



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Information Rights**

<b>Tribunal Reference:</b>	EA/2012/0265
<b>Appellant:</b>	Geraldine Hackett
<b>Respondent:</b>	The Information Commissioner
<b>Second Respondent:</b>	The United Learning Trust
<b>Judge:</b>	NJ Warren
<b>Member:</b>	N Makanji
<b>Member:</b>	Dr H Fitzhugh
<b>Hearing Date:</b>	19 June 2014
<b>Decision Date:</b>	14 July 2014
<b>Promulgation Date:</b>	15 July 2014

**DECISION NOTICE**

**A. United Learning**

1. The United Church Schools Foundation Limited (UCSF) is an educational charity founded in 1883 and anchored in the Church of England. UCSF operates through two other charitable trusts.
2. The first of these is the United Church Schools Trust (UCST). This trust runs eleven private schools and has a system of scholarships and bursaries for some of its pupils.
3. The second trust, the United Learning Trust (ULT), is a more recent development. ULT was founded in 2001 and takes advantage of government funding to run academy schools in deprived areas. ULT is a company limited by guarantee. Its members are a Department for Education (DFE) nominee and UCST. ULT has

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about twenty academies. It has an annual income of about £129,000,000, of which £110,000,000 comes from public funds.

4. All three trusts share the same head office and one brand name – “United Learning.”
5. It was always the intention that ULT should be able to benefit from the expertise and central support services of UCST; but of course it was essential that public money intended for the academies in poorer areas did not end up as a subsidy for the private schools run by UCST. Accordingly in 2006 both trusts entered into an agreement with each other to apportion the expenditure on shared services. They adopted a formula based upon pupil numbers. The form of the agreement was that UCST would provide the shared services to ULT in accordance with ULT’s reasonable instructions. There was a Schedule listing about 50 types of service to be provided. The last of these, headed “senior staff,” reads as follows:-

“Such services from the senior staff (including without limitation the chief executive, deputy chief executive and department heads) employed by UCST as ULT may reasonably require from time to time.”

A couple of years ago a research report described the central services as very good value for money for the academy schools.

6. It appeared to us from the oral and written evidence that staff work together seamlessly for all three trusts. There is one office with one email address. Some staff members will have responsibilities related only to the academies or only to the private schools because of their different needs; but the chief executive of ULT to whom day-to-day responsibility for the running of the charitable company is delegated, acts also as chief executive of the other two trusts. Similarly, the finance director has the same responsibilities for all three trusts. HM Treasury rules require that there be an “accounting officer” for the expenditure of public money by ULT under the agreement with DFE. This role is filled by the chief executive.

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7. There is support for this view in the copy of a typical contract of employment which has been provided to us. The very first paragraph reads as follows:-

“You will be employed as ..... for both UCST and ULT. Details of your precise responsibilities will be worked out with the acting chief executive ULT. If in the future significant changes in your responsibilities are required, any such changes will be worked out in consultation with you.”

The contract later refers to the employee reporting directly to the Chief Executive of ULT.

## **B. The Request for Information**

8. On 20 February 2012 Ms Hackett requested information from ULT under the Freedom of Information Act (FOIA). She wanted to know how much money had been spent on consultants and how much of the academies’ budgets was retained centrally. That information has since been supplied. She also asked for details of the employment package of the chief executive – pay, pension contribution and any other remuneration including expenses for the years 2010-2012. She also wanted to know details of the employment packages of the other members of the ULT senior management team.
9. These requests were refused so she complained to the Information Commissioner (ICO). On 29 November 2012 the ICO rejected her complaint on the ground that ULT did not hold the information; the information was instead held by UCST. Ms Hackett then appealed to the First-tier Tribunal which confirmed the ICO decision on 24 June 2013.
10. Ms Hackett took her case to the Upper Tribunal which set aside the First-tier Tribunal decision and directed a re-hearing. The Tribunal decision was set aside because of a procedural error: it appears that the sample contract to which we have referred had never been sent to Ms Hackett. In remitting the case for re-hearing, Judge Jacobs mentioned concerns about the Tribunal’s decision. Was it really the

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case that ULT had delegated day-to-day running of its charitable activities to a chief executive of whose duties under his contract of employment, ULT was ignorant? Was it permissible to avoid FOIA by the device of a contract of employment made by another body?

