

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 February 2021

Public Authority: Lincolnshire County Council
Address: County Offices
Newland
Lincoln
LN1 1YL

Decision (including any steps ordered)

1. The complainant has requested information about a near miss incident alleged to have happened at a school whilst undergoing construction works.
2. The Council supplied some information falling within the scope of the request, but the complainant considered it had not disclosed all the information it held
3. The Commissioner's decision is that on the balance of probability, the Council holds no further information. She also finds that the Council breached section 10 of the FOIA by failing to respond with 20 working days.

Request and response

4. On 24 January 2020 the complainant wrote to Lincolnshire County Council and requested information in the following terms:

'In your attached letter addressed to Ofsted and dated 11 October 2018 you refer to contact made with "the project managers and the records that they checked". In your earlier attached response to Ofsted of 20 September 2018 you advise that Lincolnshire County Council needed "further information from the officers involved in the work and from the school".

I suggest that the school's substantive response to the concerns raised by me and who you refer to as "the complainant", is unclear from your October letter to Ofsted.

To establish the clear position evidentially, please provide me with the following information which I request under the Freedom of Information Act 2000:

- All and any written responses from the school, and separately, any contractor or other relevant party.*
- In the absence of written responses, evidence of any verbal response made.*

I look forward to receiving this information within 20 working days. If you have any queries or questions then please contact me at the above address. Given the seriousness of the incidents that took place at the school, I suggest that there must be written responses from the relevant parties, including the school, for Lincolnshire County Council to be satisfied that the issues raised have been fully investigated.'

5. For context, the request related to an alleged incident in a school involving a near miss with a moving vehicle during building works.
6. The Council responded on 28 February 2020. It provided some information falling within the scope of the request, subject to redactions under section 40(2) of the FOIA (third party personal data), but said that it did not have any written responses or recorded verbal information from the school.
7. The complainant requested an internal review on the same date. The Council sent the outcome of its internal review on 17 March 2020. It upheld its original position, confirming that it did not hold any further

information within the scope of the request. It carried out another review of its response dated 13 May 2020, following further representation from the complainant, and again confirmed its position.

8. On 18 May 2020 the complainant sent a clarification email for the information requested:

'To establish the clear position evidentially, please provide me with the following information which I request under the Freedom of Information Act 2000.

- *All and any verbal responses either recorded or unrecorded from the school regarding the incident involving vulnerable children with a combination of special educational needs and education, health and care plans, having a serious and potentially fatal safeguarding incident with a moving vehicle on the school playground on 27 June 2016 and received by Lincolnshire County Council.'*

9. The Council responded on 19 June 2020 confirming that it did not hold the information.
10. Following advice from the Commissioner, on 14 September the complainant requested a review of this response. The Council responded on 23 September 2020 refusing to undertake a review as it believed the clarification email of 18 May 2020 related directly to the original request and it had therefore already fulfilled its review obligations.
11. Having again considered the complainant's email sent on 18 May 2020, and the Council's responses sent on 19 June and 23 September 2020, the Commissioner agrees that this forms part of the original request.

Scope of the case

12. The complainant contacted the Commissioner on 22 June 2020 to complain about the way his request for information had been handled. He did not think that the Council had searched for, or supplied, all the information it held falling within the scope of his request. He also had concerns about the time taken by the Council to respond to him, and its internal administrative processes. The complainant did not challenge the use of section 40(2) – third party personal data.
13. The Commissioner focused her investigation on the adequacy of the searches undertaken by the Council and time for compliance. As the internal process issues did not relate directly to obligations under the FOIA, these are not matters the Commissioner can consider.

Reasons for decision

Section 1 – right to information

14. Section 1 of the FOIA states:

'(1) 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'

15. The request relates to an incident that the complainant believes happened in June 2016 whilst a teacher at the school. It involved a near miss with four children and a moving vehicle, and was witnessed by a teacher assistant who notified the complainant. The complainant states he then provided information about the incident to the Headteacher and Designated Safeguarding Lead, but he believes no action was taken.

16. The complainant subsequently complained to Ofsted about the incident, and Ofsted contacted the Council for further information. The Council responded to this contact on 20 September 2018, stating:

'The local authority needs further information from the officers involved in the work and from the school. We shall respond fully once we have concluded our investigation.'

17. On 11 October 2018 the Council's Director Children's Services sent a letter to Ofsted and provided the following information:

'My officers have spoken with the project managers for the construction works who have checked their records. We are assured that no incident of this nature was raised via the school at any point during the construction and that Construction Design and Management (Health and Safety) regulations were adhered to at all times. All proper documentation and records of site meetings are in place. It should be noted that no vehicular movements were permitted across the playground between 8.30-15.45 and banksman guidance of construction vehicles was required at other times.'

18. The Council responded to the complainant's request for information on 28 February 2020. It confirmed that it held information falling within

the scope of the request, and subject to redactions for third party personal data, it supplied it to the complainant. The information was a series of emails between the Council and the construction company, showing that enquiries had been made about the incident in response to the Ofsted complaint, but that there was no record of any incident held by the construction company. These emails form the basis of the response sent to Ofsted on 11 October 2018 outlined above. The Council stated that it did not hold any written or recorded verbal information from the school about the incident.

