

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2023

Public Authority: Aston Community Education Trust

Address: ACET House
66 Holderness Drive
Aston
Sheffield
South Yorkshire
S26 2BH

Decision (including any steps ordered)

1. The complainant has requested meeting details from Aston Community Education Trust (ACET). ACET provided some information within the time for compliance variation applicable to a proprietor of an academy.
2. The Commissioner's decision is that ACET is entitled to rely on the time for compliance variation applicable to a proprietor of an Academy. However, it breached section 1(1) of FOIA due to its failure to obtain an objective reading of the request. The Commissioner therefore also finds that ACET breached section 16(1) of FOIA by not seeking clarification from the complainant regarding the interpretation of the request.
3. The Commissioner requires ACET to take the following steps to ensure compliance with the legislation.
 - Seek clarification from the complainant regarding which meetings they wish to access information about. Then, either disclose the information or issue a refusal notice which complies with section 17 of FOIA.
4. The public authority 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. On 5 July 2023, the complainant wrote to ACET and requested information in the following terms:

"Kindly send over full pdf copies of the 4 most recent full meetings. Please include details of any outstanding action points due by 1st Aug 23"
6. ACET provided its response to the request on 6 September 2023. It disclosed the meeting minutes from the four most recent meetings of the local governing body for one of the individual member academies which fall under ACET.

Scope of the case

7. The complainant originally contacted the Commissioner on 30 August 2023 to complain about the way their request for information had been handled.
8. The complainant's initial concern was the timeliness of ACET's response. However, once in receipt of that response the complainant also set out their concerns regarding ACET's interpretation of their request.
9. The Commissioner considers that the scope of his investigation is to determine whether ACET was entitled to rely on the variation to the 20 working day time limit for response which is applicable to a proprietor of an academy, and to determine whether ACET met its obligations at section 16 of FOIA regarding clarifying the request.

Reasons for decision

Section 10 – time for compliance

10. Section 10(1) of FOIA states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

11. Section 10(4) states that the Minister for the Cabinet Office may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.
12. Section 10(5) states that regulations under subsection (4) may –
 - (a) prescribe different days in relation to different cases, and
 - (b) confer a discretion on the Commissioner.
13. Regulation 2 of The Freedom of Information (Time for Compliance with Request) Regulations 2010¹ provides that –
 - (1) This regulation applies to a request for information that is received by the proprietor of an Academy.
 - (2) Where this regulation applies, subsections (1) and (2) of section 10 of the Freedom of Information Act 2000 have effect as if any reference to the twentieth working day following the date of receipt were a reference to either—
 - (a) the twentieth working day following the date of receipt, disregarding any working day which, in relation to the Academy referred to in paragraph (1), is not a school day, or
 - (b) the sixtieth working day following the date of receipt, whichever occurs first.
 - (3) "School day", for the purposes of this regulation, has the same meaning as in section 579(1) of the Education Act 1996².
14. The complainant set out that academy trusts are not-for-profit companies, which employ the staff and have trustees who are responsible for the performance of the academies in the trust. They asserted that ACET should not be able to rely on the variation to the twenty working day time for compliance, as ACET itself is not a school or an academy, and is still operational during school holidays.

