it did not inform him that it did not hold information of the description specified in his request. This is a breach of section 1(1)(a) of the FOIA.

Other matters

32. The Commissioner considers that the circumstances of this case highlight the benefits of having an internal review procedure in place. She recognises that an internal review provides the opportunity for a public authority to reconsider its handling of the request when, as in this case, an applicant complains about the authority's response to his or her request.
33. It is the Commissioner's view that best practice would suggest that, if the reasons put forward by the complainant for requesting an internal review raised doubt over the type of information within the scope of his request, the Council should have contacted him to clarify whether or not the information, on which they had based their initial refusal, was in fact the subject of his request.

Right of appeal

34. 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

35. 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.
36. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF