

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 January 2020

**Public Authority:** Hampshire County Council  
**Address:** The Castle  
Winchester  
SO23 8UJ

#### Decision (including any steps ordered)

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1. The complainant requested from Hampshire County Council (the Council) information consisting of a report following a visit to Hythe Primary School. The Council stated that it did not hold information as per the complainant's description but provided some clarification on the matter.
2. The Commissioner's decision is that the Council has correctly confirmed that the information is not held.
3. The Commissioner requires no steps to be taken as a result of this decision.

#### Request and response

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4. On 26 February 2019 the complainant wrote to the Council and requested information of the following description:

*"A copy of the LADO report following their recent visit to Hythe Primary School. The visit was triggered from my safeguarding complaint to Ofsted in November 2018.*

*If you also have a copy of the SEN consultants report which followed the LADO visit I would like a copy of that report also.*

*The specific information I am requesting is the areas of strengths/ weakness identified during the visit, any areas in which the school failed to follow the SEND code of practice along with any recommendation for improvement.*

*An e-mail copy will be sufficient."*

5. The Council provided the complainant with a response on 18 March 2019. It stated that it did not hold information, in recorded form, within the scope of the request.
6. Remaining dissatisfied with the Council's response, on 19 March 2019 the complainant requested an internal review and submitted arguments in support of the her position that the Council should be in possession of the information requested. The complainant attached to the request for an internal review a copy of an email from the Assistant Director of the Council's Children's Services Department sent to a Councillor that stated:

*"A senior Local Authority officer was assigned to undertake that investigation and having looked in detail at the allegations we have reported back to Ofsted that we have no immediate concerns."*

7. The Council provided the complainant with the outcome of its internal review on 17 May 2019. The Council explained that following the complainant's complaint to Ofsted the Council conducted necessary investigations which resulted in a report dated 11 December 2018. As part of the internal review outcome communicated to the complainant, the Council enclosed a redacted copy of this report. The Council also provided the complainant with a link to the recent Ofsted report following an inspection, which among other matters, addressed safeguarding.
8. The Council explained that, since the complaint was treated as a Category 3 complaint, it did not deem it necessary to involve the Local Authority Designated Officer (LADO). Therefore no LADO report was produced, hence the information requested by the complainant did not exist. The Council clarified that *"Category 1 and 2 complaints are the most serious categories and those are investigated by the LADO."* Consequently, the outcome of the Council's internal review concluded that the original response was correct and that there was no recorded information held within the scope of the request.

## Scope of the case

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9. The complainant contacted the Commissioner on 26 March 2019 to complain about the way the request for information had been handled. Based on the complainant's previous correspondence with different officials from the school and various Council departments, the complainant was convinced that the Council was in possession of information in the form of reports as per the description in the complainant's request.
10. At paragraph 7 above, it is noted that information was disclosed to the complainant with the internal review outcome. The Commissioner's understanding is that this information was disclosed to assist the complainant, but it was not considered to be within the scope of the request.
11. The scope of the analysis that follows is to determine whether or not, on the balance of probabilities, the Council held information within the scope of the request at the time the request was submitted.

## Reasons for decision

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### Section 1 - general right of access

12. Section 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."*

13. 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 First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Council held any information within the scope of the request.
15. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also

consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

16. During the course of her investigation, the Commissioner asked the Council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how the Council established whether or not it held any information within the scope of the request.
17. The Council stated that it had contacted the Assistant Director of Education and Inclusion within the Council's Children's Services. The Council explained that, since the matters raised in the complainant's case were treated as a Category 3 complaint, he was the most appropriate person to be contacted as he would have been the responsible officer to handle complaints in this category.
18. The Council informed the Commissioner that the Assistant Director had repeatedly confirmed that there was no report produced following the complainant's complaint, other than that sent to Ofsted of 11 December 2018, which was disclosed to the complainant as part of the internal review outcome.
19. The Council stated that if such a report had been produced it would have been held electronically within the Council's documents management system.
20. The Commissioner asked the Council to describe the way in which it handles comparable records of a similar age. The Council stated that *"For School Improvement records that relate to inspection and advice records for individual schools, these records would be held for 7 years from the date of declaration of closure of file."*
21. The Council stated that no document or information relevant to the scope of the complainant's request had been deleted or destroyed.
22. According to the Council *"All the relevant Data for this case is held in other forms of documents, such as the document disclosed in response to the request for internal review."*

### ***The Commissioner's Conclusion***

23. The Commissioner has examined the submissions of both parties. She has considered the searches performed by the Council, the Council's

explanations as to why there is no information held and the complainant's concerns.

24. Having considered the scope of the request, the Commissioner is satisfied that the Council took all necessary measures and steps to identify the relevant information requested that was held at the time of the request.
25. The Commissioner notes that the information request is based on the belief held by the complainant that a LADO investigation took place. Its core subject matter was a LADO report, which the complainant believed was in the Council's possession.
26. The Commissioner also notes that the fashion in which the second and the third paragraph of the request were formulated were contingent on the response to the first paragraph. Information would only have been held in relation to the second and third paragraph, if a LADO investigation had happened and a report on that investigation was produced.
27. As the request was predicated on the involvement of LADO, if it is accepted that the LADO was not involved in this matter, it follows that the Council cannot be expected to hold any information within the scope of the request. The Commissioner is prepared to accept the Council's explanation that it was a category 3 complaint and that complaints of this category are not investigated by a LADO. Therefore, she considers that it cannot have been expected that the Council would have been holding the information described in the complainant's request.
28. Whilst appreciating the complainant's concerns and expectations following the complaint to Ofsted, the Commissioner finds the Council's reasoning as to why there is no information held to be plausible and persuasive.
29. Therefore on the balance of probabilities, the Commissioner is satisfied that the Council does not hold the information requested by the complainant, and is satisfied that the Council discharged its duties in compliance with its statutory obligations under section 1(1)(a) of the FOIA when it stated that this information was not held.

## Right of appeal

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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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**