

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 November 2012

Public Authority: St Chad's College

Address: 18 North Bailey
Durham
DH1 3RH

Decision (including any steps ordered)

1. The complainant submitted a request to St Chad's College ("the College") under the Freedom of Information Act 2000 ("FOIA") for a copy of all correspondence with the Information Commissioner's Office ("the ICO") as to whether the College is subject to FOIA. The Information Commissioner ("the Commissioner") has investigated the complaint and finds that the College provided the complainant with the information he requested within the statutory timeframe of 20 working days as set out in section 10(1) of FOIA. The College therefore complied with its obligations under FOIA.

Background

2. Prior to receiving the request relevant to this case the College had sought advice from the ICO as to whether or not it was covered by FOIA and obligated to respond to requests for information made under it. It had informed the ICO that it did not consider itself to be a constitutive part of Durham University ('the University') and was neither wholly nor partially owned by that University. It had also stated that it was currently receiving public funding from the Higher Education Funding Council for England ("HEFCE") via Durham University but that this would cease at the end of the academic year 2011-2012. The ICO had informed the College that, in its view it was a public authority falling within the definition in section 53(1)(e) of Part IV of Schedule 1 of FOIA. This was particularly in view of the HEFCE funding it received via the University. However the ICO also indicated that when it stopped receiving the HEFCE funding it would be unlikely to be subject to the provisions of FOIA as it would cease to be a public authority. For the avoidance of doubt, as the complainant's request was made within the academic year 2011-2012, the College was still subject to FOIA at the time of the request.

Request and response

3. On 4 February 2012, the complainant wrote to the College via the website www.whatdotheyknow.com and requested information in the following terms:

"Please can you provide me with: -

- (1) A copy of your most recently approved publication scheme.
- (2) Copies of all correspondence/notes of meetings and phone calls with the ICO in relation to whether or not the College is a public authority for the purposes of the Freedom of Information Act 2000. In particular, I am interested in records you hold that support the following statement:

"We have verified with the Information Commissioner that the College is no longer subject to the disclosure requirements of the Freedom of Information Act."

4. The above website automatically directed the complainant's request to the University rather than to the College. An FOI officer from the University responded to the complainant's request on 14 March 2012. The response stated that St Chad's College's publication scheme was publicly accessible and directed the complainant as to where to find it. In relation to part 2 of the complainant's request, relating to the College's status under FOIA, the response stated that St Chad's College was currently seeking clarity from the ICO regarding this issue.
5. On 14 March 2012 the complainant requested an internal review of the handling of his request, specifically part 2, as he said that the College had failed to state whether or not it held information relating to part 2 of that request. According to the College, despite the University having directed the complainant to the College, the complainant continued to correspond with the University. The University had alerted the College to the request and it attempted to respond to the complainant via the whatdotheyknow.com website, however it was blocked from doing so as the website would only accept a response from the e-mail address associated with the request, i.e. that of the University. The College did not have any other contact address for the complainant.
6. On 3 May, the University transferred the request for internal review to the College, and the College was then able to respond to the complainant, which it did on 3 May. On that date it responded to the complainant, providing him with the information requested in part 2 of his original request, as the University had already provided the information requested in part 1 of the request. The complainant

requested an internal review of that response on 5 May, chasing this up on 14 May, however those letters were again sent to the University. On 15 May the University wrote to the complainant providing him with direct contact details for the College.

7. On 15 May, the complainant contacted the College directly (through the whatdotheyknow.com website) and requested an internal review of the College's response of 3 May 2012 to his request. The College requested clarification of what exactly the complainant wished it to review, as it had provided him with the information in response to his request. The College in that response invited the complainant to telephone and discuss the matter. The complainant then submitted a complaint to the Commissioner on 26 May 2012.

Scope of the case

8. Section 8 of FOIA states that: -In this Act, any reference to a "request for information" is a reference to such a request which -
 - (a) Is in writing
 - (b) States the name of the applicant and an address for correspondence
 - (c) Describes the information requested
9. The Commissioner has considered the complainant's request. His original request of 4 February 2012 went to the University, who responded on 14 March 2012. The complainant then requested an internal review on that same date– that request again went to the University.
10. Given that the College did not receive the request until 3 May 2012, and had no address for correspondence to the complainant until that date, the Commissioner considers that the complainant's letter of 14 March 2012, which was received by the College on 3 May 2012, was a new request, rather than a request for internal review. The University had already provided a response to the original request. The request of 14 March was for the information requested in part 2 of the complainant's original request.
11. The Commissioner considers that the College did not receive a valid request for information, as defined by section 8 of FOIA, until 3 May 2012. It responded to the valid request the same day that it was received. The complainant requested an internal review of the

College's response, to which it then responded on 15 May 2012. Therefore, the Commissioner considers that the complaint relates to the complainant's request of 14 March 2012 and has not considered the original request. The Commissioner has specifically considered whether the College has failed to comply with the requirements of section 10(1) of FOIA as detailed below.

Reasons for decision

Section 10(1): Time for compliance

12. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
13. Section 10(1) requires that the public authority comply with section 1 promptly and in any event no later than 20 working days after the date of receipt of the request.
14. The Commissioner notes that the complainant's original request for information was made on 4 February 2012 and he did not receive a response to that request until 1 of his request until 14 March 2012. However, from the information provided to the Commissioner in this case it is evident that the request was not made directly to the College in the first instance. Since the Commissioner considers that the complainant's letter of 14 March 2012 constitutes a new request, and that, once the College had received the request which was on 3 May 2012, it responded within the statutory timeframe, therefore there was no breach of section 10(1) of FOIA.

Other matters

15. Section 53(1)(b) of Part IV Schedule 1 of FOIA provides that "the governing body of a university receiving financial support under section 65 of the Further and Higher Education Act 1992" is a public authority. Section 53(1)(e) provides that the governing body of "any college, school, hall or other institution of a university which falls within paragraph (b)" is also a public authority for the purposes of FOIA.
16. The Commissioner is aware that the University receives financial support under section 65 of the Further and Higher Education Act

1992. As section 53(1)(e) refers to any college...**of** a university which falls within paragraph (b), the Commissioner has investigated whether St Chad's College is a college **of** Durham University.
17. It is the Commissioner's view that generally Section 53(1)(e) of Part IV Schedule 1 is intended to cover institutions, such as colleges, that are under the control of universities that fall under paragraph (b) or that receive funding from or via those universities. In the Commissioner's view, that is how the phrase "of" a university would be construed so as to remain in keeping with the spirit and intention of FOIA.
 18. St Chad's is a 'recognised college' of Durham University, but it is not maintained or governed by the University. This is an unusual arrangement and it means that, though students at the College are registered for degrees at Durham University, the College itself remains a separate legal entity. A limited company and registered charity in its own right, it is financially autonomous, independently staffed and entirely self-governed. Notwithstanding this arrangement the Commissioner considers that the fact that the College received HEFCE funding indirectly via the University was sufficient to deem it a college of the University at the time of the request.
 19. However circumstances have subsequently changed and the College is now entirely reliant on its own ability to raise funds. In view of the fact that the College is independently staffed and governed and that there is now an absence of any funding link with the University the Commissioner considers that at the point that the HEFCE funding stopped it ceased to be a college of the University and therefore a public authority for the purposes of FOIA.

Right of appeal

20. 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

21. 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.
22. 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

Jo Pedder
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