

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 August 2012

Public Authority: ESSA Academy
Address: Lever Edge Lane
Bolton
Lancashire
BL3 3HH

Decision (including any steps ordered)

1. The complainant made a request to ESSA Academy for minutes of Child Action Meetings held in 2009, together with certain policies. ESSA Academy failed to respond to her request within the statutory timescale of 20 working days. Several months after the request had been made, ESSA Academy advised that it did not hold some of the requested information and provided a copy of its Code of Conduct policy but provided the information at a meeting, rather than in accordance with FOIA. ESSA Academy therefore failed to recognise the request as being valid for the purposes of the FOIA.
2. The Information Commissioner's decision is that, on the balance of probabilities, ESSA Academy does not hold any further information other than what has been provided. In failing to provide a response within twenty working days, ESSA Academy breached section 10(1). It also breached sections 1(1)(a) and (b) of FOIA by failing to confirm that it held any of the requested information and in failing to provide it to the complainant within the statutory timescales. As these breaches do not necessitate remedial action, the Information Commissioner does not require ESSA Academy to take any steps.

Background

3. The complainant had previously made a Subject Access Request ('SAR') under the Data Protection Act 1998 ('DPA') on 2 December 2010 for her son's student records. Although this decision notice cannot consider the complainant's SAR, the Information Commissioner has included the key stages leading up to the complainant's FOIA request of 4 August 2011 to

demonstrate how the SAR developed into an FOIA request, and to detail that ESSA Academy did not deal with her earlier requests.

4. The complainant advised the Information Commissioner that she was concerned about her son's progress at ESSA Academy, and had arranged a meeting with the head of department after which she was advised to make a formal complaint against ESSA Academy, which she subsequently did. She stated that part of her formal complaint had included requesting a copy of ESSA Academy's policy as to how it decides to enter students for appropriate exams and she wanted to know how the Academy had decided her son should be entered early given that he had failed his Maths GCSE.
5. The complainant received telephone confirmation in late December 2010 that the student records requested in her SAR were being compiled, but had cause to contact the Academy further on 27 January 2011 as she had still not received them. At this point, the complainant again requested her son's student records, together with a copy of the Complaints Procedure and the Academy's policy for entering students into examinations early.
6. On 16 February 2011 the complainant also requested a copy of the Academy's Code of Conduct Policy. At this stage, the complainant involved her advocate from a mental health support body, MHIST, who secured a meeting with the Principal of ESSA Academy in June 2011. At this meeting, ESSA Academy provided the complainant's son's student records (in her view with some of her son's reviews missing) but not the requested policies and procedures.
7. The complainant's advocate made further attempts on the complainant's behalf to obtain the outstanding documents which had not been provided; however, ESSA Academy advised that it had explained to the advocate at the meeting that it did not have a written policy for entering students into examinations early.
8. The complainant contacted the Information Commissioner who advised her to send a recorded delivery letter to ESSA Academy which she did on 4 August 2011. She expressed her concerns about ESSA Academy's handling of her SAR and about her son's performance at the Academy. Within this correspondence, she made an FOIA request which is set out in the next section of this notice.

Request and response

9. On 4 August 2011, the complainant wrote to ESSA Academy and requested the information in the following terms.

- Minutes of each of the child action meetings which took place over several months in 2009 at the Academy.
 - Copies of policies/procedures relating to entering students early for examinations, together with any information held on consultation with the parents.
 - Staff/student codes of behaviour.
10. ESSA Academy did not respond to the request; however, it subsequently held a meeting with the complainant and her advocate on 28 November 2011 at which some of the requested information was provided, and explanations were given as to why it did not hold the remainder.

Scope of the case

11. The complainant contacted the Information Commissioner to complain about the way her request for information had been handled.
12. The Information Commissioner clarified that any decision notice issued would only consider the complainant's FOIA request and not her SAR. In addition to making some general enquiries, the Information Commissioner set out to determine whether, on a balance of probabilities, any of the requested information was held by ESSA Academy.
13. Although ESSA Academy initially denied having received the request of 4 August 2011, at the latter stages of the Information Commissioner's investigation it confirmed that it had in fact received the recorded delivery request and had located it in the complainant's son's file. The Academy confirmed that initial attempts had been made to respond to the request in the 'normal course of business' and that, whilst the information had been collated, it had not been sent to the complainant.
14. The Information Commissioner has also considered the delay in ESSA Academy providing the response to the request (section 10) and its failure to deal with the request under the FOIA (section 8).

Reasons for decision

15. 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."*

16. The Information Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* which clarified that the test to be applied when determining whether information is held was not certainty but the balance of probabilities. Therefore, this is the test that the Information Commissioner has applied in this case.
17. When reaching a decision about whether requested information is held by a public authority, the Information Commissioner will generally take into account the scope, quality, thoroughness and results of the searches carried out by the public authority and/or any other reasons it has offered to explain why the information is not held. This may include explanations about whether there is any business purpose for recording and/or retaining information. The Information Commissioner will also take into account any arguments put forward by the complainant as to why relevant information is held.
18. In response to the Information Commissioner's investigation, ESSA Academy initially indicated that it had not received the request of 4 August 2011.
19. ESSA Academy stated that it did not hold copies of the minutes of Child Action Meetings in 2009, and explained that a Child Action Meeting is a formal meeting of key professionals and parents convened by the Local Authority Social Care Department or other concerned parties, when a cause for concern for a child is raised. Minutes at such a meeting would be managed and circulated by the originating party.
20. ESSA Academy advised that such meetings had been scheduled to take place at the Academy on 5 and 29 April 2009, and 16 July 2009, with a review on 4 June 2009, in response to concerns about the complainant's son. The Academy told the Information Commissioner that as far as it was aware, the complainant did not attend on any of the dates and therefore the Child Action Meetings had not taken place and no minutes were taken.
21. The Academy confirmed that it has no written policy for entering students into examinations early, and explained that this is "*a matter for professional judgment*". It said that it reiterated this to the complainant's advocate at the meeting of 28 November 2011 and that it

subsequently provided a copy of the 'Education Brief' related to the curriculum by post.

22. In response to the Information Commissioner's investigation, ESSA Academy said that it gave the SAR documentation and its complaints form to the complainant's advocate at the meeting held on 28 June 2011. At the later meeting of 28 November 2011, the Academy advised it had given copies of the complainant's son's Academic Review reports (part of the SAR) and a copy of the Staff Code of Conduct to the advocate. It said that it had posted a copy of the student behaviour policy to the complainant's advocate to pass on to the complainant.
23. Given that the Academy had initially stated that it had not received the complainant's FOIA request, it had not undertaken any searches at the time for the information. However, as it had subsequently responded to the request via the meeting of 28 November 2011, the Information Commissioner asked what searches had been undertaken for the requested information.
24. ESSA Academy told the Information Commissioner that it had searched the paper records held in the student file, the administration computer network drive where policy documents would be stored, and the computer MIS system holding data tables. It said that the search included local and networked resources, including emails, and that electronic searches were carried out using the complainant's son's names as search terms.
25. The Academy confirmed that information related to 2009 would have been held both as manual records within the student file and on a network administration drive. It confirmed that no information relevant to the request had been removed, deleted or destroyed. It stated that prior to the Academy's opening in January 2009, the Local Authority would have stored data, and that any minutes relating to Child Action Meetings would be sent to attendees, with any Academy attendee copy being stored in the student file. It confirmed that student files are retained for the date of birth of the student plus 25 years and are then shredded.
26. With reference to the Child Action Meeting minutes, the Academy said that these would be stored for safeguarding and strategic intervention purposes and that policy documents would be held for reference.
27. On 11 June 2012 the Information Commissioner wrote to the complainant with his preliminary view that there were no minutes because the Child Action Meetings had not taken place, and that ESSA Academy had provided the requested policies and confirmed there is no written policy for entering students into examinations early and this is

decided by professional judgment. He asked the complainant to consider withdrawing her complaint on the basis that, on a balance of probabilities, some of the requested information was not held and that the remainder had been provided, albeit several months after the request.

