

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2012

Public Authority: Outwood Grange Academies Trust

Address: Outwood Grange Academy
Potovens Lane
Outwood
Wakefield
West Yorkshire
WF1 2PF

Decision (including any steps ordered)

1. The complainant requested correspondence concerning the use of a charity account by Outwood Grange Academy (OGAT) and statements showing use of that account. He asked for information about bank accounts held by OGAT and about the resignations of trustees from the charity. He also requested details of spending with a specified law firm to deal with press inquiries and freedom of information requests and a record of payments to and from the school fund. OGAT refused to respond to this request under section 14(1) of the FOIA.
2. The Commissioner's decision is that OGAT was incorrect to apply section 14(1) of the FOIA to these requests.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - If section 12 is deemed to apply to any of the requests listed below issue a notice compliant with 17(5). The public authority should also consider if it can provide any advice and assistance in accordance with section 16 to enable the complainant to refine his requests to bring them within the appropriate limit and if so, provide it.

- If section 12 is not relevant to a request, confirm or deny whether any information is held or issue a refusal notice compliant with section 17(1) citing a Part II exemption from the section 1(1)(a) duty.
 - In respect of each request, if information is held and no exemption from section 1(1)(a) is claimed, disclose the information or issue a refusal notice compliant with section 17(1) citing a Part II exemption from the section 1(1)(b) duty.
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 the Act and may be dealt with as a contempt of court.

Background

5. In 2009 Wakefield Council (the council) became involved in a financial audit of Outwood Grange College (OGC) following receipt of information that funds collected in respect of specific charities might have been retained within the School Fund and not paid over to the relevant charities.
6. In September 2009 OGC became an Academy (OGAT).
7. In May 2011 the council published its findings. The report considered the following:
- the school's treatment of charity income which had been retained within the OGC General School Fund;
 - payments made to the Executive Principal of OGC for activity in the National Leaders in Education Programme (NLE);
 - payments to other staff for consultancy work and additional duties;
 - the use of the School Fund account; and
 - the use of other Delegated budget transactions.
8. The report concluded that there had been a significant breakdown in appropriate standards of governance and accountability at the school. It concluded that most of the key matters requiring further consideration were the responsibility of OGAT and explained that no further audit work would be carried out.

9. The report stated that the council's main responsibility following publication related to liaison with the relevant external organisations that may have an interest in the issues, predominantly the Audit Commission, HM Revenue and Customs, the National College for School Leadership, other local authorities and the Charity Commission.
10. OGAT has denied the allegations made against it; however the complainant has argued it should be brought to account for its apparent misuse of charity funds and that it should account for its spending of public money.
11. OGAT has argued that the requests are part of a public campaign to expose what the complainant perceives to be financial mishandling at OGAT.
12. Between 4 January 2011 and 24 October 2011, the complainant submitted 46 requests to OGAT in 10 separate pieces of correspondence. These all concerned payments made by or to OGAT and to organisations and individuals related to OGAT. In addition OGAT has demonstrated that in March and May 2011, it replied in detail to a further 20 questions asked by the complainant regarding this matter. These requests have been summarised in Annex 1 to this decision notice.

Request and response

Request 1

13. On 28 November 2011, following the provision of information by OGAT to the complainant in response to two earlier requests, the complainant wrote to OGAT and asked for further information as detailed below:

'...copies of correspondence and other recorded information held by Outwood which relate to the apparent discovery that the school fund was once a charity but now appears not to be...'

14. In another email on the same date he also requested:

'... the correspondence and other recorded information held by Outwood which led the school to state how it had used the 'charity account' previously, ie the errors involved, the use of the charity account because no other was available etc.'

15. On 30 November 2011, the complainant made a further related request:

'..how many bank accounts Outwood had at the time in question, when they were opened, what their individual 'names' were (ie their specific purpose) and who were the signatories to payments from those accounts.'

The information previously provided refers to several resignations of trustees from the charity. I would like the information held on these resignations, including the reasons provided and copies of any recorded resignation letters.'

He later clarified that in the above request he meant how many accounts were held by Outwood on behalf of the school and on behalf of the charity.

Request 2

16. On 22 November 2011, OGAT provided the complainant with information in response to a request which had been referred to the Commissioner (case reference number FS50397294).

With reference to this response, on 28 November 2011 the complainant also requested:

'I would separately like to have the same information regarding [named law firm] or any other law firm used by Outwood Grange to the current day.'

On the same date he clarified that this was:

'...the same request for details on spending with [named law firm] and/or any other law firm to deal with press inquiries and FOI requests from April 26 onwards.'

