

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2016

Public Authority: Mill View Primary School
Address: Wealstone Lane
Upton-by-Chester
Chester
CH2 1HB

Decision (including any steps ordered)

1. The complainant has requested information from Mill View Primary School (the "School") regarding the existence of a contract for structural checks on the school walls. He has also argued this is environmental information.
2. The Commissioner's decision is that the School does not hold the requested information. He also considers the School correctly considered the request under the FOIA.
3. The Commissioner requires no steps to be taken.

Background to the request

4. On 2 September 2015 the complainant requested the following information from the School:

'Please can you confirm whether a contract exists for the 12 month interval structural integrity checks (as recommended by the Local Authority) on the school walls'

5. On 16 September 2015 the School informed the complainant that no contract was recommended by the Local Authority and no contract exists. It explained the Local Authority recommended a 12 month check of the existing walls to ensure there were no cracks etc.
6. The School confirmed this would be undertaken as part of the annual Local Authority and School Health and Safety building check.

Request and response

7. On 16 September 2015 the complainant explained that he had understood the Local Authority would not be undertaking any building safety checks or maintenance services. He explained that now the School was an academy, he assumed any such service would have to be bought from Cheshire West and Chester Council (the "Council").

8. The complainant then asked the School:

'can you confirm that it is indeed recorded that Cheshire West and Chester Council will be undertaking these vitally important annual safety checks.

If however the Council has not been appointed to carry out this work, please can you confirm the recorded details of the competent person or organisation that has been appointed to carry out these essential structural safety checks'.

9. On 17 September 2015 the School confirmed that it does buy back support from the Council Health and Safety Advisory Service.
10. It confirmed that the procedure for building maintenance is the School's responsibility as the landlord for the premises (on 21 September 2015 it corrected this statement to state it was the tenant rather than the landlord).
11. The School confirmed that the recorded details the complainant had requested did not exist.
12. On 18 September 2015 the complainant summarised his understanding of this response. He explained he understood:
 1. Cheshire Academies Trust has appointed the Health and Safety Advisory Service of the Council to carry out annual structural safety checks on the walls of the school building at the School.

2. Cheshire Academies does not hold any information that confirms the appointment of the Council to carry out annual structural safety checks on the walls of the School.
13. The complainant pointed out that the School was the tenant of the school site, not the landlord (see paragraph 10 above).
14. On 21 September 2015 the School confirmed its response as provided in its emails of 16 and 17 September 2015.
15. On 2 October 2015 the School provided an internal review:
 - it explained it considered the request fell under the FOIA and not the Environmental Information Regulations 2004 (the EIR);
 - it confirmed its responses to the complainant as provided in its emails dated 16 and 17th September 2015; and
 - it provided the following statement:

'Cheshire Academies Trust has not appointed the Health and Safety Advisory Service of Cheshire West and Chester Council to carry out annual structural safety checks on the walls of the school building at Mill View Primary School.

Cheshire Academies Trust does not hold any information that confirms the appointment of Cheshire West and Chester Council to carry out annual structure safety checks on the walls of Mill View Primary School.'

Scope of the case

16. The complainant contacted the Commissioner on 12 October 2015. He informed the Commissioner that he was not satisfied with the School's response to his request of 16 September 2015. He also argued that the request fell under the EIR and not the FOIA.
17. The scope of this case is therefore to determine whether the School is correct when it says that it does not hold the information requested. It will also consider whether the request falls under the EIR or the FOIA.

Reasons for decision

Is the request for environmental information?

18. Regulation 2(1) of the EIR defines 'environmental information'. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is as any information in any material form on:

'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...'

19. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question.
20. The Commissioner notes that the requested information is the name of the organisation or person who will conduct structural safety checks on a building.
21. He has considered whether this information can be classed as environmental information, as defined in Regulation 2(1)(a)-(f), and he has concluded that it cannot.
22. This is because the name of an organisation or person does not relate to the land or landscape and does not affect the elements of the environment as defined above. The name of an organisation or person also does not relate to advice which could determine or affect, directly or indirectly, policies or administrative decisions taken by the School.

23. The Commissioner considers that the information therefore falls under the FOIA. In view of this, the Commissioner has concluded that the School correctly handled the request under the FOIA.

Section 1 – is further information held?

24. Section 1(1) of 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”.

25. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Information Commissioner's Office (the “ICO”), following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
26. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
27. The School has confirmed that at the time of the request it did not hold any recorded information which shows who, if anyone, had been appointed to carry out the relevant annual structural safety checks on the school walls.
28. The School has confirmed that at the time of the request no named person or organisation had been appointed to carry out the relevant annual structural safety checks on the school walls.
29. The School has confirmed that it would expect the building checks to be completed informally, not with a formal contract, by the local governing body's Health and Safety Committee – on an annual basis. No contract would be required for this and the School therefore has no recorded information about this matter. It also explained that if, following the informal check, a need was identified, the local governing body would look to appoint a contractor.
30. Based on the submissions provided by the School, the Commissioner is satisfied on the balance of probabilities that the requested information is not held by the School.

Right of appeal

31. 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

32. 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.
33. 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

Rachael Cragg
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