28. The complainant wrote back that same day expressing her disagreement with the Information Commissioner's preliminary view. She stated that she had copies of correspondence, including minutes of the Child Action Meetings, which would prove otherwise.
29. The Information Commissioner wrote to the complainant on 12 June 2012 asking her to forward copies of such correspondence, advising that he only had the copy of her request of 4 August 2011 thus far.
30. In support of her view, the complainant posted the original correspondence which was received on 19 June 2012. She then submitted some further documentation again by post, which was received on 25 June 2012.
31. Having reviewed the additional correspondence, the Information Commissioner wrote to ESSA Academy on 3 July 2012. He advised that the complainant maintained that she had telephoned the Academy and was asked to submit her request by recorded delivery despite it being the summer break and she confirmed that her request had been received by the Academy. The Information Commissioner sought clarification as to the Academy's procedures for receiving and handling recorded delivery post.
32. In reply, ESSA Academy confirmed that the complainant's recorded delivery request had been located in her son's file since its last correspondence, but was unable to explain why. It said that it also appeared that staff at the Academy had attempted to respond to the request as 'routine correspondence' and not as a formal request. The information had been collated but was not sent, reasons for which the Academy had no explanation. The Academy apologised to both the complainant and the Information Commissioner and acknowledged that the 4 August 2011 letter should have been dealt with as an FOIA request.
33. The Academy explained that prior to the move to the new building in October 2011, recorded delivery items delivered during the day would be signed for by Reception on an electronic device held by the postal service operator. The item would then have been placed in the relevant person's enclosed in-tray in the staff room by a member of the administration team. It confirmed that no record of recorded delivery items had been kept.

34. The Information Commissioner also informed the Academy that he had now seen copies of minutes entitled "*Professionals Meeting for [son's name redacted] and complainant [name redacted]*" for 11 March 2009, 29 April 2009 and 4 June 2009, at which one of the Academy's employees was an attendee. The Information Commissioner asked the Academy to explain why it had stated that no such meetings had taken place, given that one of its employees had attended.
35. The Academy clarified that when the person(s) for whom a Child Action Meeting has been called are not in attendance, as was the case with the complainant, the meeting cannot go ahead as a Child Action Meeting. It explained, as is frequently the case, if the professionals are already present, as was the situation in relation to the complainant's scheduled Child Action Meetings, that a less formal 'Professionals Meeting' takes place. The Academy confirmed that the meetings which had taken place in relation to the complainant and her son were held as less formal Professionals Meetings. It explained that Professionals Meetings usually culminate in arranging further Child Action Meetings, hence the succession of planned then cancelled Child Action Meetings due to the complainant's non-attendance.
36. The Academy stated that Child Action Meetings are not the same as Professionals Meetings in terms of content and protocol. It advised that the minutes of Child Action Meetings are the responsibility of the Agency which called the meeting, and therefore ESSA Academy would not hold such minutes. It acknowledged that under certain circumstances, copies of the minutes may be requested by individual members of staff. It referred to 'minutes' for Child Action Meetings and 'notes' for Professionals meetings.
37. The Academy confirmed that the 11 March 2009 and 4 June 2009 Child Action Meetings were cancelled due to the complainant's non-attendance and that it had not received or requested copies of the notes of these meetings. In relation to the meeting of 29 April 2009 the Academy had requested a copy of the notes which are stored in hard copy on the complainant's son's file; however this meeting was also ultimately held as a Professionals Meeting because the complainant had not attended.
38. The complainant also provided copies of letters from her advocate which post-dated the request, being dated 5 August 2011 and 26 September 2011, but which the Information Commissioner has considered given that the request was not dealt with by the Academy until the meeting of 28 November 2011. The Information Commissioner is aware that the advocate was assisting the complainant in all matters relating to her son and the Academy, and noted that these letters included requests for the policy on entering students early for examinations and for the staff/student codes of behaviour which also formed part of the

complainant's request of 4 August 2011. The complainant submitted that her advocate's letters had not been responded to by the Academy.

