

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 July 2014

Public Authority: Birley Spa Community Primary School

Address: Jermyn Crescent
Hackenthorpe
Sheffield
S12 4QE

Decision (including any steps ordered)

1. The complainant has requested Birley Spa Community Primary School (the school) to disclose a copy of its 'Fair Access Policy' from December 2013. The school responded disclosing some information. The complainant wrote back to the school and to the Commissioner stating that she had not received the information she requested.
2. The Commissioner requested the school to carry out further searches and to supply any further recorded information it may hold within the scope of the complainant's request. The school complied and forwarded copies of all relevant policies to the complainant. The Commissioner is satisfied that on the balance of probabilities the school does not hold or no longer holds any further recorded information to that it has already provided. He therefore requires no further action to be taken.
3. The Commissioner has however recorded a breach of section 10 of the FOIA in this case, as the school failed to respond to the complainant's request within 20 working days of its receipt.

Request and response

4. On 25 April 2014, the complainant wrote to the school and requested information in the following terms:

"Last December I saw your Fair Access Policy.

<http://www.birleypaschool.co.uk/docs/Parent/Fair%20Access%20January%202013.pdf>

It is not there any more.

But I would like the Fair Access Policy as it was last December.

Could you please send it to me?"

5. As the complainant received no response, she emailed the school again. The complainant also referred the matter to the Commissioner on 27 May 2014.
6. The school responded on 3 June 2014 sending two emails to the complainant. The first email explained that the website and some policies were being updated and had therefore been removed. The school confirmed that the website and policies removed would be updated soon. The second email was sent to the complainant following contact from the Commissioner. The school forwarded a copy of the policy it believed the complainant had requested.
7. The complainant contacted the Commissioner on 4 June 2014. She stated that the policy provided on 3 June 2014 is not the policy she requires. She confirmed that she emailed the school on 4 June 2014 to ask it to review the matter again.
8. The complainant emailed the Commissioner again on 7 June 2014 asking why the school had forwarded the wrong document.
9. The Commissioner contacted the school on 9 June 2014. The school stated that it does not hold a policy with the name 'Fair Access Policy'. The request was discussed and the Commissioner informed the school that he had interpreted the request to be for the school's policy on admissions (the allocation of school places and the procedures in place for when a child is not offered a place) and asked whether the school holds an admissions policy. The school confirmed that it does and that it would forward this to the complainant.
10. The Commissioner emailed the complainant on 9 June 2014 to explain what he had requested the school to do. He asked the complainant to consider the admissions policy provided and if this is not the information she requested to explain to him in more detail exactly what information it is that she requires.
11. The complainant responded on 9 June 2014. She stated that the admissions policy is not the policy she requested. She confirmed that she provided a link to the policy she requires in her earlier request. The complainant requested the matter to be reopened and for the

Commissioner to issue a decision notice recording a breach of section 10 of the FOIA. The complainant did not clarify in any more detail exactly what information it is she is seeking, as she felt this was perfectly clear. She did however send the Commissioner an extract of the document she requires.

12. The Commissioner wrote to the complainant on 10 June 2014. He requested the complainant to ask the school to carry out an internal review before he formally accepts the complaint for investigation.
13. The complainant responded on 10 June 2014. She stated that she felt she had already done this. She referred the Commissioner to an email she sent the school on 4 June 2014 and the response she has received from the school since then.

Scope of the case

14. The Commissioner accepted the complaint for formal investigation on 11 June 2014. Specifically, the complainant requires a copy of the policy that was available on the school's website in December 2013 via the link she provided. The complainant refers to the said policy as the 'Fair Access Policy'. She also requires the Commissioner to issue a decision notice recording the breach of section 10 of the FOIA.
15. The Commissioner's investigation is limited to recording the breach of section 10 of the FOIA and identifying what further recorded information the school holds, if any, to that it has already provided. If further recorded information is held, the Commissioner will then decide if it should be communicated to the complainant or not.

