

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2019

Public Authority: Inspiration Trust
Address: 28 Bethel St
Norwich
NR2 1NR

Decision (including any steps ordered)

1. The complainant requested detailed accounting information from the Inspiration Trust, Norwich ("the Trust") about the Cromer Academy in Cromer, Norfolk ("the school"). The Trust originally withheld the information which it considered fell within the scope of the request under section 43(2) of the FOIA – prejudicial to commercial interests. During the course of the Commissioner's initial investigation, it withdrew its application of section 43(2) and provided the information to the complainant.
2. The complainant subsequently queried the Trust's interpretation of the scope of his request. The Commissioner therefore addressed whether there was more than one objective reading of the request.
3. The Commissioner's decision is that there was more than one objective reading of the request, and that the Trust therefore breached its duty under section 16 of the FOIA to return to the complainant under section 1(3) to seek clarification of the request.
4. In the circumstances of this case, the Commissioner does not require the Trust to take any steps.

Request and response

5. On 8 February 2018, the complainant wrote to the Trust to request information of the following description:

"Under the Freedom of Information Act, please could you provide the monthly 'detailed' income and expenditure, a 'breakdown', of Cromer Academy. The latest consecutive 12 months that are available. This I believe should be easily accessible and provided in such form as a Budget Control Monitoring report or Capital BCR or similar spreadsheet. (Where for instance, income and expenditure are recorded on Lines, for example an income line 101, Funds delegated by LA. Expenditure line E01, Teaching staff etc.)"

6. This request followed others which had been made to the Trust on 24 November 2017 and 7 December 2017 respectively.
7. On 8 March 2018 the Trust responded. It confirmed that it held the information requested, but refused to provide it, citing the exemption at section 43 of the FOIA – prejudicial to commercial interests.
8. The complainant requested an internal review on 29 April 2018. The Trust sent him the outcome of its internal review on 9 July 2018. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 17 March 2018. At this stage, he had not yet requested an internal review from the Trust.
10. Following the outcome of the internal review, the complainant contacted the Commissioner on 20 September 2018 to complain about the way his request for information had been handled.
11. The Commissioner wrote to the Trust on 8 January 2019. Following her involvement, the Trust reconsidered its position.
12. The Trust explained that in light of the passage of time, it could now disclose the school's management accounts from January 2017 to December 2017, which it stated would be the *"latest consecutive 12 months' accounts available at the date of the request"*.
13. It also explained to the Commissioner that the Trust's audited accounts for the financial years 2016 – 2017 and 2017 – 2018 had now been published. The Trust's financial year runs from September to August.
14. The Trust provided the school's management accounts from January 2017 – December 2017, inclusive, to the complainant on 28 January 2019. The Trust has acknowledged that a typographical error unfortunately led to it describing this information as covering the period January 2017 – December 2018 inclusive.

15. Following receipt of the information, the complainant disagreed with the Trust's interpretation of his request. He argued that his request for "*the monthly 'detailed' income and expenditure, a 'breakdown', of Cromer Academy. The latest consecutive 12 months that are available*" should not have been interpreted as pertaining to the 12 months' completed accounts for the period immediately leading up to the date of his request.
16. Rather, he considered that the Trust should have provided him, at the time of its initial response, with the most recent consecutive 12 months' accounts which were, at that date, *available for disclosure*; that is, accounts which were not found to be exempt from disclosure.
17. In view of the fact that the complainant has now received the information which the Trust, in originally responding to the request, withheld under section 43(2) of the FOIA – that is, the school's management accounts for the 2017 calendar year – the Commissioner is not required to investigate the Trust's application of the exemption at section 43(2) to this information.
18. However, the complainant has raised a concern over the Trust's interpretation of his request.
19. This notice considers whether a duty arose, under section 16 of the FOIA, for the Trust to return to the complainant under section 1(3) of the FOIA to seek clarification of the request.

Reasons for decision

Section 16 - Duty to provide advice and assistance

20. Section 16 of the FOIA states that:
 - 1) 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.
 - 2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.
21. Section 16 refers to the "code of practice". This refers to the code of practice issued by the government under section 45 of the FOIA, which provides standards and guidance on how a public authority should

discharge its duties under Part 1 of the FOIA. The latest version is dated May 2018 and is called the *Freedom of Information Code of Practice*; however, the Commissioner notes that the version in force at the date of the complainant's request dates from November 2014 and was entitled *The Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000* ("the code").

22. As stated in the code, one of its aims is to *"protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them"*.
23. The Commissioner has produced guidance on complying with the requirements of the code¹.
24. In this case, as set out in this notice, the request was made on 8 February 2018 and asked for accounting information from the Trust for *"the latest consecutive 12 months that are available"*.
25. As the Commissioner's guidance makes clear, the code does not require a public authority to assist applicants in describing the information more clearly if it can deal with the request as it has been presented.
26. However, in the event that a public authority is unclear as to how to read a specific request objectively, the guidance states that: *"if a public authority can objectively read an information request in more than one way it may need further information in order to identify the information requested. Section 16 requires a public authority to assist the applicant to clarify the request under these circumstances"*.
27. The guidance states that *"if a public authority is only aware of one objective reading of a request then no section 16 duty arises"*.
28. The Commissioner has therefore considered whether the Trust was only aware of one objective reading of the request in this case.

Did a duty to provide advice and assistance arise under section 16?

29. The Trust has explained that it considered the meaning of the request to be clear. It understood that the complainant was requesting the most recent consecutive 12 months' prepared accounts that were available to it. The 12 months in question happened to be the calendar year 2017, since the request was made in February 2018, and the January 2018

¹ <https://ico.org.uk/media/1624144/section-45-code-of-practice-request-handling-foia.pdf>

accounts had not yet been prepared. The Trust considered that it could respond to the request without the need to provide additional advice and assistance.

30. The complainant's subsequent complaint about the interpretation of the scope of his request turns on the interpretation of the word "*available*". He considers that the prepared accounts for 2017 were, self-evidently, not "*available*" at the date of his request, since the Trust advised him that they were exempt from disclosure.
31. The Trust, however, considered that it was required to consider the most recent accounts *available to it on its systems*.
32. While the Commissioner agrees that the Trust's interpretation of the request was plausible and reasonable, she has considered the wording of the request.
33. In the Commissioner's view, there are several interpretations of the request for accounting information for "*the latest consecutive 12 months that are available*". In particular, she considers that the word "*available*" could be interpreted as meaning information which was readily disclosable, as the complainant has suggested.
34. She is therefore satisfied that a duty arose under section 16 of the FOIA for the Trust to seek clarification of the request at the time, and that the Trust did not comply with this duty. In so doing, it breached the requirement of section 16(1) of the FOIA.
35. Where a breach of the FOIA has occurred, the Commissioner has discretion over whether or not to order a public authority to take remedial steps.
36. In the circumstances of this case, the Commissioner considers that subsequent events – the publication by the Trust of some accounting information, and the provision of detailed accounting information from 2017 directly to the complainant – have rendered it unnecessary for remedial steps to be taken. She therefore does not require the Trust to take any steps.

Right of appeal

37. 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

38. 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.
39. 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

Ben Tomes
Team Manager
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Water Lane
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SK9 5AF