

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2011

Public Authority: Outwood Grange Academies Trust
Address: Outwood Grange Academy
Potovens Lane
Outwood
Wakefield
West Yorkshire
WF1 2PF

Decision (including any steps ordered)

1. The complainant requested from the Outwood Grange Academies Trust (the 'Academy Trust') details about payments that were made to its Headteacher and itself.
2. The Academy Trust responded that it was not a public authority for the information requested because it did not hold the information 'for the purposes of the proprietor's functions under Academy arrangements.'
3. The complainant complained to the Commissioner. During the course of his investigation, the Academy Trust provided the complainant with the information outside the Act and after further reflection confirmed that the disclosure was made under FOIA.
4. The complainant explained that he still wanted the Commissioner to make a formal decision in this case. The Commissioner considers that the requested information was caught by the FOIA. He finds breaches of section 1(1) and 10(1) of FOIA in relation to that information. He does not require any remedial steps to be taken in this case because the complainant has already received the information that he requested under FOIA.

Request and response

5. On 4 January 2011 the complainant wrote to the Academy Trust and requested a number of items of information. He referred the following ones to the Commissioner:

'(3)[i] Michael Wilkins previous salary as chief executive/principal/headteacher or other senior role at Outwood Grange Academy and previously Outwood Grange College

(3)[ii] The payments made to Michael Wilkins for each of his chief executive/principal/headteacher roles at other schools where Outwood Grange/Mr Wilkins have been appointed to improve standards over the last five years. This should be broken down into payments per academic year or part academic year for each establishment involved.

(4) The full amount paid to Outwood Grange Academy for each of its interventions at other schools over the last five years. This should be broken down into payments per academic year or part academic year for each establishment involved.

(5) The full amount paid to the Outwood Grange Consultancy for each of its interventions at other schools over the last five years. This should be broken down into payments per academic year or part academic year for each establishment involved.

(6) Any other amounts paid to any other Outwood Grange business or other entity for each of its interventions at other schools over the last five years. This should be broken down into payments per academic year or part academic year for each establishment involved.'

6. The Academy Trust responded on 2 February 2011. It explained its status under the Act and confirmed its view that the information that was requested was not held 'for the purposes of the proprietor's functions under Academy arrangements' and therefore was not subject to the Act. It explained that the information held by the College before it became an Academy was no longer subject to the Act.
7. Following a number of requests for an internal review, the Academy Trust wrote to the complainant on 2 March 2011 to confirm that it wouldn't vary its position and told the complainant to approach the Commissioner should he want to appeal.

Scope of the case

8. On the same day, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. On 25 July 2011 the Academy Trust provided the withheld information voluntarily to the complainant outside the Act. On 28 July 2011 the complainant confirmed that he still wanted a formal decision notice about the status of the requested information.
10. On 15 November 2011, after further correspondence with the Commissioner, the Academy Trust conceded that all the requested information was indeed covered by the Act and confirmed that its disclosure on 25 July 2011 should now be considered to be made under the Act.
11. The Commissioner's decision notice will focus on the following two matters:
 1. An explanation about his view of when an Academy Trust holds information under the FOIA; and
 2. His decision about the Academy Trust's compliance with FOIA in relation to this particular case.

Reasons for decision

The Commissioner's view about when an Academy Trust holds information under FOIA

12. Section 1(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.*

13. The issue that was originally disputed in this case was whether the Academy Trust is a public authority in relation to the information that was requested on 4 January 2011

