

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2020

Public Authority: Ormiston Academies Trust

Address: Ormiston House
144 Newhall Street
Birmingham
B3 1RY

Decision (including any steps ordered)

1. The complainant has requested information about a business relationship with another education network. Ormiston Academies Trust ("the Trust") refused to comply with the request but did not cite an exemption from the FOIA which would have permitted it to do so.
2. The Commissioner's decision is that the Trust has failed to issue an adequate refusal notice in response to the request and has therefore breached section 17 of the FOIA.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue a response, under the FOIA, to the request. If and to the extent that the Trust wishes to refuse the request, it should issue a refusal notice that complies with section 17 of the FOIA.
4. The Trust 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 21 May 2020, the complainant wrote to the Trust to complain about correspondence he had received from a third party. In addition to raising a Subject Access Request (SAR), he also requested information in the following terms:

"What is the business relationship between the Ormiston Academies Trust and the Viscount Nelson Educational Network?"

"If there is a business relationship between the Ormiston Academies Trust or any of its academies, what is the extent business relationship? (e.g. consultant providing advice or training of staff, if so which Ormiston Academies does the consultancy/training apply?)."

"If the Ormiston Academies Trust or any of its academies does have a business relationship with the Viscount Nelson Educational Network what has been the cost to the Ormiston Academies Trust invoiced by the Viscount Nelson Educational Network during the years 2019 and 2020?"

"If there has been a business relationship between the Ormiston Academies Trust and the Viscount Nelson Educational Network please provide the date of commencement of the contract and advise does this business relationship continue to date?"

6. The Trust responded on 9 June 2020. It noted that it had complied with previous information requests, but stated that:

"We have therefore made the decision to no longer respond to future information requests from you."

"Please be advised that any further correspondence from you will be read and filed without acknowledgement."

7. The complainant sought an internal review on 12 June 2020. The Trust had not responded to that request at the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 17 July 2020 to complain about the way his request for information had been handled.

9. On 26 August 2020, with the internal review outstanding, the Commissioner wrote to the Trust, noting that she would normally expect internal reviews to be completed within 20 working days and asking it to complete its review within 10 working days.
10. The Commissioner received an automated acknowledgement from the Trust on the same day, advising that a "ticket" had been opened to deal with her enquiry. However she received a further automated response on 8 September 2020 advising her that the ticket had been closed. With the exception of a further automated acknowledgment when the Commissioner accepted the case for formal investigation, no other correspondence was received from the Trust up to the date of this notice.
11. The Commissioner considers that she cannot determine whether the Trust has complied with its obligations under Part I of the FOIA until such times as she is clear as to why the Trust has not provided the information or indeed confirmed that relevant information is held. She considers that the Trust has had ample opportunity to explain, both to herself and to the complainant, what FOIA exemptions it believes might apply and why those exemptions would apply. It would be unfair to the complainant if the Trust were permitted effectively to delay an investigation by the Commissioner by refusing to state its formal position in respect of the request. The Commissioner therefore considers that a decision notice is now appropriate.
12. The Commissioner considers that the scope of her investigation is to determine whether the Trust's correspondence of 9 June 2020 met the requirements of section 17 of the FOIA.
13. For the avoidance of doubt, this decision notice is restricted to dealing only with the parts of the complainant's correspondence of 11 May 2020 which do not deal with information relating to him as an individual. The remaining elements of the request may be looked at under data protection legislation.

Reasons for decision

Section 17 – Refusal Notice

14. Section 17(1) of the FOIA states that when a public authority wishes to refuse a request, to withhold information or to neither confirm nor deny holding information it 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.*

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

- (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or*
- (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and*

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies 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—

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or*
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

- (4) *A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.*
 - (5) *A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.*
 - (6) *Subsection (5) does not apply where—*

 - (a) *the public authority is relying on a claim that section 14 applies,*
 - (b) *the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*
 - (c) *it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.*
 - (7) *A notice under subsection (1), (3) or (5) must—*

 - (a) *contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*
 - (b) *contain particulars of the right conferred by section 50.*
15. Having considered the Trust's response of 9 June 2020, the Commissioner notes that the correspondence did not cite any exemption from the FOIA which would have permitted it to refuse the request or withhold information. The correspondence did not inform the complainant of any internal review procedure or other means by which he might challenge the response and it did not inform him of his right to complain to the Commissioner if he was dissatisfied.
16. The Commissioner considers that she has given an adequate opportunity for the Trust to explain why it would not have been reasonable to have issued a proper refusal notice and it has failed to do so.
17. The Commissioner therefore considers that the Trust's correspondence of 9 June 2020 did not constitute an adequate refusal notice. She therefore finds that the Trust has breached section 17 of the FOIA.

Other matters

Personal data

18. Whilst the Commissioner cannot compel it to do so as part of a decision notice issued under the FOIA, she would strongly advise the Trust to revisit those parts of the complainant's correspondence of 11 May 2020 which would fall under data protection legislation and ensure that it has responded in accordance with that legislation.

Internal review

19. The Section 45 FOIA Code of Practice advises public authorities to have in place some form of mechanism for addressing any dissatisfaction a requestor may have with a response to a request for information. This is usually referred to as an internal review.
20. The Commissioner has already recorded a statutory breach of the FOIA because the Trust did not offer the complainant an internal review or state that it was unwilling to make such an offer. The Commissioner also considers that, given the complainant specifically asked for an internal review, it was poor practice on behalf of the Trust to not carry out such a review or inform the complainant that it did not wish to carry one out.

Right of appeal

21. 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

22. 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.
23. 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

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