

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 June 2019

Public Authority: Brighton Hill Community School
Address: Brighton Way
Basingstoke
Hampshire
RG22 4HS

Decision (including any steps ordered)

1. The complainant has requested information about emergency plans to protect children deemed to be at risk of abduction. In response Brighton Hill Community School ("the School") stated that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the School does not hold the requested information. However, it failed to inform the complainant that it did not hold the information within 20 working days and therefore breached section 10 of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 30 October 2018, the complainant wrote to the School and requested information in the following terms:

"I have been informed that you have "emergency plans" agreed between the school and parent with care where there is a risk of an absent parent abducting a child.

"In regards to Brighton Hill School:

- 1) *How many such children had emergency plans of this type during the school years from 2010-11 to date?*
- 2) *How many times were such Emergency plans used for each child?*

- 3) *On each occasion, were the Police involved and was the absent parent arrested?"*
5. The School responded on 8 February 2019. It stated that it did not hold the requested information in respect of element [1] and therefore could not answer the remaining elements.
6. Following an internal review the School wrote to the complainant on 14 February 2019. It maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 13 January 2019 to complain about the way his request for information had been handled. At that point, the School had yet to issue a response and the Commissioner's intervention was necessary.
8. Following the internal review, the complainant contacted the Commissioner again on 19 February 2019 to ask her to proceed with a formal investigation.
9. The Commissioner's investigation has therefore been to determine whether the School holds any information within the scope of the request.

Reasons for decision

Section 1 - Held/Not Held

10. 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.*
11. 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. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally,

she will consider any reason why it is inherently likely or unlikely that information is not held.

12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The complainant's position

13. The complainant informed the Commissioner that he had been told that one of his own children had been the subject of such a plan when a pupil at the School.
14. The complainant also stated to the Commissioner that the existence of such a plan had been announced "in open court." The Commissioner requested a copy of the transcript containing this announcement, but the complainant stated that he could not provide a copy as the statement had been made during proceedings in the Family Court – he did not elaborate on why this prevented him providing a transcript to the Commissioner.
15. Finally, the complainant drew the Commissioner's attention to the School's Child Protection Policy which *"refers to 'child protection plans' which, to the reasonable person include emergency plans to protect against abduction by absent parents."*

The School's position

16. The Commissioner asked the School about its policies and the staff members who would be aware of such a plan, if it existed.
17. The School stated that, if such plans existed, they would be known to the Designated Safeguarding Lead and the two Deputy Safeguarding Leads. It stated that it had consulted with all those members of staff who had confirmed that no such plans existed for any child within the School.
18. The Commissioner drew the School's attention to the statement referenced at paragraph 14 above and asked whether the School was aware of this statement and, if so, whether it had anything further to add. The School stated that, if such a statement had been made, the School was not aware of it and that it had never been passed on to the School.

The Commissioner's view

19. In the Commissioner's view, this complaint essentially comes down to one side's word against the other. In the absence of clear evidence supporting such a conclusion, the Commissioner cannot find that, on the balance of probabilities, the School holds the requested information.
20. Whilst a statement in open court would be a strong indication that information existed, as noted above the Commissioner is aware of no evidence to substantiate the complainant's claim that such a statement was made.
21. Whilst the Commissioner considers that not every member of staff at the School would necessarily be aware of such plans, it is reasonable to expect that the Designated Safeguarding Lead would be aware and has confirmed that no such plans exist.
22. In the circumstances of this case, the Commissioner therefore concludes that, on the balance of probabilities, the School does not hold the requested information.

Timeliness

23. Section 10 of the FOIA states that responses to requests made under the Act must be provided *"promptly and in any event not later than the twentieth working day following the date of receipt."*
24. The School stated, at the point of issuing its initial response, that it had not received the original request. However, the complainant provided the Commissioner with a copy of an automated "read receipt", which matched his original email, and which was generated the day after the request was sent. The Commissioner also notes that the complainant used the same generic email address which she has used to communicate with the School.
25. From the evidence presented to the Commissioner in this case, she therefore considers that the School did receive the request on 30 October 2018 and, as it failed to respond within 20 working days of that date, breached section 10 of the FOIA.

Right of appeal

26. 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@justice.gov.uk

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

27. 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.
28. 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

Ben Tomes
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