

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2020

Public Authority: Ormiston Academies Trust

Address: Ormiston House
144 Newhall Street
Birmingham
B3 1RY

Decision (including any steps ordered)

1. The complainant requested information from Ormiston Academies Trust in Birmingham ("the Trust") relating to health and safety and public relations. The Trust initially withheld some information under section 43(2) (commercial interests) of the FOIA. It did not provide details of any public interest test that may have been carried out. Following the complainant's referral of the matter to the Commissioner, the Trust provided the information to the complainant.
2. The Commissioner's decision is that the Trust breached section 10(1) of the FOIA (time for compliance with a request). The Trust also failed to comply with sections 17(1) and 17(3) of the FOIA respectively in the manner of its refusal of the request.
3. The Commissioner does not require the Trust to take any steps.

Request and response

4. On 29 April 2019, the complainant wrote to the Trust to request information of the following description (numbers added for ease of reference):
 1. *"At a Board Meeting in July 2016, [name withheld] announced: 'Health and Safety policies – work undertaken with a specialist firm to make available to academies a suite of policies (which will be tailored to each academy) and a helpdesk'. A subsequent FOI request revealed that the specialist firm was Handsam Ltd, an*

established organisation that specialises in helping school and academy compliance with statutory guidance.

- *Please can you advise the total cost of the service to the Ormiston Academies Trust of that service provided by Handsam.*
2. *During the period Q2 to Q3, [name withheld], an independent consultant, was hired by the Trust to undertake a review of the Health and Safety Policies...*
- a) *What was the cost to the... Trust of... [his] services?*
 - b) *Was the review authorised by the Board of Trustees?*
 - c) *Who requested the services of [name withheld]?*
 - d) *What was the reason for the review, in view that the Handsam policies were announced as replacing the policies of the time by [name withheld] in 2016?*
3. *In early 2017, Melanie Onn MP... questioned Schools Minister Nick Gibb in Parliament and asked "It was reported last week that [the Trust] is seeking to hire a public relations agency for up to £900,000 to deal with reputational management..."*
- *Could you tell me the name of the public relations company and expenditure to the public relationship company for the years: 2016, 2017, 2018 and 2019 to date."*
5. On 31 May 2019, the Trust responded as follows:
- Question 1 – this information was withheld as "*commercially sensitive*".
 - Question 2a) – this information was withheld as "*commercially sensitive*".
 - Question 2b) and 2c) – the Trust provided some general information regarding the named individual's role, including the fact that he was not specifically employed with a view to reviewing policies.
 - Question 2d) – the Trust stated that the Handsam policies were "*implemented and reviewed in line with common working practices*".

- Question 3 – the Trust provided the name of the public relations company, but stated that its expenditure in this regard was "*commercially sensitive*".
6. The complainant requested an internal review on 6 June 2019. The Trust sent him the outcome of its internal review on 5 July 2019. It specified that the information which it had not provided on the grounds of it being "*commercially sensitive*" was being withheld under section 43(2) of the FOIA – prejudice to commercial interests. It did not disclose any further information at this stage.

Scope of the case

7. The complainant contacted the Commissioner on 15 July 2019 to complain about the way his request for information had been handled.
8. During the course of the investigation, on 2 December 2019, the Trust provided the complainant with the information that had been withheld under section 43(2). Following this disclosure, the Trust was no longer withholding any of the information that it held and that was within the scope of the complainant's request.
9. This decision notice addresses the Trust's compliance with the procedural aspects of the FOIA in its handling of the request.

Reasons for decision

Section 10 – time for compliance

10. Section 1(1) of the FOIA Section 1(1) of the 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."*
11. Section 10(1) of the FOIA states that 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*".
12. In this case, the Commissioner notes that the Trust's initial response was provided twenty-two working days following receipt of the request.

13. The Commissioner therefore finds that the Trust breached the requirements of section 10(1) of the FOIA.

Section 17 – refusal of request

14. Section 17(1) of the FOIA states that:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that... information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

15. In addition, section 17(3)(b) of the FOIA states that a public authority which is relying on a qualified exemption (that is, an exemption which requires a public interest test to be carried out) must:

"... either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming... that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

16. The Commissioner notes that the Trust's initial response failed to cite specifically the relevant section of the FOIA under which the information was exempt from disclosure. Although, following the internal review, this was identified as section 43(2), at no time did the Trust provide details of any public interest test having been carried out.
17. The Commissioner therefore finds that the Trust breached both sections 17(1) and 17(3) of the FOIA in its initial response to the complainant.

Other matters

18. Although the Commissioner has not ordered any steps to be taken in this notice because the requested information has now been provided to the complainant, she would remind the Trust of its obligations to comply in full with the procedural sections of the FOIA when responding to a request for information.

Right of appeal

19. 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

20. 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.
21. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF