

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2017

Public Authority: St Mary's College
Address: Cranbrook Avenue
Hull HU6 7TN

Decision (including any steps ordered)

1. In a series of requests, the complainant has requested information about how St Mary's College ('the College') manages health and safety risks.
2. The Commissioner's decision is that:
 - the College's responses of 21 December 2016 and 27 January 2017 to the complainant's request of 15 December 2016 breached section 1(1)(a) as the College did not clearly tell the complainant whether or not it held the information he had requested; and
 - the College breached section 10(1) with regards to the complainant's requests of 15 December 2016, 11 February 2017 and 11 August 2017 as it did not communicate to the complainant all the information it holds that falls within the scope of these requests within 20 working days.
3. The College has now complied with its obligations under section 1(1)(a) and 1(1)(b) of the FOIA with regards to the above requests, and the Commissioner does not require the College to take any further steps to ensure compliance with the legislation.

Request and response

4. On 15 December 2016 the complainant wrote to the College and requested information in the following terms:

"Perhaps I need to write the following sentence in upper case in the hope that you will read and respond to it as you did not respond to it in your previous reply.

How can I see your health and safety risk assessments relating to hazards faced by pupils.

That is my main requirement at the moment so please reply with an electronic copy of your pupil risk register or let me know how I can see it."

5. On 21 December 2016, the College responded. It said it would not be appropriate for it to share with the complainant as much information as he had requested. It briefly explained its handling of particular risk assessment matters.

6. In correspondence to the complainant dated 27 January 2017, the College suggested that the complainant's request was vexatious. This response is discussed in more detail at paragraph 22.

7. The complainant submitted a service complaint to the College on 11 February 2017. Included in this complaint were the following requests:

[2] *"Access to the pupil health and safety risk assessments and an indication of what health and safety information has been given to pupils since September 2016"*

[3] *"I would also like to see the school's adverse incident and near miss information for the last 12 months if this information is readily available"*

and

[4] *"If there is any benchmarking information to show how the school's performance and adverse incidents compare with similar schools I would also like to see that."*

8. In correspondence to the complainant dated 29 March 2017, the College released information; namely a range of risk assessments and policies. In this same correspondence the College gave a narrative explanation of its accident/near miss reporting and told the complainant that the College is benchmarked with its sister school and local authority monitoring.

9. On 6 April 2017, the College wrote again to the complainant in response to his service complaint. The College said that it considered his requests for information to be disproportionate and referred to the information it had released on 29 March 2017.
10. However, following the Commissioner's intervention, the College provided the complainant with a further response on 9 August 2017. In this comprehensive response, the College itemised the complainant's various requests and associated queries. Against each, the College either confirmed that it had released relevant information it holds or confirmed it does not hold relevant information. The College then provided further narrative explanations of its risk assessment procedures and detailed the number of hours the College had spent dealing with the complainant's requests thus far. The Commissioner notes that the College had not refused to comply with the requests under section 12(1) of the FOIA (cost/time exceeds the appropriate limit).
11. The College concluded this correspondence by inviting the complainant to narrow down the scope of his requests if there was information he particularly wanted.
12. In correspondence to the College dated 11 August 2017, the complainant detailed information that he is seeking.
13. On 27 September 2017 the College released further information in a folder which it invited the complainant to pick up from the College. The Commissioner understands that the complainant has done so.

Scope of the case

14. The complainant initially contacted the Commissioner on 10 April 2017 to complain about the way his requests for information had been handled.
15. Having received the information the College released on 27 September 2017, the complainant wrote to the Commissioner on 3 October 2017. In this correspondence, the complainant confirmed that he was not satisfied with the length of time it had taken the College to communicate to him all the relevant information it holds. The complainant also considered that the College had mishandled its initial suggestion that one of his requests was vexatious.
16. The Commissioner's investigation has focussed on whether the College complied with its obligations under section 1(1) and section 10(1) of the FOIA.

17. She has considered the College's handling of the complainant's request of 15 December 2016 under 'Other Matters'. This is because the College did not finally refuse to comply with the request because it was vexatious (section 14(1) of the FOIA) or because the cost of complying with it would exceed the appropriate limit (section 12(1) of the FOIA). The College went on to comply with the request and release relevant information that it holds.

Reasons for decision

18. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled:
 - (a) to be told if the authority holds the information and
 - (b) to have the information communicated to him or her if it is held.
19. Section 10(1) of the FOIA places an obligation on a public authority to comply with section 1(1) as soon as possible and not later than 20 working days following the date of receipt.
20. In this case, the complainant initially submitted a request on 15 December 2016 and further related requests on 11 February 2017.
21. The College did not indicate on receipt of the request of 15 December 2016 that it considered it to be unclear. Having reviewed its response to the complainant of 21 December 2017 (detailed at paragraph 5), the Commissioner considers that the response breached section 1(1)(a) of the FOIA as the College did not confirm whether or not it held the information the complainant had requested.
22. Further email exchanges then occurred which led to the College's response of 27 January 2017. In this response, which the Commissioner considers is somewhat muddled, the College again did not clearly confirm whether or not it holds the information the complainant had requested. Instead the College advised the complainant to be reassured that it meets all the necessary health and safety requirements. However, it also said that it was not clear how access to its risk assessments would be of use to the complainant. The College then suggested that the complainant's request was therefore vexatious and advised that it would not provide the 'risk register' that he had requested.
23. Correspondence between the complainant and the College nonetheless continued and the complainant submitted the additional related requests on 11 February 2017.

24. Again, the College did not suggest these requests were unclear and provided a response to them on 29 March 2017, releasing information within the scope of both the request of 15 December 2016 and the requests of 11 February 2017. By doing so, the College complied with section 1(1)(b) with regard to these requests.
25. The Commissioner considers that the College breached section 10(1) with regard to the requests of 15 December 2016 and 11 February 2017. It appears that the College *did* hold information within the scope of these requests but communicated it to the complainant well outside the 20 working day requirement.
26. In its further response to the complainant of 9 August 2017, the College invited the complainant to narrow down the scope of his requests and the complainant submitted a set of somewhat narrower requests on 11 August 2017. These were, in effect, new requests. On 27 September 2017, the College complied with section 1(1)(a) and 1(1)(b) with regard to these requests when it provided its response to them and released relevant information. However, again this was outside the 20 working day requirement and was again a breach of section 10(1).

Other matters

27. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request if it considers the request to be vexatious.
28. In its correspondence to the complainant of 27 January 2017 the College suggested that it considered the complainant's request of 15 December 2016 to be vexatious, although it did not refer to section 14(1).
29. The complainant is dissatisfied because at this point the College did not advise him to refer the matter to the Information Commissioner. For the College's future reference, in circumstances where a public authority is relying on section 14(1), while it may not be necessary or appropriate for it to carry out an internal review of its response, it is a requirement under section 17 of the FOIA for the public authority to advise the complainant of his or her right to complain to the Commissioner. The College did not do so on this occasion. However it appears to have then withdrawn any reliance on section 14(1) and gone on to comply with the request.

Right of appeal

30. 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

31. 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.
32. 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
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