

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2018

Public Authority: City of Norwich School
Address: Eaton Road
Norwich
NR4 6PP

Decision (including any steps ordered)

1. The complainant has requested from City of Norwich School ('CNS') copies of two specific sub-policy documents that he considers CNS had adopted and was following at the time of his request. CNS's position is that it does not hold the sub-policy documents in question.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, CNS does not hold the information that the complainant has requested under section 1(1)(a) of the FOIA.
 - CNS breached section 10(1) of the FOIA as it did not confirm that it did not hold the information within 20 working days of receiving the request.
 - CNS complied with section 16(1) as it offered the complainant adequate advice and assistance.
3. The Commissioner does not require CNS to take any steps to ensure compliance with the legislation.

Request and response

4. On 8 February 2018 the complainant wrote to CNS and requested information in the following terms:

"I also think it is now appropriate to make a FOI request for a copy of the following school policy documents:

[1] POL-ICE02 England Accident/Incident Investigation and Reporting Policy

[2] POL – PEG01 England PE and Games Policy."

5. CNS responded on 21 March 2018. With regard to part [1] CNS said that POL-ICE02 is covered by its *"health and safety policy which references accident and investigation reporting"*. With regard to part [2] – sub-policy POL-PEG01 - CNS stated in its response that this is not a statutory policy and it does not use it.
6. The complainant requested an internal review on 6 April 2018. He sent to CNS a screenshot of a health and safety policy he considered was current at the time of his request, the *'Ormiston Academies Trust, City of Norwich School, Health and Safety Policy, June 2016'* (the Handsam policy'). On page 3 of the policy, the sub-policies he has requested are shown. The complainant noted that paragraph 18 of the above policy states that the *"...attached sub-policies make up the overall CNS Health and Safety Policy to which each academy must have regard."*
7. CNS provided a review on 25 April 2018. CNS explained that the health and safety policy that the screen shots were taken from was adopted on 20 November 2017. However, CNS said that the sub-policies shown in this policy (which included the two that the complainant had requested) were not approved or adopted by CNS governors. CNS indicated that, at that time, the two sub-policies would have appeared on its website under the title 'pending approval'. CNS acknowledged that the status of these sub-policies was not clear in the overarching 2017 health and safety document itself. By 'overarching 2017 health and safety document', the Commissioner understands CNS was referring to the Handsam policy above.
8. CNS went on to explain that this policy was superseded by an *'Ormiston Academies Trust (OAT) Health and Safety Policy'* (the OAT policy') which does not include any reference to the sub-policies requested. The OAT policy was approved and adopted by CNS governors on 26 February 2018. CNS said that the rest of a group of new OAT Health and Safety policies was listed on its website under 'pending approval'.

9. Finally, CNS confirmed that it could not pass to the complainant POL-ICE02 or POL-PEG01 as it had never adopted these sub-policies and did not have them to share with the complainant.

Scope of the case

10. The complainant first contacted the Commissioner on 27 March 2018 to complain about the way his request for information had been handled. Following provision of the internal review, the complainant remained dissatisfied.
11. In correspondence to the Commissioner, the complainant has noted that both the sub-policies he has requested are referenced on page 3 of the Handsam policy.
12. During the Commissioner's investigation, OAT considered the request. OAT is the sponsor of CNS. OAT identified that it holds versions of the two sub-policy documents concerned and, on 18 September 2018, OAT provided these to the complainant. It confirmed to the complainant that it is OAT that holds this information and that CNS does not hold it, had not adopted the sub-policies in question and was not following the two sub-policies.
13. In the course of her investigation the Commissioner reviewed these two documents and she has noted that they are template documents. The documents are discussed from paragraph 39 of this notice.
14. Since he had now received (from OAT) information within the scope of his request the Commissioner asked the complainant whether he was prepared to withdraw his complaint so that the case could be closed informally. The complainant preferred to conclude his complaint formally, through a decision notice. He sent the Commissioner what he considers to be 'new evidence' that supports his view that CNS held the information he has requested at the time of his request.
15. At the complainant's request, the Commissioner's investigation has focused on whether CNS has complied with section 1(1), section 10(1) and section 16(1).

