

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2023

Public Authority: West Sussex County Council
Address: County Hall
Chichester
West Sussex
PO19 1RQ

Decision (including any steps ordered)

1. The complainant requested information relating to school allocations. West Sussex County Council (the "council") disclosed some information and confirmed that other information was not held.
2. The Commissioner considers that, on the balance of probabilities, the council correctly confirmed that it does not hold the information identified in parts 2 and 3 of the request and that it complied with section 1(1) of the FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 1 March 2023 the complainant submitted the following request to West Sussex County Council (the "council"):

“(1) A full data set of the school allocations made for Tanbridge House School and The Forest School in relation to what primary school each child attends, distance from home to school, and gender.

(2) All emails and correspondence relating to the decision making process and final decisions for these schools and decisions of the Southwater children being allocated The Burgess Hill Academy.

(3) All minutes from meetings pertaining to, or covering, the decision making process in general and also the specific meeting minutes pertaining to the decision to send people from Southwater to The Burgess Hill Academy.”
5. On 24 March 2023 the council responded and disclosed the information in part 1 of the request. In relation to parts 2 and 3 of the request the council provided an explanation of its decision making process but did not confirm or deny whether the specified information was held or disclose any recorded information.
6. On 24 March 2023 the complainant asked the council to reconsider its handling of parts 2 and 3 of the request.
7. On 28 March 2023 the council responded and confirmed that, in relation to parts 2 and 3 of the request, it did not hold any recorded information.
8. On 31 March 2023 the complainant asked the council to review its handling of the request.
9. On 12 April 2023 the council issued its internal review response which maintained the position that information was not held.

Scope of the case

10. On 14 April 2023 the complainant contacted the Commissioner to complain about the council's handling of their request.
11. The complainant confirmed that they wanted the Commissioner to investigate the council's response to parts 2 and 3 of the request. They explained that they considered that the council should hold recorded information regarding these matters.

12. The complainant also raised concerns about the council's internal review process. As internal reviews are not a statutory obligation under the FOIA but relate to the code of practice issued under section 45, the Commissioner has not considered these concerns within the confines of the decision notice. He has, however, commented on the matter in the Other Matters section below.

Reasons for decision

Section 1 – General right of access

13. Section 1 of the FOIA provides that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
14. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
15. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the council holds any recorded information within the scope of parts 2 and 3 of the request.
16. The council explained to the Commissioner that, in handling the request, it liaised with relevant members of staff including the Assistant Director of Education and Skills, Head of Organisation and Planning, Children, Young People and Education and the Pupil Admissions Manager.
17. The council confirmed that the School Place Planning Team and the Admissions Team had discussions regarding the placement of children but that, as part of its normal practice, no notes or minutes were taken of these discussions.
18. The council explained that the allocation of school places is carried out in line with published admission arrangements and in compliance with the School Admissions Code 2021, which sets out the mandatory requirements that the council must comply with. The council has confirmed that these documents set out the decision making process and there is no discretion for it to make any decisions outside these frameworks, and to do so would be unlawful. The council explained that

this is why there are no notes or minutes of any discussions around decisions.

19. In relation to searches carried out for information, the council confirmed that there is no search that can be undertaken, as colleagues have confirmed that no such notes exist and there is nothing held by the council that can be disclosed.
20. The complainant submitted their request within the context of correspondence with the council about a decision made in relation to their child's schooling. The identity of a requester and their motivations for making a request are not ordinarily relevant considerations under the FOIA, however, the Commissioner appreciates why the complainant would expect that information regarding this significant decision making process would be recorded and held by the council.
21. The FOIA does not impose statutory obligations on public authorities to record and retain specific types of information. Whilst the code of practice issued under section 46¹ of the FOIA recommends that authorities should, for example, retain such information that is needed to justify decisions and/or to demonstrate compliance with other statutory obligations, it is for individual authorities to decide what information is actually recorded.
22. As noted above, in this case the Commissioner understands why the complainant would consider that information falling within the scope of their request might be held by the council². On the basis of the council's submissions, though, the Commissioner has concluded that, on the balance of probabilities, it is likely that it has correctly confirmed that it does not hold the information in parts 2 and 3 of the request. The Commissioner has, therefore, concluded that the council has complied with the requirements of section 1(1) in this case.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1010395/Freedom_Information_Code_Practice_Web_Accessible.pdf

² The council has confirmed to the Commissioner that, in future, information regarding these matters will be recorded.

Other matters

23. Although they do not form part of this decision notice the Commissioner notes the following matters.

Section 45 code of practice

24. The complainant has raised concerns about the council's practice in relation to the carrying out of internal reviews, specifically regarding the independence of the reviewer.
25. The code of practice issued under section 45 of the FOIA (the "code") contains recommendations as to best practice in the handling of requests.
26. In relation to the carrying out of internal reviews paragraph 5.9 of the code states:
- "It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision. The public authority should in all cases re-evaluate their handling of the request, and pay particular attention to concerns raised by the applicant."³
27. In this case, whilst the Commissioner understands the complainant's concerns, he notes that the review was carried by a different officer to the original request handler. He, therefore, does not have any concerns that the council's practice in this case does not conform to the recommendations of the code.

3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

28. 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

29. 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.

30. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF