

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2017

Organisation: The Quality Assurance Agency for Higher Education
("QAA")

Address: Southgate House
Southgate Street
Gloucester
GL1 1UB

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints and concerns raised about the Leicester Medical School.
2. The QAA has explained that it is not a public authority for the purposes of the FOIA. It has therefore refused to respond to this request under the FOIA.
3. The Commissioner's decision is that the QAA is not a public authority for the purposes of the FOIA. She therefore upholds the QAA's position and requires no steps to be taken in this case.

Request and response

4. On 13 September 2016, the complainant wrote to the QAA and requested information in the following terms:

"I would like to make a Freedom of Information request. I would like all copies of correspondence held by yourselves in relation to complaints and concerns raised about the Leicester Medical School from 2002 onwards. I would request this should include correspondence between the complainant/ your organisation expressing concerns about the medical school, correspondence between yourselves and the university relating to the matter and any internal correspondence/minutes of meetings relating to concerns, decisions to investigate or not etc as well as any investigation material/outcomes."

5. The QAA responded on 15 September 2016. It stated that the QAA is not covered by the FOIA.

6. The QAA further wrote to the complainant on 23 September 2016 advising him that:

"QAA is not included in Schedule 1 of the Freedom of Information Act 2000, which lists the public authorities bound to comply with the provisions of the Act.....We are therefore unable to provide you with the information requested."

7. On 8 October 2016 the complainant wrote to the QAA expressing his view that :

"In my view that does not exempt you from the Act, as under Section 5, the Chancellor for the Duchy of Lancaster, can designate bodies as a public body for purposes of the Act. An example of the use of this section was that applied to UCAS in 2011. The QAA state that they monitor and advise upon the standards of Higher Education. Universities are public institutions, the standards of which the QAA claim to monitor and advise upon. It is further stated on your website that: -

"Above all, we will continue to put students and the public interest at the centre of everything we do.???"

There are further references to acting in the public interest as well as working for public bodies. It is my view therefore that the QAA is bound by the FOI Act (2000), and thus I am fully entitled to the information requested. Nonetheless it would appear that you hold a different view and this will be better decided by the appropriate organisation, the Information Commissioner's Office. I'm sure you can now see why the FOI Act (2000) also applies to the QAA."

8. Following a review the QAA wrote to the complainant on 10 October 2016. It stated that it's position remained unchanged.

Scope of the case

9. The complainant contacted the Commissioner on 28 October 2016 to complain about the way his request for information had been handled. He disagreed with QAA's position that it is not a public authority for the purposes of the FOIA.

10. The Commissioner considers the scope of this case to be concerned with the question of whether the QAA is a public authority for the purposes of the FOIA.

11. In the recent case of *Fish Legal v Information Commissioner & Others* (GIA/0979/2011 & GIA/0980/2011) ("Fish Legal"), the Upper Tribunal Administrative Appeals Chamber (the "UT") ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority.
12. The Commissioner therefore has jurisdiction to decide this question. The First Tier Tribunal (the "FTT") may also hear appeals against the Commissioner's decisions and the UT may hear appeals against the decisions of the FTT.

Reasons for decision

13. The FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
14. If a public authority receives a request for information they are legally obliged to provide it within 20 working days, unless any of the exemptions contained within Part II of the FOIA apply. If a public authority believes an exemption does apply to the information that has been requested then the public authority must explain why the exemption applies in accordance with section 17 of the FOIA
15. The question here is whether the QAA is a public authority for the purposes of the FOIA.
16. The definition of 'public authority' is given in section 3(1) of the FOIA. In particular it states that under the FOIA a "public authority" means-
 - (a) subject to section 4(4), any body which, any other person who, or the holder of any office which-
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or
 - (b) a publicly-owned company as defined by section 6.
17. Section 5 allows the Secretary of State to designate a public authority by order.
18. Section 6 states that a company is a "publicly-owned company" for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1 (other than a government department or any authority which is listed only in relation to particular information).

19. The Commissioner agrees that the QAA is not an organisation listed in Schedule 1 of the FOIA and is not therefore a public authority by virtue of section 3(1)(a)(i).
20. The complainant believes that due to the public nature of the function performed by the QAA there are similarities with UCAS, which has been designated as a public authority by the Secretary of State via an order under section 5 FOIA. The complainant argued that the QAA ensures standards in higher education are maintained, and, as is stated on their website, they act in the public interest. He states that the QAA carry out work under contract with public bodies such as the funding councils. He further states that the QAA has a vital function in producing reports relating to public institutions (ie. public universities) and these reports determine largely whether or not these institutions should be awarded public funding for such courses. The reports produced are available for public inspection. The complainant considers that the public have the right to know what, if any, concerns have been raised about publicly funded institutions such as universities. He says it is in the public interest that a body that may be charged with conducting investigations of public bodies following a complaint do so in a manner open to public scrutiny. As such the complainant believes the QAA are carrying out a public function and should be designated as a public authority.
21. Furthermore the complainant argued that the information he requested relates to a public institution and the public functions of the QAA and not any private business of the QAA, a consideration which was determined when designating UCAS as a public authority.
22. Irrespective of any argument that the QAA performs a public function, it is not within the Commissioner's remit to make an order under section 5. Only the Secretary of State can do so. At the time of the complainant's request, and as at the date of this decision notice, the Secretary of State has not made an order under section 5 designating the QAA as a public authority. Accordingly the Commissioner considers that the QAA is not a public authority by virtue of section 3(1)(a)(ii) of the FOIA.
23. The Commissioner has gone on to investigate whether the QAA is a publicly-owned company as defined by section 6 FOIA.
24. As stated on it's website, the QAA is an independent body, a registered charity and a company limited by guarantee. QAA is funded through a number of channels:
 - subscriptions from higher education providers (all publicly funded higher education providers in the UK subscribe to QAA and pay an annual fee, as do some that are not publicly funded);

- contracts and agreements with the UK funding councils and organisations to which QAA reports annually;
 - providers of higher education seeking educational oversight for immigration purposes as required by the Home Office pay a fee to be reviewed by a QAA team, as well an annual maintenance charge;
 - contracts with the General Osteopathic Council (GOsC), and with the National College for Teaching and Leadership for Early Years Professional Status (EYPS); and
 - additional private contracts, consultancy and business development work in the UK and internationally
25. The QAA is independent of government and of higher education providers. Whilst it's review work is done under contract with the funding councils (the public bodies that help fund UK higher education), and guidance is developed through close working with the providers themselves, the QAA acts independently of both the funding councils and the higher education sector.
26. In view of the above the Commissioner is of the opinion that the QAA is neither wholly owned by the Crown, nor any public authority listed in Schedule 1, and therefore does not satisfy the definition of a publicly-owned company as contained in section 6. Accordingly the Commissioner is of the view that the QAA is not a public authority by virtue of section 3(1)(b) of the FOIA.
27. The Commissioner therefore agrees with the QAA that it is not required to respond to the complainant's request under FOIA.

Right of appeal

28. 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@hmcts.gsi.gov.uk

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

- 29. 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.
- 30. 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

**Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**