

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2023

Public Authority: The Governing Body of Clifton Primary School
Address: Clitheroe Road
Lytham St Annes
FY8 3PY

Decision

1. The Commissioner's decision is that, on the balance of probabilities, Clifton Primary School ('the School') does not hold the requested information about a new nursery. The School complied with section 1(1) of FOIA and it is not necessary for it to take any steps.

Request and response

2. The complainant made the following information request to Clifton Primary School on 15 January 2022:

"I request the following information:-

1/ Where will the nursery be located precisely?

2/ What is the budget for setting up the nursery? Including staffing costs, resources, overheads, insurance, admin etc.

3/ where are the set up finances coming from?

4/ Will the nursery children have a separate, secure outdoor play area?

5/ Will the nursery children have separate bathroom and toileting facilities?"

3. The School's final position in correspondence to the complainant of 4 February 2022 appeared to be that parts of the request, and other requests the complainant had submitted, were repeat requests under section 14(2) of FOIA. It also appeared to apply section 43(2) of FOIA to part of the request of 15 January 2022.
4. However, the School wrote to the complainant again in correspondence dated 29 March 2022. The School addressed part 1 of the request, advising that it was intended for the nursery to be located within the school grounds but had not identified the exact location. The School advised it did not hold the information requested in parts 2 – 5.
5. As part of a wider request on 16 March 2022, the complainant had also requested the following information:

"3/ Provide copies of all correspondence to Lancashire County Council regarding your instructions to them not to renew the nursery lease."
6. In its correspondence of 29 March 2022 the School advised it does not hold this information and that its governing body does not have the power to instruct the County Council not to renew a lease.

Reasons for decision

7. This reasoning covers whether or not, on the balance of probabilities, the School holds recorded information within scope of parts 2-5 of the request of 15 January 2022 and part 3 of the request of 16 March 2022.
8. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled to be told if the authority holds the information, and to have the information communicated to them if it is held and is not exempt information.
9. In a submission to the Commissioner, the School confirmed that it does not hold the information that has been requested in parts 2-5 of the January request. It explained that the School's plans for a nursery were at a very early/hypothetical stage [at the time of the request]. The plans did not progress following a consultation and therefore the information the complainant has requested was never gathered.
10. Regarding part 3 of the January request, the complainant had told the Commissioner that a recent Fylde BC meeting indicated to them that:

"... the school had plans to set up their own nursery using the funds remaining from Morris Homes and this information was available at least from the time the school announced this in May/June 2021 and

as early as 2012 when Morris Homes made the funding agreement with the council. In order for [redacted] to have the information, that information must be held in school and have been discussed in school and have received the ratification of his fellow governors and of the head teacher."

11. The School has told the Commissioner that the monies from Morris Homes was funding through a Section 106 Agreement that was used by Lancashire County Council (LCC) to create a new classroom to house a "bulge" year at the School. The School became aware in 2021 that there were some remaining funds that it might be able to get from Morris Homes via LCC/Fylde Borough Council to support the provision of additional accommodation at the School. However, the deadline was missed and no funding was forthcoming. As such, there was no decision made about how to use any monies that might have been obtained. Any decision would have had to take account of the Section 106 criteria in any event.
12. Regarding part 3 of the 16 March 2022 request, the complainant had told the Commissioner that:

"I have evidence in writing from Lancashire County Council that the request not to renew the lease was from the school headteacher and governing body."
13. The School has told the Commissioner that it is difficult for it to respond to this point without sight of the "evidence" that the complainant claims to exist. However, the School says, it is a fact of law that its governing body does not have the power to instruct LCC not to renew a lease.
14. The Commissioner is satisfied with the explanation the School has given about events surrounding a potential new nursery. He also considers the School has addressed the complainant's points satisfactorily. Having considered the circumstances, and in the absence of the evidence the complainant referred to in relation to the March request, the Commissioner's decision is that that, on the balance of probabilities, the School does not hold the requested information and has complied with section 1(1) of FOIA.

Right of appeal

15. 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

16. 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.
17. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF