

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2011

Public Authority: Bamford Academy Trust
Address: Belgium Street
Rochdale
Lancashire
OL11 5PS

Decision (including any steps ordered)

1. The complainant requested the minutes that led to the previous school deciding to take Academy status from Bamford Academy Trust (the 'Academy Trust'). The Academy Trust failed to provide any information within 20 working days.
2. The case was referred to the Commissioner. During the course of his investigation, the Academy Trust disclosed the information to the complainant and the complainant asked for a formal decision notice about the delays he had experienced.
3. The Commissioner considers that the delays constitute a breach of section 10(1) of the Freedom of Information Act 2000 (FOIA). However, he requires no remedial steps to be taken because the information has been released by the Academy Trust.

Request and response

4. On 9 October 2011 the complainant wrote to the Academy Trust and requested:

'Could you please supply me with the minutes of the governing body meeting when the decision to convert Bamford Primary School into an academy was made. Please include copies of material which you hold in the form of paper and electronic records. I would be grateful if you would supply this information in the form of email.'

5. The Academy Trust responded on 11 October 2011. It asked the complainant to justify why he wanted the information and explained that it did not consider that it was covered by FOIA.
6. On 17 October 2011 the complainant explained why the Academy Trust was covered by the FOIA. The Academy Trust agreed to consider whether the information could be provided, but did not act before the case was referred to the Commissioner.

Scope of the case

7. On 14 November 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner contacted the Academy Trust. It confirmed that the information had been provided to the complainant, albeit late. The Commissioner asked the Academy Trust to provide the information again to ensure that the complainant had it.
9. The Commissioner discussed the case on the telephone with the complainant on 6 December 2011 and it was agreed that the Commissioner should issue this formal decision notice focussing on the delays that had been experienced by him.

Reasons for decision

The Commissioner's view about when an Academy Trust holds information under FOIA

10. It is noted that the Academy Trust originally argued that it wasn't covered by the FOIA. The Commissioner wants to explain in this formal notice when the Academy Trust is covered. This should enable it to ensure compliance in the future.
11. Section 1(1) of the FOIA states that:

*"Any person making a request for information to a **public authority** is entitled –*

- i. to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- ii. if that is the case, to have that information communicated to him.*

12. The issue in dispute in this case was whether the Academy Trust was a public authority in relation to the information that was requested on 9 October 2011
13. The FOIA is prescriptive about what constitutes a public authority. Schools converting to academy status on or after 1 September 2010 were covered with immediate effect. Academies existing prior to 1 September 2010 were added to the Act on 1 January 2011 (through the Academies Act 2010, Schedule 2 paragraph 10), however, the legislation explained that they were only covered for recorded information that was held by them *'for the purposes of the proprietor's functions under Academy arrangements'*. This means that the Academy Trust only has an obligation to comply with Part I to V of the FOIA where information is held for the set purposes.
14. The Commissioner considers that he can issue a decision notice to establish whether or not a public authority holds information for set purposes. This follows the House of Lords' decision in *Sugar v BBC* [2009] UKHL 9 which confirmed that in a similar situation the Commissioner did have the jurisdiction to issue a decision notice. The Commissioner considers that the Academies Act 2010 was passed on the understanding that the Commissioner would have the same power.
15. The Commissioner will now explain his view of the circumstances when he considers that an Academy Trust holds information for the purposes of the FOIA. In doing so he is setting out his view of what the clause *'for the purposes of the proprietor's functions under Academy arrangements'* means. 'Proprietor' has the same meaning as in section 579(1) of the Education Act 1996.
16. The Commissioner's view is determined by a number of sections of the Academies Act 2010. The first is section 1(2) that defines the term 'Academy arrangements':

""Academy arrangements" are arrangements that take the form of—

(a) an Academy agreement, or

(b) arrangements for Academy financial assistance."
17. An Academy agreement is an agreement between the Secretary of State (SoS) and the Academy proprietors whereby the proprietors give the undertakings set out at section 1(5) in return for the SoS agreeing to provide financial assistance. The relevant undertakings that are set out in 1(5) are:

- i. to establish and maintain an independent school in England which –
 - 1. has characteristics that include those in subsection (6); and**
- ii. to carry on, or provide for the carrying on of, the school.*

18. For completeness subsection 1(6) sets out those characteristics:

- (a) the school has a curriculum satisfying the requirements of section 78 of EA 2002 (balanced and broadly based curriculum);*
- (b) if the school provides secondary education, its curriculum for the secondary education has an emphasis on a particular subject or particular subject areas specified in the arrangements;*
- (c) the school provides education for pupils of different abilities; and*
- (d) the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.'*

19. The Commissioner considers that whether the information held is caught by the FOIA will be a matter of fact and it is likely to be necessary to consider the nature of the request, the nature of the withheld information and, of course, the purpose/reason for which the information is being held when making such a determination.

20. The Commissioner's position is that it is likely the majority, if not all, of the information previously held by a school and covered by the FOIA will be held by the Academy for the purposes of the proprietor's functions, that is, the establishing and maintaining of a school or the carrying on or providing for the carrying on of a school and therefore subject to the FOIA. He considers that the information is held for the purposes of the proprietor's functions unless the Academy Trust can demonstrate otherwise.

21. In this case, the information requested was the key information that led to the school to change its status into an Academy. This information was essential when the Academy was set up and must therefore be used in the carrying on of the school.

22. The Commissioner therefore determines the information requested fell within the scope of the FOIA and therefore the Academy Trust as a

public authority had a duty to consider it under FOIA. It follows that the Academy Trust's initial failure to do so constitutes a breach of section 1(1) of the FOIA.

23. In this particular case, the Academy Trust ultimately conceded that all the requested information was held for the relevant functions and fell to be considered under FOIA. This also accorded with the complainant's understanding of the situation.
24. Section 10(1) requires that a public authority complies with section 1(1) in 20 working days. The Academy Trust failed to do this and so also breached section 10(1) of the FOIA.
25. The Commissioner does not require any remedial steps in this case because the complainant is in possession of all of the requested information and the Academy Trust has confirmed to the Commissioner that it agrees that this disclosure was made under FOIA. The Commissioner has used his discretion not to order any remedial steps in this case, because they would not have served any purpose.
26. Finally, the Commissioner wants to note for the avoidance of doubt that the FOIA is applicant blind. This means that subject to a limited number of circumstances (such as whether the request is made under a pseudonym, whether the request is first party personal data or whether the request is vexatious) the identity of a complainant is irrelevant. In addition, there is no requirement for a complainant to state why he wants information and he expects the Academy Trust to learn from its handling of this request.

Right of appeal

27. 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

28. 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.
29. 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

Gerrard Tracey
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