

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 May 2023

Public Authority: Varndean School
Address: Balfour Road
Brighton
BN1 6NP

Decision (including any steps ordered)

1. The complainant requested information from Varndean School ("the School") relating to the School's covid mask wearing risk assessment addendum. The School disclosed some information but the complainant believed that further information within the scope of the request was held.
2. The Commissioner's decision is that on the balance of probabilities, the School does not hold further information within the scope of the request. However, he also finds that by failing to confirm that it does not hold information within the scope of part a of the request, the School breached section 1(1) of the FOIA.
3. The Commissioner requires the School to take the following steps to ensure compliance with the legislation.
 - The School must provide the complainant with a fresh response to part a of the request which complies with the requirements of section 1(1) of the FOIA.
4. The School must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant made the following information request to the School on 1 July 2022:

"I am writing to request information under the Freedom of Information Act 2000.

Could you please provide the following information, related to the following documents:

- Brighton & Hove City Council document 'Model risk assessment (for local adaptation) for schools during COVID-19 PANDEMIC,' where it states:
 - This risk assessments should be completed in consultation with all relevant union colleagues not just individual unions. As a minimum this must always include Unison, the GMB and the NEU. This will ensure that all your staff who are part of a union have been fully consulted on the issues.'
- Varndean School, Brighton, Covid Face Mask Risk Assessment Addendum 10/11/20, conducted by the following persons named on the document as:

Person completing: [name redacted];

Manager/Headteacher: [name redacted].

Information requested:

- a) Evidence that the NEU, the GMB and Unison, Brighton & Hove, were consulted by Varndean School, Brighton, in relation to their Covid Face Mask Risk Assessment Addendum 10/11/20, by the persons named on the document, or any staff members of Varndean School, Brighton. For example – emails, letters, phone calls, face to face communication. Please provide details of which individuals, from aforesaid Unions, were consulted.
- b) Evidence that NEU, GMB and Unison members, who are members of staff at Varndean School, Brighton were 'fully consulted on the issues' relevant to Varndean School, Brighton, Covid Face Mask Risk Assessment Addendum 10/11/20. For example – emails, letters, phone calls, face to face communication, staff meetings."

6. The School responded on 6 September 2023 and provided the complainant with a copy of the risk assessment addendum ("the addendum"). However, the School stated that it no longer held the message that invited staff to comment on the addendum or any comments from staff.
7. On 9 October 2022, the complainant requested an internal review. The School provided the complainant with the outcome of its internal review on 11 November 2022 in which it provided the complainant with further information it believed was within the scope of the request. Specifically, the School provided the complainant with a copy of the email that was sent to staff asking for comments on the addendum, a document containing the comments received from staff, and a copy of the email that was sent to staff summarising the comments received.
8. The School provided the complainant with a further response to the request on 15 March 2023 in which it provided the complainant with some emails from staff commenting on the addendum.

Reasons for decision

9. This reasoning covers whether the School is correct when it says that it has disclosed all the information it holds within the scope of the request.

The complainant's position

10. The complainant considers the School to hold information within the scope of the request which has not been disclosed. In their complaint to the Commissioner, the complainant stated that they do not consider the information they have received from the School to fall within the scope of the request.
11. The complainant stated the information they have received does not reference the addendum and that the staff comments they received in response to the request were received by the School prior to the date of the addendum. The complainant therefore considers that staff could not have been consulted on the addendum as the covid mask wearing risk assessment had not yet been conducted.
12. Furthermore, the complainant stated that the School has not provided any information which shows that staff have seen the addendum or that the Unions named in the request and staff members who are members of those Unions were consulted about the addendum.

The School's position

13. The School's position is that it has provided the complainant with the information it holds within the scope of the request. In its submissions to the Commissioner the School explained that it initially created a covid mask wearing risk assessment in March 2020. It stated that in November 2020, when government guidance advised that it was no longer necessary for face masks to be worn in schools, the School asked staff and students to continue to wearing face masks and the addendum was created to assess the risks associated with this policy.
14. The School explained that when creating the addendum, it did not specifically consult the Unions named in the request or staff members who are members of those Unions. However, it did send an email to all staff including those who are Union representatives and Union members asking for comments on the addendum. The School stated that any comments received as a result of this consultation were incorporated into the addendum before it was finalised on 10 November 2020.
15. In its submissions to the Commissioner, the School explained the searches it has undertaken for information held within the scope of the request. The School explained that it conducted a search of the emails of the two staff members who were responsible for creating the addendum using the search term 'Covid Mask Wearing Risk Assessment'. All information within the scope of the request that was located as a result of this search has been disclosed to the complainant.
16. The School explained that it has also conducted a 'Google Vault' search of all records held on its Google Workspace and network using the search term 'Covid Mask Wearing Risk Assessment'. This search located one email which has been disclosed to the complainant.

The Commissioner's position

17. The Commissioner notes that when creating the addendum, the School did not consult the Unions named in the request. The Commissioner therefore considers that when responding to part a of the request, the School should have informed the complainant that it did not hold any information within the scope of part a of the request.
18. The Commissioner also notes that the School did not specifically consult staff who are members of the Unions named in the request. However, the School did consult all staff about the addendum including those who are Union representatives and Union members. The Commissioner therefore considers any information held by the School relating to that consultation to fall within the scope of part b of the request.

19. The Commissioner notes that in response to the request, the School provided the complainant with staff comments on the addendum. However, the complainant does not consider these comments to relate to the addendum as the School received the comments before the addendum was finalised on 10 November 2020.
20. Whilst the Commissioner recognises that the comments disclosed in response to the request predate the date that the addendum was finalised, the School has explained that comments were sought from staff members before the addendum was completed and then incorporated into the addendum. The Commissioner is therefore satisfied that the staff comments disclosed in response to the request do relate to the addendum and so fall within the scope of part b of the request.
21. The Commissioner considers that the School has carried out adequate searches for information held within the scope of the request. Therefore, the Commissioner's decision is that on the balance of probabilities, the School has disclosed all the information it holds within the scope of the request. However, the Commissioner finds that by failing to confirm that it does not hold information within the scope of part a of the request, the School breached section 1(1) of the FOIA.

Right of appeal

22. 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

23. 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.
24. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF