

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2012

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 an agreement that may have been made with Rotherham Metropolitan Borough Council (RMBC).
2. The Commissioner's decision is that RMBC does not hold any information covered by the scope of the request. The Commissioner does not require RMBC to take any steps in response to this notice.

Request and response

3. Following earlier correspondence, the complainant wrote to Rotherham Metropolitan Borough Council (RMBC) on 26 March 2012 and requested information in the following terms:

"In light of the revelations of the S106 agreements recently aired in the pages of the Advertiser, my fellow objectors and myself would like to make a further FOI request.

We would like to know all the details of such an agreement, if there was one, about any S106 agreement attached to either RB/2011/1774 or RB2011/1775, the Belvedere PH, or the Moorgate Conservation Area in the last 2 years.

We hope that is as broad a brush and also as focussed as we can manage".

4. RMBC responded on 11 April 2012. It stated that no information was held, explaining that there was no Section 106 agreement attached to the planning permission granted at Belvedere (either the planning permission or the conservation area consent).
5. The complainant emailed RMBC expressing dissatisfaction with that response. RMBC wrote to him on 10 May 2012 advising him to take up the issue with the Commissioner:

"... because the Council has indeed responded in full and clearly outlined its position with respect to information held on this subject".

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Referring to the request at issue in this case, as well as to another of his requests to RMBC that is outside of the remit of this decision notice, he told the Commissioner:

"They have not responded wholly or accurately to any of these FOI requests".

7. In support of his complaint, the complainant provided the Commissioner with a number of press cuttings detailing S106 payments in respect of other developments. He told the Commissioner:

"Hope this background allows you to understand that RMBC are more than happy to take S106 payments when it suits, even to the detrimental health of its residents. It was these revelations that prompted the few of us to ask RMBC about a possible S106 payment regarding the Belvedere PH in perhaps the prime Conservation Area in Rotherham. The decision did not make sense then, and as we watch the pub being knocked around to accommodate a new Tesco Express (yet another wonderful shopping experience) it makes less and less sense considering its environs".

8. The Commissioner understands that a section 106 agreement relates to monies paid by developers to Local Planning Authorities in order to offset the costs of the external effects of development.
9. The Commissioner notes that, in this case, RMBC provided the complainant with details of its complaint process in its correspondence of 11 April 2011. RMBC stated:

"If you are not satisfied with this response you have the right to an internal review by the Council".

10. The complainant emailed RMBC expressing dissatisfaction with its response to his request for information. RMBC wrote to him on 10 May 2012 advising him to take up the issue with the Commissioner:

"... because the Council has indeed responded in full and clearly outlined its position with respect to information held on this subject".

11. The Commissioner asked RMBC to clarify whether it had, in fact, carried out an internal review as it was not clear from that correspondence. In response, RMBC advised:

"we did not carry out a full review of our response as we were certain that no information was held".

12. The Commissioner considers the scope of his investigation to be whether RMBC held the requested information at the time of the request.

Reasons for decision

Section 1 General right of access to information held by public authorities

13. Section 1 of FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
14. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, he 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).
15. The request in this case relates to a S106 agreement. The Commissioner understands that Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a land developer over a related issue. The obligation is commonly referred to as a 'Section 106 Agreement'.

16. In response to his questions about the searches it carried out for any information falling within the scope of the request RMBC provided the Commissioner with details of the files and databases that it would have searched. It also explained that, where held, there is a statutory requirement to retain information of the type requested as it would form part of the planning decision.
17. By way of further explanation about the planning process in general, RMBC told the Commissioner that planning files and the planning register (which consists of the application and the decision) are retained indefinitely.
18. Whilst appreciating the complainant's frustration in this matter, having considered RMBC's submissions during the course of his investigation, the Commissioner is satisfied that, on the balance of probabilities and on the basis of the evidence in front of him, RMBC does not hold any relevant information.

Right of appeal

19. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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