Reasons for decision

Is the requested information or further recorded information held?

16. The Commissioner will first consider whether the requested information was held at the time of the request and whether any further recorded information falling within the scope of the request to that already provided is held.
17. The Commissioner discussed the complainant's request in detail with the school on several occasions. He also referred the extract of the document the complainant supplied to him on 9 June 2014 to the school.

18. The school confirmed that the link contained in the complainant's original email is no longer accessible and this cannot be currently used in order to obtain the information that was available via this link in December 2013. The school explained at the outset that it had removed several policies from its website, as these needed updating. It also confirmed that it was updating its website at the same time as well.
19. The school confirmed that it cannot identify the policy the complainant is referring to and explained that it does not hold a policy named the 'Fair Access Policy'. It explained that it had used the extract supplied by the complainant on 9 June 2014 to try and locate the requested information. The school confirmed that it undertook an electronic search and had manually read through all policies it does hold to try and identify the information the complainant requires. Despite these searches it cannot locate the requested information.
20. The school also confirmed that it had provided the complainant with copies of any policies it does hold which may fall within the scope of her request. It provided what it believed was the information she required on 3 June 2014 and then a copy of the school's admission policy that was in place in December 2013 at the request of the Commissioner. Despite this the complainant is not satisfied and still maintains that it is not the information that was available to her in December 2013 via the link she supplied.
21. The Commissioner carried out a simple internet search of the words 'Fair Access Policy' to establish more clearly what this is. The results showed that fair access policies within schools relate to the allocation of school places and the procedures in place for those children that do not get offered a place at the school. As the complainant remained adamant that she had not been provided with the requested information, the Commissioner put this interpretation to her and asked her to clarify exactly what information it is she requires.
22. The complainant did not answer the Commissioner fully. She simply stated that she could not have made her request any clearer and again referred to the internet link she provided.
23. As the complainant did not clarify in more detail the information she requires or indeed reject the Commissioner's interpretation of the request, the Commissioner's investigation has proceeded on this basis.
24. The school informed the Commissioner that it cannot locate the information the complainant is referring to either via the link she provided in her initial request (as this is no longer in use) or by searching through all the policies it does hold. It has considered the extract the complainant provided on 9 June 2014 but this has not

assisted the school in identifying the requested information. The school has confirmed to the Commissioner that it has now provided all policies it does hold which could fall within the scope of her request, including its admissions policy from December 2013, which addresses the school's procedures on the allocation of school places.

25. The Commissioner is satisfied that the school has undertaken adequate searches of its records to try and locate the specific policy the complainant is referring to. It has also confirmed that it has made all policies it considers may fall within the scope of the complainant's request available to her.
26. Since contacting the school the complainant has provided the Commissioner with further extracts from the document she requires. The Commissioner is not aware whether the complainant is actually in receipt of the entire document she requires or whether the complainant copied and pasted just the extracts provided at a time when the requested information was available on the school's website. The complainant has not explained her position in more detail and has in fact stipulated that the Commissioner must not share these further extracts with the school.
27. The Commissioner has explained that he would like to forward these extracts on to the school, as it may assist him and the school in identifying exactly what information she requires. But as the complainant has specifically stated that the Commissioner is not permitted to forward these extracts to the school, there is little further he can do to assist her.
28. The Commissioner has therefore concluded that on the balance of probabilities the school does not hold or no longer holds the requested information.

Section 10

29. Section 10 of the FOIA states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
30. Section 1(1) 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.

31. It is evident in this case that the complainant submitted her request for information to the school on 25 April 2014. However, as the school did not respond until 3 June 2014, it failed to comply with section 1(1) of the FOIA within twenty working days of the receipt of this request. As it failed to do so, the Commissioner has recorded a breach of section 10 of the FOIA in this case.

Right of appeal

32. 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: GRC@hmcts.gsi.gov.uk

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

33. 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.
34. 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

Racheal Cragg
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