19. The complainant requested a review of the Council's response, drawing attention to the Council's letter to Ofsted dated 20 September where the Director of Children's Services wrote: *'The local authority needs further information from the officers involved in the work and from the school.'* He went on to ask for an explanation of why the Council does not hold written or recorded verbal information from the school. By only supplying the emails with contractors, the complainant considered the lack of information concerning communication with the school to be an omission. The complainant contacted the Council again on 2 March 2020, suggesting that the school had not adhered to its health and safety responsibilities and that from the information disclosed to him, the school's response to the incident was unclear.
20. In its review response dated 17 March 2020, the Council confirmed it did not hold any further information falling within scope of the request, explaining:

'The letter from Debbie Barnes to Ofsted dated 11th October 2018 makes it clear that the Council contacted the Project officers for the construction who stated that no incident was raised by the school. Therefore, the Council did not contact the school directly, as the information had already been confirmed by the project officers'
21. The complainant wrote to the Council again on 7 April 2020, concerned that the Council had not followed through on its commitment in its letter to Ofsted dated 20 September 2018 to contact both the project officers and the school. The Council responded on 13 May 2020, reiterating its review position.
22. On 18 May 2020 the complainant contacted the Council again, highlighting a letter that the school had sent to him on 13 March 2020. This stated:
 - i. *The school has sent all the information that it holds relating to your request.*

ii. Any verbal responses to Lincolnshire County Council were not recorded.

23. The complainant went on to say that it was therefore unclear from this letter whether or not the school provided the Council with verbal responses, either recorded or not, and as result he could not see how the Council could conclude that the information was not held. He followed this with an additional request:

'All and any verbal responses either recorded or unrecorded from the school regarding the incident involving vulnerable children with a combination of special educational needs and education, health and care plans, having a serious and potentially fatal safeguarding incident with a moving vehicle on the school playground on 27 June 2016 and received by Lincolnshire County Council.'

24. The Council replied to the complainant on 19 June 2020 with the following, and maintained its position that no further information was held:

'I have considered your letter, and the letter addressed to you from Monkshouse Primary School, dated 13th March 2020. I note the response at point 2 which states that "Any verbal responses to Lincolnshire Country Council were not recorded" However, I do not consider that this implies that there were any verbal responses, just that if there were any, they were not recorded and are therefore not held for the purpose of the Freedom of Information Act 2000.'

25. The complainant submitted a request for a review of the Council's response on 14 September 2020, on the advice of the Commissioner. The Council declined the request on the basis that its response of 19 June 2020 was not in relation to a new request but a supplementary response following the request made on 24 January 2020. When the Commissioner examined the case for investigation, she agreed this to be a reasonable interpretation by the Council and therefore did not require an additional review.

26. Despite the Council explaining that it did not hold any recorded verbal information from the school, and clarifying that its contact with officers as referred to in its letters to Ofsted were Council officers and not those from the school, the complainant considered that it was still unclear whether or nor responses were made from the school to the Council.

27. The Commissioner sent the Council an investigation letter, requiring it to explain the searches undertaken in response to the request, along with

a range of other questions to establish the integrity of these searches and ascertain whether information had ever existed about the incident.

28. The Council's response considers the incident to be alleged. It explains that had it occurred, it would have expected the school to have escalated it to the Council immediately and parents would have required reassurance and answers from the school. However, no such communication was received.
29. Any information relating to the alleged incident would have been held within the Council's online project management system. This contains all documentation relevant to the management of a construction project including all logs, minutes of site meetings etc. The alleged incident was not reported by the Contractor to the Council – if it had the construction site would have been shut down pending a full investigation.
30. The Council examined all site meeting minutes and records with the Contractor and the school, and no reference to the incident was found. Staff were asked to check emails and logs, and a physical search of paper based records of those involved in the project did not reveal any evidence of the incident. Staff were also asked of they had any recollection of the incident or any conversations about it.
31. The Council explained that if information was held, it would be relatively easy to search and find as the Council's project management system is presented in an Excel format. No information was found following such searches.
32. It is not the Commissioner's role to establish whether or not the incident occurred, but to determine whether information is held on the matter (as either an allegation or an actual event). The Council maintains that had the near miss happened, records would be held, and has therefore undertaken relevant and thorough searches. This resulted in the disclosures made to the complainant on 28 February 2020, which were emails created in the autumn term of 2018 when the letter from Ofsted to the Council about the incident prompted enquiries with the contractors. These emails confirm the Council's position in relation to the request that no incident was recorded.
33. The Commissioner has no reason to question the Council's position that at that time, as stated in the letter to Ofsted, enquiries were made with Council officers and the construction company, and not the school directly. Its explanation that it did not contact the school because the project officers had confirmed no record of an incident is entirely reasonable. The Council also maintains that as it had management responsibility and oversight of the project, had the incident occurred,

regardless of project construction records, it would have heard directly from parents and the community. This did not happen.

34. The Commissioner appreciates that this might be disappointing for the complainant but based on the Council's responses she does not see any lack of clarity about whether the Council contacted the school, or whether any verbal responses were received and recorded. The Commissioner cannot rule out the possibility of verbal exchanges, but by their very nature, had they occurred and were not recorded, then no information would be held for the purposes of the FOIA. Had they been made and recorded, then they would have likely to have been found during the Council's extensive searches.
35. The Commissioner therefore concludes that on the balance of probability, no further information is held by the Council in relation to the request.

Section 10 – time for compliance

36. Section 10 states:

'a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

37. The Council responded 22 days after receiving the request, thereby breaching section 10 of the FOIA. The Commissioner reminds the Council of its obligation under the FOIA to meet the requirement to respond within 20 working days.

Right of appeal

38. 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

39. 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.
40. 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

Andrew White

Head of FOI Complaints and Appeals

Information Commissioner's Office

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