14. The FOIA is prescriptive about what constitutes a public authority. Existing Academies, that opened before 1 September 2010, were added to the Act on 1 January 2011 (through the Academies Act 2010, Schedule 2 paragraph 10), however, the legislation explained that they were only covered for recorded information that was held by them *'for the purposes of the proprietor's functions under Academy arrangements'*. This means that the Academy Trust only has an obligation to comply with Part I to V of the FOIA where information is held for the set purposes.
15. The Commissioner considers that he can issue a decision notice to establish whether or not a public authority holds information for set purposes. This follows the House of Lords' decision in *Sugar v BBC* [2009] UKHL 9 which confirmed that in a similar situation the Commissioner did have the jurisdiction to issue a decision notice. The Commissioner considers that the Academies Act 2010 was passed on the understanding that the Commissioner would have the same power.
16. The Commissioner will now explain his view of the circumstances when he considers that an Academy Trust holds information for the purposes of the FOIA. In doing so he is setting out his view of what the clause *'for the purposes of the proprietor's functions under Academy arrangements'* means. 'Proprietor' has the same meaning as in section 579(1) of the Education Act 1996.
17. The Commissioner's view is determined by a number of sections of the Academies Act 2010. The first is section 1(2) that defines the term 'Academy arrangements':

"Academy arrangements" are arrangements that take the form of—

 - (a) an Academy agreement, or*
 - (b) arrangements for Academy financial assistance."*
18. An Academy agreement is an agreement between the Secretary of State (SoS) and the Academy proprietors whereby the proprietors give the undertakings set out at section 1(5) in return for the SoS agreeing to provide financial assistance. The relevant undertakings that are set out in 1(5) are:
 - (a) to establish and maintain an independent school in England which –*
 - (i) has characteristics that include those in subsection (6); and*

(b) to carry on, or provide for the carrying on of, the school.

19. For completeness subsection 1(6) sets out those characteristics:

(a) the school has a curriculum satisfying the requirements of section 78 of EA 2002 (balanced and broadly based curriculum);

(b) if the school provides secondary education, its curriculum for the secondary education has an emphasis on a particular subject or particular subject areas specified in the arrangements;

(c) the school provides education for pupils of different abilities; and

(d) the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.'

20. The Commissioner has a copy of the Outwood Grange Academy agreement and this was considered in this case. He notes that the agreement explains that the Academy Trust intends to establish and maintain an Academy in replacement of the old school. The government in return will provide money for expenses including teacher's salaries and the Academy Trust will appoint an accounting officer to maintain proper accounting records which will be available to the Secretary of State (and other bodies) on request.

21. The Commissioner considers that whether the information held is caught by the FOIA will be a matter of fact and it is likely to be necessary to consider the nature of the request, the nature of the withheld information and, of course, the purpose/reason for which the information is being held when making such a determination.

22. The Commissioner's position is that it is likely the majority, if not all, of the information previously held by a school and covered by the FOIA will be held by the Academy for the purposes of the proprietor's functions, that is, the establishing and maintaining of a school or the carrying on or providing for the carrying on of a school and therefore subject to the FOIA. Similarly, where the school was not previously covered by the FOIA, for whatever reason, the Commissioner's view is that again the majority, if not all, of the information previously held is likely to be now held for the purposes of the proprietor's functions (as set out above) and therefore subject to the FOIA. He considers that the information is held for the purposes of the proprietor's functions unless the Academy Trust can demonstrate otherwise.

The Commissioner's view about the Academy Trust's compliance with FOIA in relation to this particular case.

23. As noted above, whether or not the information is held for '*the purposes of the proprietor's functions under Academy arrangements*' is a question of fact to be determined on a case by case basis.
24. The Commissioner concludes that in this particular case the information requested fell within the scope of the FOIA and therefore the Academy Trust as a public authority had a duty to consider it under FOIA. It follows that the failure to do so constitutes a breach of section 1(1) of the Act.
25. In this particular case, the Academy Trust ultimately conceded that all the requested information was held for the relevant functions and fell to be considered under FOIA. This also accorded with the complainant's understanding of the situation.
26. Section 10(1) requires that a public authority complies with section 1(1) in 20 working days. The Academy Trust failed to do this and so also breached section 10(1) of the Act.
27. The Commissioner does not require any remedial steps in this case because the complainant is in possession of all of the requested information and the Academy Trust has confirmed to the Commissioner that it agrees that this disclosure was made under FOIA (therefore was a disclosure to the public at large). The Commissioner has used his discretion not to order any remedial steps in this case, because they would not have served any purpose.

Right of appeal

28. 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

29. 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.
30. 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

Gerrard Tracey
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