Reasons for decision

16. On behalf of CNS, OAT has provided the Commissioner with some background to the request. It says that an incident occurred involving the complainant's child, on a particular date. At the time of the incident

the health and safety policy on the website was the Handsam policy. CNS has told the Commissioner that this policy was in place at the time of the incident and that a copy of this policy was provided to the complainant in response to his request. Clarification about this document was given in the internal review response to the complainant.

17. OAT has explained to the Commissioner that an organisation called Handsam had been responsible for producing policy documents for OAT and its associated academies and schools. Handsam's contract with OAT ended in November 2017 but OAT continued to use the policy documents it had produced – including the Handsam policy – until the replacement policy – the OAT policy – was rolled out in January 2018. The OAT policy was agreed by the Board of Trustees in December 2017.
18. In January 2018 OAT had emailed all its academies to advise that the revised and updated OAT policy had been approved and was available on 'OATnet' – its information management system. (OAT has provide the Commissioner with a copy of that email.) It advised that all academies should adopt this policy and communicate it within their academy.
19. In the email, OAT further advised that "*the suite of mandatory health and safety policies previously written by Handsam*" had been removed from the OATnet 'Policies' page and had been replaced by OAT health and safety procedures. Finally, the email advised that over the coming months, this initial set of procedures would be further developed to include not only legal health and safety compliance but also good practice within academies.
20. The Commissioner noted that the above email would suggest that the sub-policies in question were 'mandatory' and that CNS would therefore have adopted and been following them. She raised this with OAT who confirmed to her that the sub-policies of the overarching Handsam policy were not mandatory.
21. The OAT policy was sent to all OAT academies before the CNS 'Finance and General Purposes' governors committee meeting on 26 February 2018. The OAT policy was uploaded to the CNS website on 16 March 2018 following the requested changes that were made at that governors meeting.

Section 1 – general right of access to information held by public authorities

22. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled a) to be told if the authority holds the

information and b) to have the information communicated to him or her if it is held and is not exempt information.

23. In its submission to the Commissioner, and on behalf of CNS, OAT has confirmed that as a result of this investigation a search was made by the OAT Health and Safety Officer at its Head Office, and the two sub-policies requested were found in the OAT system. OAT says it is clear that these have never been adopted by CNS's governing body and, as such, the academy itself (ie CNS) did not hold them.
24. OAT has gone on to address other points that the complainant raised with the Commissioner and which she passed to OAT. First, that the Handsam policy and two sub-policies were in force at the time of the incident involving the complainant's child. OAT has again confirmed that CNS did not adopt the two sub-policies referred to, and does not hold them.
25. Second, the complainant has asserted that CNS has attempted to cover up the existence of the two documents in question by modifying website documents to remove references to these documents. OAT – in the submission it provided to the Commissioner on CNS's behalf - has categorically denied that any 'cover up' has occurred and has referred to CNS's internal review response, in which the situation with regard to the policies was explained. OAT has told the Commissioner that it was simply the case that the Handsam policy was updated, which is a normal part of business, at a time, by coincidence, when OAT's contract with Handsam had ended.
26. Finally, in its submission OAT has described the searches it undertook to see if CNS held the information the complainant has requested. It has confirmed that, if held, the information would be held electronically. Electronic searches were done on staff computers/in governors minutes/emails trails/communications from head office relating to policies/and hard copy policy information at academy level. Emails and phone conversations with the Clerk of governors ascertained the dates that changes were made and the rationale behind the policy change.
27. Search terms used were 'H&S policy', 'governor minutes', 'the Finance and general purposes committee', 'POL-ICE02 England/Incident Investigation and Reporting Policy' and 'POL-SCTR02 England PE and Games Policy'.
28. OAT has confirmed that no recorded information falling within the scope of the request was ever deleted or destroyed (the Handsam policy has been retained). It has further confirmed that all old policies removed from the website sit electronically on file from the time periods involved. It says that OAT is required to keep old versions of its health and safety

policies in accordance with its statutory responsibilities under the General Data Protection Regulations and other relevant legislation.