17. On 1 December 2011 the complainant made a further request:

'Given the charity account appears to have had just £41 according to the Charity Commission return in 08/09, I would like copies of the bank statements for the year or other periodical statements or similar which show payments in and out. Naturally the account number should be redacted.'

I would like the same information for the charity account for 09/10.

If there is another account called school fund or similar, I would like the record of the payments in and out as previously referred to in Outwood's response which provided totals for money going in and out of the charity account.

I would like the specific records/statements which show these payments in the 'non-charity' account. Again, the account number can be redacted.'

18. OGAT responded on 21 December 2011. It confirmed that with respect to all the above requests, it held some of the information requested but was withholding it under section 14(1) of the FOIA as it considered the requests to be vexatious. OGAT explained that it does not currently operate an internal review procedure.

Scope of the case

19. The complainant contacted the Commissioner to complain about the way his requests for information had been handled.
20. The Commissioner has considered whether OGAT's application of section 14(1) to these information requests was correct.

Reasons for decision

21. Section 14(1) provides that a public authority is not obliged to comply with a request if it is vexatious.
22. The Commissioner's published guidance¹ on section 14(1) provides that the following five factors should be taken into account when considering whether a request can accurately be characterised as vexatious:
- whether compliance would create a significant burden in terms of expense and distraction;

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

- whether the request is designed to cause disruption or annoyance;
 - whether the request has the effect of harassing the public authority or its staff;
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
 - whether the request has any serious purpose or value.
23. It is not necessary for all five factors to be engaged, but the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.
24. The Commissioner has therefore considered arguments put forward by OGAT and the complainant, partly in light of the five tests set out above, but also in light of the Information Tribunal's view that a consideration of a refusal of a request as vexatious may not necessarily lend itself to an overly structured approach². He has therefore considered these tests 'in the round'.

Whether compliance would create a significant burden in terms of expense and distraction

25. The guidance states that this question must consider whether responding would divert or distract staff from their usual work.
26. The Information Tribunal³ has said that the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor in deciding whether a request is vexatious.

² *Coggins v the Information Commissioner (EA/2007/0130)*

³ *Gowers v the Information Commissioner & the London Borough of Camden (EA/2007/0114)*

27. OGAT has argued that it has spent a considerable amount of administrative time, effort and budget on replying to the complainant's requests. OGAT is a relatively small organisation and has no dedicated freedom of information (FOI) specialist. Over a nine month period, the complainant submitted 46 requests to OGAT in 10 separate pieces of correspondence, plus an additional 20 questions. The volume of requests therefore means that the employees of OGAT have been diverted from their core duties and the cost of responding has diverted funds away from the core functions of OGAT.
28. OGAT has argued that on several occasions, the complainant has challenged its responses and referred the matter to the Commissioner. The Commissioner considers that such complaints have been legitimate and therefore has not given this argument any significance when deciding whether the requests impose a significant burden.
29. OGAT has also argued that each response leads to a significant number of further requests for additional clarification or information. The Commissioner is satisfied that each of OGAT's responses has elicited further contact and additional questions from the complainant and that this pattern appears likely to continue. The requests (summarised in the Annex to this notice) are clearly linked and it is apparent that one question leads to another.
30. The Commissioner is also satisfied that dealing with the complainant's requests in this case would place a significant burden on OGAT, both in terms of time and cost, and in the distraction of its staff from their other duties when viewed in context. Over a period of nine months, the complainant has submitted over 60 requests to OGAT. The volume of questions would undoubtedly place a burden upon a relatively small organisation. Many require a detailed response and, taken as a whole, the requests constitute a significant distraction from the core functions of the organisation. The Commissioner considers this factor deserves significant weight.

Whether the request is designed to cause disruption or annoyance

31. OGAT has not argued that the complainant's requests are designed to cause disruption or annoyance, and the Commissioner has found no evidence of this.

Whether the request has the effect of harassing the public authority or its staff

32. OGAT has argued that the volume and frequency of correspondence has had the effect of harassing the organization. Whilst he accepts that the requests would impose a significant burden, the Commissioner is not satisfied that they would have the effect of harassing the public authority or its staff. Whilst undoubtedly there is a substantial volume and frequency of requests, the Commissioner notes the absence of any hostile or abusive language. Moreover he does not consider that the requests simply seek to reopen issues that have been fully debated, nor do they appear to have been used as a means of arguing with or haranguing OGAT. In the Commissioner's view the complainant has requested additional information to further his understanding of issues that are of considerable concern to the public such as the circumstances of several trustees' resignations and statements regarding financial transactions.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

