

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 May 2023

Public Authority: Brighton and Hove City Council

Address: Hove Town Hall
Norton Road
Hove
BN3 3BQ

Decision (including any steps ordered)

1. The complainant requested from Brighton and Hove City Council (the "Council") information about a Covid Mask Wearing Risk Assessment in respect of a specific school.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has provided all the information it holds in recorded form in respect of this request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 27 July 2022, the complainant requested information in the following terms:

"Could you please provide the following information regarding 'Covid Mask Wearing Risk Assessment' (Task / Activity Covered: Wearing Masks in School during COVID19 Pandemic)' conducted by Varndean School, Brighton:

- 1.-A copy of the document 'Covid Mask Wearing Risk Assessment' (Task / Activity Covered: Wearing Masks in School during COVID-19 Pandemic)' conducted by Varndean School, Brighton 10/11/2020, and subsequently reviewed on 04/12/2020 and 10/05/2021.

2.-Evidence that BHCC Director of Public Health and/or BHCC Public Health Team were consulted by Varndean School, Brighton, concerning their Covid Face Mask Risk Assessment 10/11/20, subsequently reviewed on 04/12/2020 and 10/05/2021, by the persons named on the document, or any staff members of Varndean School, Brighton. For example–emails, letters, phone calls, face to face communication.

3.-Evidence confirming when BHCC Director of Public Health and/or BHCC Public Health team were first contacted by Varndean School Brighton about aforesaid document – e.g. date, persons communicating, email, letters, face to face communication

4.-Evidence confirming any subsequent communications between Varndean School and BHCC Public Health Team about aforesaid document – e.g. date, persons communicating, email, letters, face to face communication.

5.-Evidence that BHCC Public Health team ensured Varndean School:

a.- clearly communicated to all BHCC employees, pupils, parent/carers the stated risks of harm associated with face mask wearing, current control measures, and additional controls to be put in place from aforesaid document;

b.-and they clearly made all BHCC employees, pupils, parent/carers aware of aforesaid document by email, letter, or any other form of communication, and where to access it.

6.-Evidence from BHCC Director of Public Health and/or BHCC Public Health team, that having read the following potential risks listed (below) under the section of aforesaid document 'What are the significant, foreseeable, hazards? (the dangers that can cause harm),' that the calculated risk ratings of the 'Current control measures' and 'additional controls will be put in place to reduce the risk further?' were assessed, using scientific evidence provided by Varndean School, and/or that held by BHCC Public Health, and considered:

a. -evidentially proportionate;

b.- they prevented potential, or actual risk of harm to employees of BHCC at Varndean School, Brighton, and children attending this school. (Potential risks listed under 'Covid Mask Wearing Risk Assessment' (Task / Activity Covered: Wearing Masks in School during COVID-19 Pandemic:

1. Physical effects: Rashes; Headaches; Breathing difficulties

2. Impaired Communication: Reduced ability to hear speech; Reduced ability to read facial expressions; Reduced ability to speak clearly.

3. Increased student and staff anxiety

4. Increased risk of transmission of virus: Prolonged wearing of masks (additional moisture), Masks worn incorrectly, False sense of security; Exhaled breath irritates the eyes - increased touching; Infected people re-breathe air and increase their bio-load.)

7. - Scientific evidence held by BHCC Public Health team, having read aforesaid document, that shows employees of BHCC at Varndean School, Brighton, and children attending this school, cannot be potentially, or actually, physically and/or psychologically harmed, by wearing face masks/coverings.

8.- Evidence that Varndean School communicated with BHCC Public Health team, Brighton about 'What additional controls will be put in place to reduce the risk further?' where it states 'additional information requested from LA' on 10/11/2020, and subsequently reviewed on 05/12/020 and 10/05/2021 for the following risks listed in aforesaid document:

1. Physical effects: Rashes; Headaches; Breathing difficulties

4. Increased risk of transmission of virus: Prolonged wearing of masks (additional moisture), Masks worn incorrectly, False sense of security; Exhaled breath irritates the eyes - increased touching; Infected people re-breathe air and increase their bio-load.

a.- Which employee(s) of BHCC at Varndean School communicated with BHCC Public Health team about 'additional information requested from LA'. Please provide copies of names, dates of communication, means of communication e.g. email, letters, phone calls, face to face discussions

b.-Which member(s) of BHCC Public Health team were communicated with by Varndean School concerning 'additional information requested from LA'; and what additional information did they communicate to which employee(s) of Varndean School. Please provide copies of names, dates of communication, means of communication e.g. email, letters, phone calls, face to face discussions.

c.-Evidence, that having provided additional information to Varndean School, BHCC Public Health team ensured that aforesaid 'Covid Mask Wearing Risk Assessment' (Task / Activity Covered: Wearing Masks in School during COVID-19 Pandemic)' was amended by persons responsible for it at Varndean School, and this was clearly

communicated to BHCC employees, pupils and parent/carers of said school by email, letter or any other form of communication.