11. We re-heard the appeal on 19 June 2014. Mr Tomlinson QC appeared for Ms Hackett. Mr Maxwell appeared for ULT. The ICO did not trouble to attend. We are grateful to Mr Tomlinson and to Mr Maxwell, and to those who prepared the respective cases, for the assistance they gave us.
12. Mr Maxwell conceded that ULT did not seek to rely on any exemption under Section 40(2) FOIA.

### **C. Academy Schools and FOIA**

13. There is no dispute among the parties that ULT is a public authority covered by FOIA whereas UCST is not. We need not therefore deal with this point in detail but it is convenient to summarise the legal position. We are grateful to Mr Maxwell for a note on this which he produced for us after the hearing and which the other parties have seen. Para 52A Schedule 1 FOIA brings within the scope of the Act the proprietor of an academy but only in respect of “information held for the purposes of the proprietor’s functions under academy arrangements.” There are statutory definitions of “proprietor” and “academy arrangements” in Section 579(1) Education Act 1996 and Section 1 Academies Act 2010 respectively. It is common ground that the directors of ULT, which is a multi-academy trust are the proprietors of all the ULT academies. The disputed information, if held by ULT, is obviously held for the purposes of its functions as proprietor.

### **D. Does ULT hold the Disputed Information?**

14. A convenient starting point is the reasoning of the ICO. ULT explained to the ICO that its senior staff were paid by the UCST, which is not subject to FOIA. The ICO observed from the sample employment contract that the employees were employed by USCT who was responsible for payment of salary expenses, pension etc. The

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ICO asked ULT to confirm that it made no payment to staff itself and that they were not therefore paid for out of public funds. ULT replied:-

“You are correct and the services agreement provided to you does show that these costs are met by UCST.”

15. On this basis the ICO concluded that ULT did not hold the information.
16. Ms Hackett’s case has always been that the ICO should have enquired further. We agree. As Judge Jacobs observed in the Upper Tribunal, the arrangements were more complex. The fact that UCST paid the senior staff must be viewed in the context that UCST provided payroll services for all ULT staff. The services agreement demonstrates that a proportion of all the central services were, quite correctly, paid for from public funds. The chief executive of the ULT is the accounting officer under HM Treasury rules. Moreover, the question is not to be approached on an either/or basis. It is a commonplace for the same information to be held by more than one person.
17. We turn then to determine this issue ourselves.
18. At the hearing both Counsel addressed us on the question of whether the senior management team were employees of ULT, USCT or both. We also received submissions on the nature of the agreement between the two trusts and their different legal personalities. Whilst we found these arguments illuminating, it seems to us that we should not be diverted from the task the statute gives us of deciding whether ULT “holds” the disputed information. In this, we have been guided by the decision of the Upper Tribunal in University of Newcastle upon Tyne v ICO and BUAV [2011] UKUT 185 (AAC) especially at paras 20-23 and 27-29.
19. We were told at the hearing, and we accept, that the disputed information is held in hard copy in one of the filing cabinets at the United Learning Head Office. Those with access to it work seamlessly, we have found, for all three trusts. They have responsibilities to all three trusts. For these purposes, we are not attracted by artificial theories suggesting that staff hold these documents only on behalf of one or two of the trusts. Looking at actualities, and applying the plain words of the

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statute, in our judgment the disputed information is held by ULT, even if it is also held by UCST and UCSF. This finding is consistent with the obligations of the ULT accounting officer in respect of senior officers' payroll arrangements. See the Academies' Financial Handbook issued by the Education Funding Agency in September 2012 (pages 170, 177 of the bundle).

20. Our decision therefore is to set aside the decision notice of the ICO and, subject to one reservation, direct that ULT disclose the disputed information within 35 days.
21. That reservation derives from the limited scope of the obligations under FOIA of the proprietor of an academy. As we have indicated, the Act applies only to information held for the purposes of the proprietor's functions under academy arrangements. Our provisional view is that this means that ULT would fulfil its obligations under FOIA by disclosing not the total sums involved but that proportion, calculated in accordance with the agreement, which relates to the academies; in other words excluding that proportion which can be attributed to USCT's private schools.
22. We heard no argument on this point and it may be that United Learning do not wish to rely on it. We therefore give all parties liberty to make submissions on this issue should they be unable to reach agreement.

**NJ Warren**

**Chamber President**

**Dated 14 July 2014**