39. The Information Commissioner asked ESSA Academy to confirm whether it had received the advocate's correspondence. In reply, it said that it could not locate the correspondence in the complainant's son's main file or in any of the sub-folders within it, so was unable to confirm whether the letters were received or not. The Academy recalled that it had the need to convene a meeting as soon as possible *"to facilitate a fresh start"* with the complainant and that this resulted in the meeting of 28 November 2011, at which the information was provided.
40. On 9 July 2012 the Information Commissioner wrote to update the complainant of his further findings following her submission of additional correspondence. He said that he was satisfied, on the balance of probabilities, that ESSA Academy did not hold minutes of the Child Action Meetings because such meetings had not taken place due to the complainant's non-attendance. He explained that the meetings had proceeded as less formal Professionals Meetings and that these were the minutes/notes which the complainant had in her possession. He conveyed the Academy's apologies for mislaying her request and for initially failing to recognise her letter as an FOIA request, and advised that it had now appointed a Senior Leader within the Academy to deal with FOIA and DPA requests.
41. The Information Commissioner stated that his preliminary view had not changed in light of the additional submissions, and asked the complainant to reconsider withdrawing her complaint on the basis that either the information was not held, or had been provided to her, although he acknowledged that a decision notice could be issued to reflect the issues in this case. The complainant declined to withdraw her complaint.
42. In coming to a conclusion in this case the Information Commissioner has taken into account the explanations provided by the Academy in addition to considering the submissions provided by the complainant during his investigation. The Information Commissioner considers that on the balance of probabilities any further requested information (other than what has already been provided) is not held by ESSA Academy.
43. Section 8(1) of FOIA states that a request for information should be in writing, bear the name and address of the applicant, and describe the information requested. The Information Commissioner considers that the request in this case can be defined as such and therefore constituted a valid request under FOIA for recorded information.

44. The Information Commissioner holds the view that all communications made in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of FOIA, and so must be dealt with in accordance with the provisions of FOIA. While in many cases such requests can be dealt with under the course of normal business where that is a more efficient way of providing requested information, the Information Commissioner notes that in this case ESSA Academy failed to provide any information through this route. In the absence of an effective disposal of this request in the normal course of business, the Information Commissioner's view is that ESSA Academy was under an obligation to provide a freedom of information response within the statutory timescale.
45. ESSA Academy also breached section 1(1)(a) and section 1(1)(b) in failing to inform the complainant whether it held the information requested and in failing to communicate that to her.
46. Section 10(1) of FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days. From the information provided to the Information Commissioner in this case it is evident that ESSA Academy did not respond to the complainant within the statutory time frame and that it therefore breached the requirement of section 10(1).

Other matters

47. The code of practice issued under section 46 of FOIA (the 'section 46 code') sets out the practices which public authorities should follow in relation to the creation, keeping, management and destruction of their records.
48. During the course of the Information Commissioner's investigation the authority confirmed that it was unable to locate certain pieces of correspondence from the complainant's advocate, and that it was also unaware until late in the Information Commissioner's investigation that it had in fact, received the complainant's FOIA request which it located on the complainant's son's file. The Information Commissioner expects that, in future, the authority will ensure that its records are retained in accordance with its own records management policy and that it will have due regard for the recommendations of the section 46 code. The section 46 code is published online at this address. He also requires that ESSA Academy should ensure it has appropriate procedures in place to recognise information requests:

<http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>

Right of appeal

49. 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

50. 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.
51. 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

**Jon Manners
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