

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2012

Public Authority: London Borough of Sutton
Address: Civic Offices
St Nicholas Way
Sutton
SM1 1EA

Decision (including any steps ordered)

1. The complainant requested information about bullying, harassment and compromise agreements at all schools within the London Borough of Sutton, with particular focus on one school. The Commissioner's decision is that the London Borough of Sutton [the council] has provided the complainant with all of requested information that it holds relevant to the scope of the request. The Commissioner does not require the council to take any further action.

Request and response

2. On 24 June 2011 the complainant wrote to the council and requested information in the following terms:
"For each academic year since 2000, please provide the number of cases (and dates) where the LEA has advised St Philomena's Catholic High School for Girls in connection with either informal or formal allegations of bullying and/or harassment and/or discrimination (race, gender, disability, sexuality or age) against another member (or members) of staff, including senior management."
3. The council provided a response on 12 July 2011 in stated that there were no recorded incidents of advice being provided.
4. The complainant contacted the council again on 14 July 2011 and submitted a more detailed request as follows:
"First, please confirm that the whole of the London Borough of Sutton

*/LEA (and its officers/offices) **have not provided any advice, guidance or templates** to St Philomena's in connection with any instance of harassment and/or bullying of staff since 2000, including the current academic year.*

Secondly, please supply for each year since 2000 information on each Compromise Agreement which was a) discussed/negotiated and b) agreed and which covers a teacher in a secondary school in the London Borough of Sutton, specifically please show the date and school involved for a) each attempt to discuss/negotiate such a Compromise Agreement —regardless of whether or not the negotiations resulted in any signed agreement —and b) each Compromise Agreements actually agreed."

5. The council provided the complainant with a response on 16 August; it again confirmed that it had no records of providing advice to the school. The council also provided the complainant with the total number of compromise agreements for secondary school teachers since 2004.
6. The complainant contacted the council again on 17 August and further expanded his request to include an electronic search of emails for reference to any discussions about compromise agreements.
7. Following further correspondence, an internal review was requested on 25 August 2011. The council provided the outcome of its review, in which it upheld its previous responses.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He argued that the council must hold more information than that provided to him as a result of his request.

Reasons for decision

9. Section 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."

10. Where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the actions the public authority took to check that the information was not held and if it can explain why it was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities."
11. The Commissioner asked the council about the searches it had carried out in order to locate the requested information.
12. The council explained that schools within the borough have the option to purchase HR support from the council. When HR support is bought, schools then have access to the council's HR manual and a team of council employees for advice and guidance. The school that the complainant was seeking information about is one of the schools which buy the council's HR support. The team which provides the HR support to schools is a small team with one senior HR consultant who provides advice and guidance to head teachers on matters such as, bullying, harassment and compromise agreements.
13. The council went on to explain that it would only hold information about schools which purchased the HR support and that records generated by this particular support service are kept for seven years. Therefore the council could not supply records dating back to 2000 as requested.
14. Information relating to each school is held in both physical and/or electronic format, under the name of the school. The information would either be stored on the individual's personal file, if it related specifically to that individual, or on the school file if a more general enquiry. Emails are generally printed out and filed on the physical file rather than filed electronically to ensure they are accessible to all within the team. If a head teacher phoned for telephone advice about a bullying allegation the team would make a record of such a conversation and file as a hard copy in files along with advice given to the Heads.
15. In this particular case, the council stated that one member of the HR team has worked with the school in question on a regular basis for the past seven years and would therefore have known about any cases discussed with the head of the school. However, the council went on to explain that she may not know about bullying cases where the head teacher had not contacted the HR team for advice but chose instead to refer to the council's HR manual.
16. The response provided to the complainant on 12 July was composed after the member of the HR team, described above, had checked the

relevant files and also used her own knowledge of the advice she had supplied to the school in question over the past seven years.

17. The council's response of 16 August explained to the complainant that an inspector from the Advice and Inspection team meets with the head teacher each term where staff matters could be discussed, however there was no record of advice being given by the Link Inspector in relation to bullying, harassment or compromise agreements. This letter also provided the complainant with the information he had requested in relation to the number of compromise agreements which had been completed since 2004 on behalf of schools which had purchased the council's HR support, the names of the schools or staff involved was not disclosed to the complainant however the council did confirm that St Philomena's was not one of the schools to have entered into a compromise agreement since 2004.
18. In response to further questions from the complainant, the council wrote to him again on 24 August in which it advised him that it could only provide him with information actually held by the council. In this letter the council also provided the complainant with the outcome of its search of the email system.
19. The council has confirmed to the Commissioner that the council's corporate email system retains emails for one month. The search facility available on the email system only allows the council to search the subject line of emails. The council searched the subject line for the words "compromise agreement". The council acknowledges that if an email about a compromise agreement had a different title in the subject field that the electronic search carried out would not find such emails.
20. From the explanations provided to him by the council in response to his detailed enquiries, the Commissioner is of the view that the public authority has carried out searches of the appropriate locations in order to locate and retrieve the relevant information. The Commissioner holds that it is not reasonable to suggest that other information pertaining to the request may be held by the public authority elsewhere. Moreover the Commissioner has viewed all the information provided to him by the public authority within the course of his investigation and he has not found any evidence within the correspondence, to suggest that further information within the scope of these requests exists. Therefore, in the absence of any evidence to the contrary, he is satisfied that the public authority does not hold any further information relevant to the request.

Right of appeal

21. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF