

Freedom of Information Act 2000 (FOIA)

Date: 2 July 2019

Public Authority: The Chair of Governors
Sir John Cass's Foundation and Red Coat CofE
Secondary School & Sixth Form College

Address: Stepney Way,
London E1 0RH

Decision (including any steps ordered)

1. The complainant has requested information relating to Sir John Cass's Foundation and Red Coat CofE Secondary School & Sixth Form College ("the college") policies on dress code and health and safety.
2. The Commissioner's decision is that on the balance of probabilities, the college does not hold any further information within the scope of the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 16 March 2018, the complainant wrote to the college and requested information in the following terms:
 1. *Can you please provide me with the relevant policies related to dress code and health and safety?*
 2. *Was there any consultation between the relevant stakeholders prior to enacting this policy?*
 3. *I am from a Muslim and from Bangladeshi background. As you are aware, religion and ethnicity are protected characteristic under the Equality Act [2010]. How have you ensured that these characteristics have not been infringed upon in this instance?*
 4. *Can you please provide any documentation pertaining to the meeting we had concerning these matters to me? It would help me understand what has happened throughout this process.*

5. *Is this an attempt by the school to adhere to their obligations in respect of the Counter-Terrorism and Security Act [2015], in particular the PREVENT duty?*
6. *If this is happening under the PREVENT duty, why was this not clarified to me at any stage in the process?*
7. *Is this an attempt by the school to adhere to their social, moral, spiritual and cultural education obligations?*
8. *If so, how does this comply?*

5. On 18 April 2018 the college responded and provided some information in response to parts 1 and 2 of the request. It stated that it does not hold any information for parts 3, 4, 5 and 6, explained what procedure should be followed in response to part 7 and provided information in response to part 8 outside of the FOIA.

6. On 6 September 2018 the complainant wrote to the college again and made a further request:

1. *The documents issued by the borough recommending this policy*
2. *Any consultation consideration given by the SMT to the aspect of face covering with local parents.*
3. *Any email correspondence between the school and Tower Hamlets Local Authority during the implementation stage of face coverings as part of the Safeguarding policy. (Please provide minutes where face-veil is deemed unacceptable on school grounds, as per schools Health and Safety policy)*
4. *Please provide correspondence between the SMT referring to possible breaches of The Human Rights Act, The Equality Act when implementing said safeguarding policy.*

7. The college responded on 15 October 2018 and advised that it did not hold the requested information. The complainant wrote to the college on 2 November 2018 expressing her dissatisfaction with its response. In that letter the complainant also requested:

"I request the minutes of the SMT/Governors meetings discussing the policy since its inception in 2012, subject to the appropriate redactions."

8. On 3 December 2018, the complainant contacted the Chair of Governors and made the following request:

1. *I am from a Muslim and from Bangladeshi background. As you are aware, religion and ethnicity are protected characteristic under the Equality Act [2010]. How have you ensured that these characteristics have not been infringed upon in relation to this policy?*
2. *The documents issued by the borough recommending this policy*

3. *Any consultation consideration given by the SMT to the aspect of face covering with local parents.*
 4. *Any email correspondence between the school and Tower Hamlets Local Authority during the implementation stage of face coverings as part of the Safeguarding policy. (Please provide minutes where face-veil is deemed unacceptable on school grounds, as per schools Health and Safety policy)*
 5. *Please provide correspondence between the SMT referring to possible breaches of The Human Rights Act, The Equality Act when implementing said safeguarding policy.*
9. The Chair of Governors responded on 15 January 2019 summarising some of the points raised. She also advised that the Safeguarding Policy would be reviewed in March 2019.

Scope of the case

10. The complainant contacted the Commissioner on 8 February 2019 to complain about the way her request for information had been handled.
11. The Commissioner wrote to the complainant on 20 March 2019 and confirmed that the scope of this case was to determine whether the College handled the request of 6 September 2018 in accordance with the FOIA, and if it holds any of the information requested.

Reasons for decision

12. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request". Section 1(1)(b) of FOIA states that, "If that is the case, to have that information communicated to him".
13. In scenarios where there is some dispute between the public authority and the complainant about the amount of information that may be held, following the lead of a number of Information Tribunal decisions, the Commissioner applies the civil standard of the balance of probabilities.
14. For clarity, the Commissioner is not expected to prove categorically whether the information is held; she is only required to make a judgement whether on the balance of probabilities a public authority holds any information within the scope of the request.

15. As is usual in these cases, the Commissioner asked the college what searches it had carried out in an attempt to locate any information within the scope of the request.
16. The college explained it had looked at records of previous staff and no information within the scope of the request is held. It further explained it had checked previous Governor's Board minutes, talked to staff that may have been involved and checked records held of previous staff.
17. It also carried out searches of electronic folders left by the previous member of staff, the key terms for Visitors Policy and FOI were searched. These searches recorded a limited response and any information that came out of this has already been provided to the complainant. The Headteacher's PA was asked to conduct searches on her emails and Senior Leadership Team (SLT) minutes and she confirmed she had no information relating to the time the policy was implemented.
18. The college confirmed that if the information had been held, it would have been held electronically. It also confirmed that as it was unaware of what searches had been carried out when the request was first received it had carried out additional searches and spoken to staff but no further information was retrieved.
19. It explained that the current Headteacher, HR Manager and School Business Manager have only been in post from September 2016, September 2014 and September 2018 respectively, and do not have access to minutes that may have been taken at SLT meetings. However there is no evidence to suggest these meetings were minuted at this time. It confirmed that it has not deleted or destroyed any information that may have been related to this request.
20. The college stated that searches have not returned any information relating to the request, so the college cannot confirm that it existed to have been destroyed. The searches carried out seem to imply that the requested information was never recorded.
21. The college confirmed that it was in discussion with London Diocesan Board for Schools and the Governing Body about agreeing a policy relating to data retention and destruction. At present all financial records are kept for a minimum of seven years as are HR records. There is no business purpose as SLT meetings are informal. In this particular instance the discussion related to a non-statutory policy. It also confirmed that these type of meetings are informal and as such, there was no requirement to keep records.
22. The Commissioner is satisfied that the college has provided her with a sufficient explanation and adequate searches for any information it

may hold. On the balance of probabilities, the Commissioner considers that the college does not hold any further information within the scope of the request and therefore that it has complied with section 1 of the FOIA.

Other matters

23. The Commissioner notes that the college is in the process of agreeing a policy relating to data retention and destruction. She recommends that it refers to the following information and guidance on her website to assist and ensure that it complies with its obligations under the FOIA and Data Protection Act 2018.

<https://ico.org.uk/for-organisations/guidance-index/data-protection-act-1998/>

<https://ico.org.uk/for-organisations/guidance-index/data-protection-act-1998/>

https://ico.org.uk/media/for-organisations/documents/1475/deleting_personal_data.pdf

<https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/>

<https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

https://ico.org.uk/media/for-organisations/documents/1167/flowchart_of_request_handling_under_foia.pdf

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: 0300 1234504
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

Pamela Clements
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