¹ <https://www.legislation.gov.uk/ukxi/2010/2768/regulation/2/made>

² <https://www.legislation.gov.uk/ukpga/1996/56/section/579>

15. The Commissioner considers that there are four ways in which an organisation will be designated as a public authority for the purpose of FOIA –
- if it is listed in Schedule 1 of FOIA or falls within a generic description of a public authority within the Schedule
 - if it is added to the Schedule by an order under section 4(1) of FOIA, if it meets certain specified criteria
 - if it is added to the Schedule by an order under section 5 of FOIA, when it meets certain criteria
 - if it meets the definition of a publicly-owned company in section 6 of FOIA
16. If we were to consider ACET only as a generic not-for-profit company it would not be covered by any of the descriptions set out in the above four categories. Therefore it would not be considered to be a public authority for the purpose of FOIA, and as such would not be obliged to provide any response to a request under FOIA. However, in considering ACET's functions in a broader context, the Commissioner is satisfied that it fits into the description at paragraph 52A(1) of Schedule 1 of FOIA –
- “The proprietor of an Academy, in respect of information held for the purposes of the proprietor's functions under Academy arrangements.”
17. Whilst each member Academy has its own local governing body, those local governing bodies are accountable to the ACET Board of Trustees, who in turn are accountable to ACET members. The Commissioner is therefore satisfied that ACET has overall management responsibility for the Academies within the Trust and, as such, is the proprietor for those Academies.
18. The Commissioner is further satisfied that meeting minutes held by ACET would be held for the purposes of its functions under Academy arrangements, which are defined by section 1 of the Academies Act 2010³.
19. The Commissioner concludes that ACET is a public authority for the purpose of FOIA, as the proprietor of its member Academies, in respect of information which it holds for the purposes of its functions under Academy arrangements. As such, ACET is entitled to rely on the

³ <https://www.legislation.gov.uk/ukpga/2010/32/section/1>

variation to the time for compliance applicable to proprietors of Academies, as provided by Regulation 2 of The Freedom of Information (Time for Compliance with Request) Regulations 2010.

Section 1 – general right of access
Section 16 – advice and assistance

20. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
21. Section 16(1) of FOIA provides that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
22. Section 16(2) provides that any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45⁴ is to be taken to comply with the duty imposed by subsection (1) in relation to that case.
23. With regard to clarifying the request, the section 45 code of practice explains that there may be instances when a public authority needs to contact an applicant to seek clarification regarding the information they are seeking.
24. The Commissioner's published guidance⁵ on section 16 goes on to confirm that when a request, read objectively, is ambiguous and requires clarification as to the information sought, the public authority should contact the applicant for more details to help it identify and locate the information they want.
25. The request for information in this case was submitted to ACET and asked for details of "full meetings". ACET's response to the request provided meeting minutes for one of its member Academies. The complainant has confirmed that they were not the specific meetings that they were interested in.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

⁵ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-16-advice-and-assistance/>

26. During the course of his investigation the Commissioner sought to understand how ACET had determined that the meeting minutes for the individual Academy were the relevant information that the complainant was seeking. ACET explained that the complainant is the parent of a child who attends the Academy to which the disclosed meeting minutes relate. Furthermore, the complainant had recently submitted various other requests or communications which had related to the individual Academy rather than ACET as a whole. ACET also confirmed to the Commissioner that, on receipt of the request for information, it did not have any discussion with the complainant to clarify the terms of their request.
27. The Commissioner considers that requests for information under FOIA should be handled by the public authority as though they are applicant and motive blind. As such, where it is possible that more than one interpretation can be deduced from the terms of a request, the public authority should take steps to clarify with the requester as to what particular information they are seeking. Whilst the Commissioner understands ACET's rationale for making the presumption that the complainant was seeking information about the individual Academy, a public authority should not make any presumptions based on prior knowledge it has of the requester.
28. The Commissioner notes that in its response to his investigation letter ACET stated the complainant did not query the information which was disclosed to them. However the onus is on the public authority, not the applicant, to ensure that it has reached a singular objective reading of the request before it responds to or refuses the request accordingly.
29. The Commissioner concludes that ACET did not meet its duty to provide advice and assistance to the requester in this case, by way of clarifying the information that they were seeking. Therefore, the Commissioner finds that ACET breached section 16(1) of FOIA. As such, it should now follow the steps ordered in paragraph 3 of this decision notice.

Other matters

30. Whilst not part of the decision set out above, the Commissioner wishes to take this opportunity to comment on ACET's communications to the complainant. There is no obligation under the Act for a public authority to inform a requester that it is relying on a variation to the standard 20 working day time for compliance. However, the Commissioner considers that if a public authority is able to send an acknowledgment of a request to the complainant it would be good practice for it to make clear the timeframe that it is working to at the earliest opportunity, in the

interests of transparency and accountability, but also to manage the complainants expectations.

Right of appeal

31. 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

32. 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.
33. 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

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