29. With regard to the complainant, he originally outlined his concerns about CNS's response in correspondence to the Commissioner in August 2018. These can be summarised as a concern that the Handsam policy and the sub-policies were in force at the time a particular incident had occurred and at the time of his request, and the complainant's belief that CNS had an obligation to provide the documents he has requested.
30. Following OAT's provision of relevant information on 18 September 2018, and the Commissioner's preliminary assessment of the situation, the complainant wrote to the Commissioner again on 25 September 2018.
31. With regard to CNS not holding the disputed information, the complainant has told the Commissioner that from the information OAT has now supplied to him, he was able to use the results of an advanced internet 'cache search' to identify information about the documents online. In the complainant's view, the results revealed that the claim that "the school does not hold the information" is false.
32. The complainant says that the archive has records that show that CNS does hold the documents on at least one of its systems and, from a check at the time of his writing to the Commissioner, has held both files since 11 October 2016.
33. The complainant says CNS would have known this information was on the website because the advanced archive cache searches also reveal that links pointing to the two documents were in place as late as 18 December 2017, around seven weeks before his FOI request. The complainant has told the Commissioner that these links were removed sometime between 18 December 2018 and the beginning of February 2018. At that time he had researched the CNS website as a result of the complaint he was in the process of making concerning his child who, the complainant says, was subject to significant harm in the aforementioned incident that occurred at CNS. The complainant says the links were not present on the CNS system at that time.
34. The complainant says that it is notable that the file path he has provided to the Commissioner contains a folder named 'Policies_Final'. He says that, at the time of his writing, the policies remain in that folder and are accessible by links he has provided to the Commissioner.
35. The complainant notes that the two sub-policies OAT provide to him are exactly the same content as the policies on the CNS system. The file names differ slightly but the overall content including meta data such as

author, creation date/time, file size, and a byte by byte comparison all match exactly – which, in the complainant's view, confirms that CNS holds up to date information on its systems - as confirmed by comparing this to the information OAT provided.

36. The complainant says that OAT has several internal trust-wide management systems designed to be accessible to all academies. One of these systems is the aforementioned OATnet. According to the complainant, its physical location is not known but its virtual location is at each and every academy as well as OAT itself. As well as providing global trust wide services, each academy has a dedicated section. The OATnet system maintains a record of all trust-wide policies; in the complainant's view CNS would have access to this system as well as being aware of OAT's requirement for academies to maintain awareness of them.
37. The complainant considers that the claim that "the school does not hold the information" is further contradicted by virtue of the fact that CNS has access to the portal of this trust-wide system as part of the overall participation of being a member of OAT. The complainant considers that, by virtue of having access to the trust-wide system, CNS does hold the disputed information.
38. Having discussed his belief that 1) CHS holds the disputed information, in his correspondence received 25 September 2018 the complainant has gone on to discuss - at length - his view that 2) CNS had adopted the policies in question and 3) was following the two policies. The complainant appears to be pursuing these avenues because, if CNS had adopted and was following the two policies at the time of his request, this would support the complainant's argument that it held the two documents. The Commissioner has reviewed this further material and has been prepared to address these particular matters if necessary.
39. To recap, the complainant's request to CNS is for:

*"I also think it is now appropriate to make a FOI request for a copy of the following **school policy documents**..."* [Commissioner's emphasis]

The Commissioner considers that a reasonable interpretation of the request is that it is for CNS sub-policy documents; that is, documents directly pertaining to CNS, that CNS follows.

40. The complainant has sent the Commissioner the following web links that he identified through his 'advanced cache search'.

http://www.cns-school.org/docs/Policies_Final/T-OAT-POL-PEG01_England_PE_and_Games_Policy_March_2016.pdf

and

http://www.cns-school.org/docs/Policies_Final/T-OAT-POL-ICE02_England_Policy_for_Accident_Incident_Investigation_and_Reporting_November_2015.pdf

41. The first link leads to a document called '*Ormiston Academies Trust PE and Games Policy | March 2016*'. In brackets at the top of the document is the following: '(SCHOOL/ACADEMY NAME)'. This suggests to the Commissioner that it is a template document into which each school or academy that has adopted the sub-policy would insert its individual name.
42. The second link leads to a document called '*Ormiston Academies Trust Policy for Accident/Incident Investigation and Reporting | November 2015*'. Again, there is '(SCHOOL/ACADEMY NAME)' at the top of this document, which again suggests to the Commissioner that it is a general template document. These two documents are the same two documents that OAT provided to the complainant on 18 September 2018.
43. In his communication to the Commissioner, the complainant has provided screen shots that suggest that he identified these documents on 23 September 2018 and that suggest that the documents were last modified on 11 October 2016. He appears to consider this to be evidence that CNS held the requested information at the time of his request.
44. The Commissioner is interested in any evidence that would suggest that, at the time of his request on 8 February 2018, CNS held information within the scope of the complainant's request ie held the two sub-policy documents that were directly related to CNS ie that were in CNS' name and that CNS had adopted and was following.
45. The Commissioner does not consider the complainant's evidence above to be compelling. It simply appears to show that CNS held general template documents on 23 September 2018 that had last been modified (by an unknown party) in 2016. The Commissioner might have been persuaded had the two documents had 'City of Norwich School' in the '(SCHOOL/ACADEMY NAME)' section but they do not. In the Commissioner's view, the information the complainant has provided is not evidence that, at the time of the request, CNS held the two sub-policy documents that it, itself, had adopted and was following.
46. With regard to the complainant's point about OATnet, again the Commissioner does not consider that this is evidence that CNS held the information he has requested. In the Commissioner's view, CNS may

(or may not) have had access to the two template documents above through OATnet, but she is satisfied that it did not have access to information falling within the scope of the complainant's request; that is, the two sub-policy documents in question in CNS' name, that CNS had adopted and was following. This is because CNS did not hold this information, and neither, it appears, did OAT, because CNS had not adopted these two sub-policies and was not following them.

47. In conversation, OAT has stated categorically to the Commissioner, as CNS did to the complainant, that, at the time of the request, CNS did not hold the requested information as it had not adopted the two sub-policies in question and was not following them. The Commissioner has reviewed all the complainant's arguments and he has not persuaded the Commissioner otherwise. From the submission OAT has provided on CNS's behalf and her additional conversations with OAT, the Commissioner is satisfied on the balance of probabilities that CNS did not, and does not, hold the requested information under section 1(1)(a) of the FOIA.

Section 10 – time for compliance

48. Under section 10(1) of the FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of a request.
49. The complainant submitted his request on 8 February 2018 and a response was due on 9 March 2018. CNS provided a response on 21 March 2018 in which it indicated that it did not hold the information the complainant had requested and it confirmed this in its internal review. However, CNS did not comply with section 1(1)(a) – ie confirm that it did not hold the requested information - within 20 working days of receiving the request and so breached section 10(1) on this occasion.

Section 16 – duty to provide advice and assistance

50. Section 16(1) of the FOIA places a duty on a public authority to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
51. Having reviewed CNS's (and OAT's) correspondence with the complainant the Commissioner is satisfied with how CNS dealt with his request. Its position was that it did not hold the requested information; as such there was a limit to the advice and assistance it could offer. However CNS provided the complainant with other documents it considered might be helpful and addressed his queries. OAT went on to provide him with information that is relevant to his request. The Commissioner therefore finds that CNS complied with section 16(1).

Right of appeal

52. 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@hmcts.gsi.gov.uk

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

53. 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.
54. 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

Pamela Clements
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