33. The requests between January and October 2011 are obviously linked. The complainant is seeking access to information in order to increase transparency surrounding OGAT's financial affairs and overall operation.
34. OGAT has argued that these requests can be seen as obsessive and unreasonable when seen in the context of other FOI requests relating to its affairs which the complainant sent to three councils in late 2010 and early 2011 (26 to one council, 6 to another, and 25 to another). In addition there were two requests to one school and five requests to another school relating to OGAT's financial affairs. OGAT has argued that in a number of instances it has been consulted by these other public authorities about the requests and that this has added to the burden it has experienced.
35. The Commissioner understands that as a result of OGAT's involvement in the NLE (and OGC's before it) it has worked in partnership with a number of schools in different local authority areas. Consequently a number of other public authorities are likely to hold details, including financial information, about their interaction with OGAT and the Commissioner does not consider it unreasonable that requests were submitted for that material. The Commissioner acknowledges that all of the requests to OGAT and other public authorities demonstrate the complainant's determination to access a very substantial amount of information about OGAT's affairs.

36. In the Commissioner's view there is often a fine line between persistence and obsession. However, an obsessive request can most easily be identified where an applicant continues to make requests despite being in possession of independent evidence about the same issue(s). The Commissioner has carefully considered the requests in this case and the context in which they were made.
37. The requests undoubtedly demonstrate persistence and tenacity on the part of the complainant. In the Commissioner's view, at this point, they fall short of being obsessive. In reaching this decision the Commissioner has considered what, if any, independent evidence was publicly available at the time of the requests to address the issues about which the complainant sought further information.
38. As explained above, the council published its audit findings in May 2011 ie prior to the requests relevant to this case. Whilst the Commissioner acknowledges OGAT's argument that it was able to refute some of the allegations against it following publication of the audit report, the content of that document nevertheless highlighted a significant breakdown in general standards of governance and accountability at the school. In this context the Commissioner does not consider that requests which seek information about financial transactions, including the treatment of charity income, the use of the School Fund account and the resignation of trustees to be obsessive. Nor does he consider that OGAT has demonstrated why the requests about spending on legal advice related to handling FOI requests or press enquiries are obsessive.
39. OGAT's financial arrangements are regulated by a number of organisations. The Charity Commission retains some powers in relation to academies as exempt charities. It is also the regulator of the Outwood Grange School Fund (registered charity 1070968). OGAT is also accountable to the Secretary of State for Education as an academy. As a company OGAT has to follow the requirements of the Companies Act 2006 and file accounts within 9 months of the year end.
40. OGAT has also argued that the Education Funding Agency (EFA) is responsible for funding academies and for providing advice to the Secretary of State to enable him to fulfil his role as principal regulator. All academies are required to complete an annual Financial Management and Governance Evaluation return. The annual accounts are independently audited and published (with the exception of a school's first year of conversion). The Commissioner notes that Outwood Grange began operating as an academy on 1 September 2009. Therefore financial information of interest to the complainant predated the period in which accounts would have been audited and published by the EFA. In any event the Commissioner has not taken into account the regulation

by the EFA as it was not relevant at the time of the requests in this case given that it was only established on 1 April 2012.

41. The Commissioner has considered the regulatory mechanisms above that applied to OGAT's financial arrangements at the time of the requests. There appears to be a lack of independent evidence available from such regulators regarding the issues of interest to the complainant and therefore the Commissioner does not consider that the requests can be seen as obsessive.
42. In addition, when reaching the conclusion that the requests are not manifestly unreasonable or obsessive in this instance, the Commissioner has taken into account the fact that OGAT has responded to earlier requests providing information and then subsequently altered its position. In this context the Commissioner does not consider it unreasonable for the complainant to submit further requests seeking clarification and further information on these points.
43. The Commissioner has found the Information Tribunal's comments in *Thackeray vs Information Commissioner (EA/2011/0082 & 0083)* useful when reaching this conclusion. At paragraph 26 the Tribunal stated that, *"the dogged pursuit of an investigation should not lightly be characterised as an obsessive campaign of harassment. It is inevitable that, in some circumstances, information disclosed in response to one request will generate a further request, designed to pursue a particular aspect of the matter in which the requester is interested"*. The Tribunal found, on the facts of that case that *"Mr Thackeray was doing no more, in that chain of requests, than pursuing a legitimate line of enquiry. The request was not one that was so similar to the first request that section 14(2) could have been invoked by the Authority and it was sufficiently distinct from the other requests or chains of request that we have identified that it may not fairly be characterised as the simple re-working of earlier requests"*.

