

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2023

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

Decision (including any steps ordered)

1. The complainant requested copies of reports from the Ormiston Academies Trust (the Trust), regarding the City of Norwich School's (CNS) performance and compliance.
2. The Commissioner's decision is that the Trust, on the balance of probabilities, has not disclosed all the information it holds within the scope of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the Annex C "New Health and Safety Dashboard report – June 2019" to the complainant.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 9 November 2021, the complainant wrote to the Trust and requested information in the following terms:

"[Request] (1) under the FOI please could the Trust provide copies of the reports as mentioned by Nick Hudson in the discussion, for the CNS for the years 2017, 2018, 2019, 2020 and if available 2021 to date.

Request (2) under the FOI please could the Trust confirm if the CNS are now compliant or remain non-complaint.

Request (3) under the FOI, please could the Trust advise if the CNS have become compliant, at which date did they become compliant.

Request (4) under the FOI, if the CNS remain non-compliant, is there an action plan to address this?"

6. The Trust responded on 9 December 2021. It provided some information within the scope of the request, but advised the remaining information is not held.
7. Following an internal review, the Trust wrote to the complainant on 9 February 2022. It stated that there was some additional information that it had not disclosed, but it maintained it's position that no further information was held.

Scope of the case

8. The complainant contacted the Commissioner on 23 March 2022 to complain about the way his request for information had been handled.
9. The Commissioner considers whether, on the balance of probabilities, the Trust holds the requested information.

Reasons for decision

Section 1 FOIA - determining whether information is held

10. Section 1(1) of the FOIA states: "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." If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.

11. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e., the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.

The complainant's position

12. The complainant advised the Commissioner that although a lot of information had been disclosed, they still believed some requested information could be missing.
13. The complainant explained for the Improvement Plan summary the document is titled "Updated August 2018", the complainant stated that this indicates it is a subordinate document, however no master document was provided.
14. The complainant referred to a board minutes document 2018, that referenced developments in Estates and Technology including Health and Safety. They stated that if the Trust was following protocol introduced in 2017, a report should exist for this year also.
15. For the 2019 request, the complainant advised that one document disclosed to them by the Trust, referenced a different annex documents. The complainant believed that this document referred to as 'Annex C' in the report had been missed and not disclosed to them.
16. The complainant concluded that the Trust had not sent them the briefing paper, which they requested and was mentioned in the 14 March 2019 board meeting minutes.

The Trust's position

17. The Trust explained that it had conducted searches for board meeting reports, confirming this is how compliance is reported. Searches had also taken place in emails, files and folders relating to the Estates and Technology team; as they are responsible for Health and Safety across the Trust.
18. The Trust explained that the head of Governance was asked to check any electronic or paper records, which may relate to the Board meetings over the period of the request.
19. The health and safety officer was also asked to check over any health and safety files, and folders in the network for the period requested. The Trust explained that searches included information held locally on networks, emails and that all information would be held electronically.

20. When queried by the Commissioner about any information that may have been deleted or destroyed, the Trust explained that any dashboard reports were compiled by a member of staff who no longer works at the Trust and that the system in place at that time was stopped in late 2019. A new staff member has now introduced a simpler system and any information (other than what has been disclosed) no longer exists. The Trust also advised that any emails which are over 6 months old, are also automatically deleted and as such are no longer held by the Trust.
21. The Trust explained that as the dashboard and related system no longer exists, any information in the report provided would have been superseded by a later report. It advised that copies of previous and subsequent reports that went to the board have been located and provided. However, it advised that information in the dashboard reports would only be required for business purposes, until superseded by updated information.
22. In relation to the complainant's concerns, the Commissioner queried the Trust regarding the 'Annex C' document, the Trust advised that this document was not sent to the Commissioner originally, as it is a template document and does not have any school information on. The Trust further advised that this document was sent to the complainant during the Internal Review.
23. The Trust finally concluded that the improvement plan 2018 was in fact an updated report and the previous 2017 report should have been disclosed.

The Commissioner's decision

24. The Commissioner decision is that, on the balance of probabilities, the Trust does hold further information within the scope of the request.
25. Whilst the Trust advised that Annex C "New health and safety Dashboard Report 2019" was disclosed to the complainant during the Internal Review, the Commissioner is not satisfied that this report was disclosed.
26. The Commissioner agrees with the complainant that the Health and Safety improvement plan for 2018, is an updated document, meaning the original document was not disclosed at the time of the request. Therefore, the Trust failed to provide the complainant with the original Health and Safety plan, which was dated 2017.

Other Matters

27. Regarding the complainant's concern that the Trust should hold information if following protocol, this would not be something for the Commissioner to consider.
28. Any concerns with the Trust's performance should be raised with the Trust directly or to the relevant ombudsman or regulator.

Right of appeal

29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Catherine Fletcher
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Wycliffe House
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SK9 5AF