

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 May 2022

**Public Authority:** Ormiston Academies Trust  
**Address:** 1 Victoria Square  
Birmingham  
B1 1BD

### **Decision (including any steps ordered)**

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1. The complainant made a multi-part request for information to Ormiston Academies Trust (the Trust) on 24 November 2021. The Trust responded on 17 December 2021 to parts 1-6 of the request but asked the complainant to remake parts 7-10 of the request at a later date as the Trust had already occurred a cost of £175 responding to parts 1-6 of this request and a previous request dated 9 November 2021. Whilst the Trust did not formally apply section 12 FOIA (cost limit) or section 14 FOIA (vexatious requests) to parts 7-10, it did ask the complainant to bear these sections in mind. Subsequently in the internal review dated 17 March 2022 the Trust responded to parts 7-10 of the request to the complainant's satisfaction.
2. The complainant has asked the Commissioner to investigate whether the Trust breached section 10 FOIA (statutory time for compliance) and section 16 FOIA (advice and assistance) in the handling of this request.
3. The Commissioner considers that the Trust breached section 10 FOIA in the handling of this request but does not consider there was a breach of section 16 FOIA in this case.
4. The Commissioner requires no steps to be taken.

### **Request and response**

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5. On 24 November 2021 the complainant made the following request for information under the FOIA for:

"FOI (1) Please clarify (expand) the use of the acronym "FSM" in the March 2019 Ormiston Board Minutes meeting.

The school records show that the incoming principal's post was publicised and the leaving principal remained to assist the new principal to become orientated, therefore:

FOI (2) Why was the payment to the 'leaving principal' unexpected?

FOI (3) What was the nature of the £70,000 payment to the leaving principal? The financial report for the financial year 2018/19 shows severance payments for that financial year as follows:

Non statutory/non-contractual staff severance payments.  
Included in staff restructuring costs are non-statutory/non-contractual severance payments totalling £67,719. Individually, the payments were; £9,601, £7,500, £6,781, £6,201, £5,978, £5,538, £5,000, £5,000, £4,000, £2,600, £2,500, £2,500, £2,500, £2,000 and £20.

None of the above correspond to the amount of £70k and the total payments of £67,719 to 15 staff is less than the £70,000 paid to the leaving principal, hence it does not appear to be a severance payment.

Due to the amount of the payment (£70k) to a single staff member it's understood ESFA are required to grant prior approval.

FOI (4) Did the ESFA give prior approval of the £70,000 payment to the leaving principal?

Should it be the case that the acronym "FSM" does mean Free School Meals supplement and the wording indicates the funding was used to rectify the unexpected payment of £70,000 to the leaving principal ("NEW - had to pay an unexpected £70k to leaving principal. FSM funding will help rectify this") then:

FOI (5) Is the above interpretation correct? Are ESFA aware of this use of the funding?

FOI (6) What was the total amount of Free School Meals funding allocated to the Ormiston Academies Trust and how much was allocated to the NEW academy by ESFA for 2019?

In another meeting later in 2019, regarding a visit from HMRC, a section of the minutes document financial concerns as follows:

"Report on HMRC visit

[redacted] provided a summary of the HMRC Employer Compliance and VAT review. Trustees asked whether the Chairs could be asked to repay the tax to OAT. This was not considered appropriate as the Chairs hadn't followed incorrect procedures. OAT had also followed the correct procedures, but a judgment made on the IR35 assessment was disputed by HMRC. [redacted] to send notification to academies that Chairs and Clerks are office holders, and payments must be subject to tax deductions.

[redacted] asked what the potential exposure relating to VAT is. [redacted] explained that [redacted] this is very difficult to quantify, but that a provision of c.£50k is included in the head office budget for 19/20. "

It's understood this conversation about the HMRC visit was in reference to individuals working for Ormiston on "off payroll" or "IR35" basis. Understood to mean acting as self employed with the onus of accounting for Income tax and National Insurance payments previously incumbent on the contractor. However since 2017 the HMRC have brought in rules as follows:

The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same Income Tax and National Insurance contributions as employees. These rules are sometimes known as 'IR35'.

