

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2022

Public Authority: Rhondda Cynon Taf County Borough Council
Address: freedomofinformation@rctcbc.gov.uk

Decision (including any steps ordered)

1. The complainant requested a copy of a risk assessment that was performed at Hawthorn School and swimming pool in December 2019. Rhondda Cynon Taf County Borough Council (the Council) stated that it did not hold the information requested. The Commissioner's decision is that on the balance of probabilities the Council does not hold the information requested. The Commissioner does not require any steps to be taken.

Request and response

2. On 27 September 2020, the complainant wrote to the Council and requested information in the following terms:

"I would like a copy of the risk assessment that was performed at hawthorn school and swimming pool in December of last year, plus risk assessments for the previous 4 years. I am happy to receive the reports electronically or via hard copy"

3. The Council responded on 28 October 2020 and stated that no risk assessments have been produced and as such no recorded information was held relevant to the request.
4. The complainant wrote back to the Council on 28 October 2020 and expressed dissatisfaction with the response that no information was held and asked a number of questions about the reason for this.
5. The Council responded on 20 November 2020 and advised that it was unable to comment on the specific issues the complainant had raised in

relation to the school itself. In this response the Council confirmed that *"no written risk assessment was completed as a result of the initial findings of my Leisure Manager who had been tasked with reviewing the operation of Hawthorn High School swimming pool"*. The Council also apologised for any confusion caused by its earlier response that mentioned a risk assessment.

Scope of the case

6. The complainant contacted the Commissioner on 21 January 2021 to complain about the way their request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any recorded information falling within the scope of the request of 27 September 2020.

Reasons for decision

Section 1 – general right of access

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
9. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

Background information

10. The Commissioner understands that the swimming pool (the pool) at Hawthorn School (the School) offers school swimming, swimming lessons and sessions for club swimmers. In addition it is open to the public at certain times. The pool was operated by the School itself until 2021 when it transferred to the Council.
11. In January 2020, early morning and lunchtime swimming sessions for members of the public were withdrawn by the School. The complainant states that when they spoke to a member of staff at the School at this

time they were advised that the public swim sessions had been withdrawn as a result of child protection concerns.

The Council's position

12. The Council provided the Commissioner with background information about the subject matter associated with the request which is summarised below.
13. Around October 2019, the Council's Leisure Services were asked by the Education department to assist with the running of the pool following a number of issues which had been identified during an Audit Inspection. A Leisure Manager was assigned to review the operation of the pool and report any findings to the School, including making any recommendations for any improvements to the management of the pool.
14. During the period of the review, a number of informal discussions and 'walkarounds' the site were undertaken with the Headteacher and other School staff. It was during one of the walkarounds that the Leisure Manager observed that the public were accessing the pool whilst the School was open. The Council advised that "these observations were based on the strict child protection policies within the public pools operated by Leisure Services when schools were using the facilities". A number of instances were identified during the walkarounds including:
 - Members of the public being on site and having access to School grounds one hour after the School opened.
 - The pool viewing area had been changed to a 6th form common room during school time where public had access to the facility.
 - There were a number of adults using the fitness suite within School grounds whilst the school was open.
15. The Council advised the Commissioner that the Headteacher raised the issues concerned with the Governing Body and a decision was taken to close access to the pool to members of the public during school hours with effect from January 2020. All regular users of the pool were contacted by the School to advise them of the change.
16. The issue of access to the pool was due to be reviewed following its withdrawal in January 2020. However, a combination of maintenance issues which resulted in the pool being closed completely and issues associated with the Covid 19 pandemic resulted in the review not being carried out at that time. The Council advised the Commissioner that a decision has since been taken to transfer the operation of the pool from the School to the Council. The Commissioner also understands that the pool reopened to members of the public in November 2021.

17. The Council explained that, at the time of the request the pool was operated by the School as opposed to Leisure Services and no Leisure Services risk assessments had taken place. The Council advised that the School holds a file of operational risk assessments, but there was no risk assessment that dealt with the issue of the public and school children being present on site at the same time. This issue was identified by the Leisure Manager who made the observation during a walkaround at the School and pool. The Council advised that the issue would have undoubtedly been reflected in a revised risk assessment following the review, but the review was put on hold as a result of the Covid 19 pandemic.
18. The Council confirmed that the only written document held relevant to the issues raised by the complainant is an action plan which was compiled by the Leisure Manager as a result of the review of the operation of the pool. The plan was used solely by the Leisure Manager to document all actions arising from his review. It contains information about the safeguarding issue along with a review of other aspects of the school's management of the pool. The Commissioner has made further comments about this action plan in the other matters section of this notice.

Conclusion

19. The Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it. The Commissioner has taken account of the explanations provided by the Council, and in particular its statement that no risk assessments had been undertaken prior to the date of the request. Based on the evidence available to him, the Commissioner accepts that, on the balance of probabilities at the time of the request the Council did not hold any information falling within the scope of the complainant's request.

Other matters

20. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:
21. As stated earlier in this notice, during the course of the Commissioner's investigation, the Council provided a copy of an action plan produced by its Leisure Centre Manager to document actions arising from his review of the operation of the pool. The action plan includes information about the child protection issues identified at the School in 2019.
22. Section 16(1) of the FOIA places a duty on a public authority to provide advice and assistance, so far as it would be reasonable to expect the

authority to do so, to persons who propose to make, or have made, requests for information to it.

23. Whilst the Commissioner accepts that the action plan does not fall within the scope of the request, the Commissioner considers it clear that it is within the subject matter area that the complainant has an interest in – the amended hours of opening of the swimming pool – and that the Council should have advised the complainant of the existence of the action plan under its duty to provide advice and assistance. The Commissioner recommends that the Council now writes to the complainant to confirm that it holds the action plan to ascertain whether the complainant would be interested in accessing this plan. If the complainant confirms that they want the action plan, the Council will then need to consider this as a new request and either disclose the information or, in respect of any information it wishes to withhold, issue a refusal notice within the meaning of section 17 of the FOIA providing a basis for withholding the information.

Right of appeal

24. 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

25. 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.
26. 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

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