Whether the request has any serious purpose or value

44. The complainant has argued it is the public interest that OGAT disclose information about its legal costs and that it has an obligation to account for its spending of public money and the management of charity funds. He has been instrumental in making public the past financial affairs of OGAT.
45. On the basis of earlier correspondence between the parties, there appears to have been some confusion about whether money was paid into the registered charity Outwood Grange School Fund or the Outwood Grange School Fund (unofficial fund) as listed in the 2009/2010 financial statements published by the Charity Commission. In the Commissioner's

view there is serious purpose and value in the requests which seek to further the complainant's understanding of OGAT's financial transactions and management as well as the reasons for trustees resigning and to ensure transparency. The Commissioner is satisfied that these aims would be furthered if OGAT were to comply with the requests. He is also persuaded that complying with the request regarding legal expenditure would ensure accountability for expenditure of public funds which is also of value.

Conclusion

46. In the Commissioner's view the requests impose a significant burden on OGAT when seen in the context of the ongoing correspondence between the parties. However he has not been persuaded that they are manifestly unreasonable, obsessive or that they have the effect of harassing the public authority for the reasons explained above.
47. OGAT has argued that where the Commissioner concludes that only some or one of the factors considered above is satisfied he should not be prevented from finding that section 14 applies. In support OGAT has cited Independent Police Complaints Commission vs Information Commissioner (EA2011/0222). Paragraph 19 of that decision states that, *"the ICO and the Tribunal should have no hesitation in upholding public authorities which invoke s.14(1) in answer to grossly excessive or ill-intentioned requests and should not feel bound to do so only where a sufficient number of tests on a checklist are satisfied"*.
48. The Commissioner's decision has found that whilst the requests impose a significant burden, this is outweighed by the serious purpose and value of the requests and therefore it would be wrong to find the requests vexatious. He has not reached his conclusion because only one of the factors above is satisfied. The Commissioner notes that in paragraph 20 of the aforementioned case the Tribunal also noted that the requests were *"not just burdensome and harassing but furthermore wholly unreasonable and of very uncertain purpose and dubious value, given the indiscriminating nature of the first request"*. He does not consider that the same applies to the requests in this case which were focussed and had a clear serious purpose.
49. For the reasons given above the Commissioner considers that OGAT was incorrect to refuse to comply with the requests on the basis of section 14(1) of the FOIA.

Right of appeal

50. 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:

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

51. 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.
52. 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

Jo Pedder
Policy Delivery Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

Summary of requests between January and October 2011

Where the request was referred to the Information Commissioner's Office, the case reference number has been provided.

4 January 2011 (FS50378254)

Seven questions including the salary of the principal of OGAT and payments made to him for each of his roles at other schools over the past five years. In addition, the request asks for payments made to Outwood Grange Academy, Outwood Grange Consultancy and any other related business entity over the last five years.

4 January 2011

Four questions concerning the principal's salary as Chief Executive of Adwick Academy and payments made to him in his senior roles at Adwick/North Doncaster Technology College. In addition, the request asks for amounts paid to Outwood Grange Academy and Outwood Grange Consultancy during its involvement at Adwick/North Doncaster Technology College.

8 March 2011

Two questions concerning information the academy holds on monies received from the Outwood Grange Consultancy and from schools or councils where Outwood/the principal has been contracted as an NLE (National Leader in Education) to provide specialist support.

21 March 2011 (FS50389876)

Three questions regarding the principal: how much money he has been asked to repay by Wakefield Council and his response to this.

21 March 2011 (FS50400536)

Seven questions regarding teaching fees, donations made by the consultancy to the school and travel expenses for staff who have worked at other schools.

26 April 2011

One request for all governors' information held relating to the principal and the academy's/Outwood's role as an NLE at other institutions.

26 April 2011 (FS50397294)

One request for information held on payments to a named law firm by the academy since 1 January 2011. This was with respect to services relating to freedom of information requests and press inquiries.

1 July 2011

One request for details of the payment arrangements for NLE (the principal of OGAT) to provide support at St Catherine's High School.

10 August 2011 (FS50419372)

Seven questions regarding payments made into the charity account in 2007/2008 and the running and auditing of this account.

24 October 2011

12 questions regarding the charity, its trustees, minutes of meetings, payments made to trustees, the management committee, its reports from 2006/2007 onwards, payments made to members of the committee from the charity, signatories to cheques.

Further requests

In addition OGAT has demonstrated that in March and May 2011, it replied in detail to a further 20 questions asked by the complainant regarding this matter.

These concerned information about payments for the principal's consultancy work, salary supplements, OGAT's view of the findings of the Wakefield audit, payment the consultancy received from councils in payment for services provided by Outwood Grange staff, details of payments to such staff working at other schools, links with the OGAT family of schools, payments for work undertaken at specific schools and what this has been spent on.