Since 2017 the employer should have deducted the Tax and NI payments and paid directly to the HMRC, however from the conversation in the minutes it seems that this was not done and there was discussion regarding regarding reclaiming these payments from "Chairs" and "Clerks".

It would seem from the minutes that "Chairs" and "Clerks" were employed on an "off payroll" basis.

FOI (7) How many individuals were employed by Ormiston Academies Trust or their individual academies on an "off payroll" or "IR35" basis from 2017 to the the present.

FOI (8) How much is the total Tax and NI payments have the Ormiston been required to pay to HMRC for these individuals broken down by 2017/18, 2018/19 and 2019/20 tax years.

FOI (9) How much is the total of the payments been reclaimed by Ormiston from the individuals that was paid prior to the HMRC visit that

should have been deducted from the payments to the individuals since 2017 but was not?

Regarding the potential exposure to VAT, the minutes show £50k was included in the budget for 19/20.

FOI (10) What was the final total exposure to VAT for 19/20 for this item?"

6. The Trust responded on 17 December 2021 to parts 1-6 of the request but asked the complainant to remake parts 7-10 of the request at a later date as the Trust had already incurred a cost of £175 responding to parts 1-6 of this request and a previous request dated 9 November 2021. Whilst the Trust did not formally apply section 12 FOIA (cost limit) or section 14 FOIA (vexatious requests) to parts 7-10, it did ask the complainant to bare these sections in mind.
7. The complainant requested an internal review on 11 February 2022.
8. The Trust provided the internal review on 17 March 2022, it provided information in relation to parts 7-10 of the request.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 3 May 2022 and asked him to investigate whether the Trust had complied with section 10 and 16 FOIA in the handling of this request.
10. The Commissioner has considered whether the Trust complied with section 10 and 16 FOIA in this case.

### **Reasons for decision**

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#### **Section 10**

11. Section 10(1) provides 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."*

12. Section 1(1) provides 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."*

13. The requests were made on 24 November 2021 and the Trust did not respond to parts 7-10 by providing the information requested until 17 March 2022. The Commissioner therefore finds that the Trust breached section 10(1) in failing to provide a response under FOIA to these parts of the request within 20 working days.

## **Section 16**

14. Section 16 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."

15. The Commissioner's guidance on section 16 FOIA makes it clear that there are three main circumstances in which a public authority will be obliged to provide advice and assistance under section 16 FOIA:

"The first is that you have reason to believe that the applicant has not given their real name. In this case, you should ask the applicant for it.

The second circumstance is when the request, read objectively, is ambiguous and requires clarification as to the information sought. In this case, you should contact the applicant to ask for more details to help you identify and locate the information they want.

The third circumstance is when the request would exceed the appropriate limit beyond which you would not be required to provide the information. In this instance, you should provide the applicant or prospective applicant with advice and assistance to help them reframe the request in a way that would bring it within the appropriate limit."

16. In this case whilst there was some question over whether the applicant had given their real name, this was resolved between the Trust and the complainant and so the Trust complied with its obligations.

17. From the correspondence between the complainant and the Trust relating to these requests it does not appear that the Trust considered the request to be ambiguous or requiring clarification. Indeed the Trust responded fully to parts 1-6 and asked the complainant to resubmit parts 7-10 at a later stage. The Trust subsequently responded to parts 7-10 at the internal review stage to the complainant's satisfaction. The Trust must therefore have understood the information the complaint required from its correspondence with the complainant.
18. Finally section 12 FOIA (cost limit) was not applied in this case.
19. For the reasons above the Commissioner does not consider that the Trust breached section 16 FOIA in the handling of these requests.

## Right of appeal

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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: 0870 739 5836

Email: [grc@Justice.gov.uk](mailto:grc@Justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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.....**

**Gemma Garvey**  
**Senior Case Officer**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**