9.-Scientific evidence held by BHCC Public Health team and/or Varndean School that shows the necessity of 'short breaks from wearing masks allowed' as a control measure for:

- a.-headaches;
- b.-breathing difficulties; and;
- c.-the duration of a 'short break from wearing masks'

10.- Scientific evidence held by BHCC Public Health team and/or Varndean School that shows wearing face masks cannot:

- a.- reduce oxygen intake into the body of the wearer;
- b.-reduce blood/ oxygen levels of the body of the wearer;
- c.-increase the levels of re-breathed carbon dioxide in the body of the wearer;
- d.-prevent the wearer infected with SARS-COV-2 virus increasing their bio-load.

If my request is denied in whole or in part I ask that you justify all deletions by reference to specific exemptions of the act. I would be grateful if you could confirm in writing that you have received this request. I look forward to your response within 20 working days as outlined by the statute."

- 5. On 30 August 2022, the Council responded and advised that the information requested was not held. The Council's internal review response dated 31 October 2022 upheld this position.

Scope of the case

- 6. The complainant contacted the Commissioner on 11 November 2022 to complain about the way their request for information had been handled.
- 7. The complainant believes that the Council holds further recorded information within the scope of the request.

8. The Commissioner considers the scope of his investigation is to determine if the Council has provided a response in accordance with section 1 of FOIA.

Reasons for decision

Section 1 FOIA - determining whether information is held

9. Section 1(1) of FOIA states:

"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."

If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.

10. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e., the balance of probabilities. 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.
11. Accordingly, the investigation will consider the scope, quality, thoroughness, and results of the searches, and/or other explanations offered by the Council as to why the information is not held.
12. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it **ought** to be held).
13. Finally, the Commissioner will consider whether there are any further steps the public authority could be required to take if the complaint were upheld.

The complainant's position

14. The complainant's argument is the Council must hold some of the information requested because the complainant has written evidence from employees at the school in question that they communicated with the Council's public health team about the Covid Mask Wearing Risk

Assessment and the complainant has provided this written evidence to the Council.

15. The complainant has also obtained a copy of the Covid Mask Wearing Risk Assessment from the school in question.

The Council's position

16. Following the intervention of the Commissioner, the Council explained in detail to the Commissioner the searches that it had undertaken and explained that they had found some information which was outside the scope of the original request but which the complainant may find of use. As a gesture of goodwill, this information was then disclosed to the complainant by the Council.
17. Following receipt of the additional information, on 19 April 2023, the complainant asked the Commissioner to pass on the following further requests to the Council:
 - "any emails between BHCC and Varndean from 09/11/20 – 16/11/20 about 'Covid Mask Wearing Risk Assessment' (Task/Activity Covered: Wearing Masks in School during COVID-19 Pandemic), including any reference to the complainant's complaint.
 - any emails that show that the document 'Covid Mask Wearing Risk Assessment' (Task/Activity Covered: Wearing Masks in School during COVID-19 Pandemic) was shared with BHCC i.e that Simon Lackner received a copy from Lynn Hill for him to refer to, to be able "exemplify the risks identified". Surely Simon Lackner would need to have a copy of the risk assessment to give advice back, share with others to whom he was seeking advice, and also to verify that it adheres to the requirements of health and safety legislation?
 - emails between BHCC and Lynn Hill that actually highlight 'risks identified below (including the physical health ones)' as requested by Lynn Hill in her email to Simon Lackner on 16/11/20. They are not shown in the emails BHCC provided."
18. On 28 April 2023, the Council responded to the Commissioner explaining the further searches it had done and that no further emails as requested in paragraph 17 above had been found.

The Commissioner's view

19. The Commissioner has carefully considered the points made by the complainant and the Council.
20. The Commissioner appreciates that the complainant strongly asserts that the Council is withholding information which the complainant believes they have evidence exists, namely communication between the Council's public health team and Varndean School about the Covid Mask Risk Assessment.
21. The Council has explained to the Commissioner that at the start of the COVID pandemic, the council's health and safety team produced a model COVID template risk assessment. This was based on national guidance (at the time) and shared with schools. Schools were asked to localise/adapt this template and return a copy to the health and safety team so that assurance that reasonable mitigations were in place could be obtained. The health and safety team provided commentary/feedback to schools on these initial risk assessments only.
22. Subsequently, the Council's health and safety team produced an on-going series of model template risk assessments for education settings which incorporated all aspects of delivering education during the period of the pandemic. This was in the context of the latest national advice from the Department for Education and Public Health England. As updated national advice was released, the health and safety team updated the template and reissued it indicating any updated changes. This happened a number of times during the pandemic, as advice changed rapidly and often. Education leaders were provided with this as an aid to manage individual school arrangements. The Council did not request copies of subsequent risk assessments. Schools would usually agree risk assessments in accordance with their local health and safety oversight arrangements, ensuring governors were informed of significant issues.
23. The Council has explained in detail to the Commissioner the thorough searches it has undertaken to try to find any emails of the nature requested by the complainant. The Council has assured the Commissioner that any relevant emails have been disclosed to the complainant and that no others have been found.
24. In conclusion, the Commissioner finds that, on the balance of probabilities, the Council does not hold any further documents requested by the complainant.

Right of appeal

25. 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

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

26. 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.
27. 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

Michael Lea
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