

## **Freedom of Information Act 2000 (FOIA)**

### **Decision Notice**

**Date:** 7 May 2014

**Public Authority:** Activate Learning  
**Address:** Oxpens Road  
Oxford  
OX1 1SA

#### **Decision (including any steps)**

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1. The complainant has requested information from Activate Learning in relation to the approved admissions code of practice or Student Admissions Policy or other terms of reference that are considered in the admissions process to the college.
2. Activate Learning provided some requested information, and stated that further information was not held. The Commissioner's decision is that the outstanding information is not held. He therefore does not require Activate Learning to take any steps to comply with the legislation.

## Request and response

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3. On 17 September 2013 the complainant requested information of the following description from Activate Learning (the "College"):  
*"To ensure all elements of the admissions process are open and transparent please make sure copies of approved admissions code of practice or Student Admission Policy or any other terms of reference in admission are forward to me prior to scheduling this meeting."*
4. On 1 October 2013 the complainant contacted the College to advise that he had received no assistance in his admission application and had not received any admissions policy.
5. On 7 October 2013 the complainant contacted the College again and to advise that he had not received an acknowledgement to his emails.
6. On 14 October 2013 the College acknowledged the complainant's correspondence and asked him to contact the Head of Learning for further assistance.
7. On 21 October 2013 the complainant wrote to the College to advise that he was not satisfied with the lack of response to his FOIA request dated 17 September 2013.
8. On 24 October 2013 the complainant advised the Commissioner that he had not received a response to his request for information dated 17 September 2013.
9. On 7 November 2013 the Commissioner wrote to the College asking for a response to the request to be provided to the complainant.
10. On 22 November 2013 the complainant advised the Commissioner that he had still not received a response to his request.
11. On 23 January 2014 the College provided its response to the request for information and also the request for an internal review.
12. On 24 January 2014 the complainant advised the Commissioner that he was not satisfied with the response he had received to his request as he believed that further information may be held within the scope of his request.
13. On 4 February 2014 the Commissioner issued a decision notice under the previous case reference FS50522438 to reflect the breach of section 10 of the FOIA as the response to the request had not been provided within the required timescales under the FOIA.

## Scope of the case

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14. The complainant wrote to the Commissioner on 6 February 2014 stating he was not satisfied with the response to his request for information dated 17 September 2013. He also advised that he did not consider Activate Learning a valid "public authority" for the purposes of the FOIA.
15. The scope of this case has been to consider whether any further relevant information is held and whether the College has complied with its obligations under the FOIA.

## Reasons for decision

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### **Whether the College is a valid "public authority" for the purposes of the FOIA**

16. Section 3(1) of the FOIA provides that a public authority means:  
*"(a) subject to section 4(4), any body which, any other person who, or holder of any office which –*
  - (i) is listed in Schedule I, or*
  - (ii) is designated by order under section 5 or*  
*(b) a publicly-owned company as defined by section 6.*
17. Schedule I part IV provides that Maintained Schools and other Educational Institutions within England and Wales are "public authorities" for the purposes of the FOIA.
18. As part of his complaint the complainant has advised that he does not accept that Activate Learning is a public authority as he does not accept that this authority is essentially the same organisation he previously dealt with when it was known by the name of Oxford and Cherwell Valley College. He believes the College does not have legal status.
19. As part of its submission to the Commissioner the College has provided documentary evidence from the Department for Business Innovation and Skills which confirms the change of name from the Corporation of Oxford and Cherwell Valley College to Activate Learning on 1 September 2013.

20. The Commissioner is therefore satisfied that Activate Learning is the appropriate public authority for the purpose of this request.

**Whether information is information is held**

21. Section 1(1) of the FOIA states that:

*"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,*

*(b) if that is the case, to have that information communicated to him."*

22. In situations where there is a dispute between the public authority and a complainant about whether the requested information is held, the Commissioner applies the civil standard of the balance of probabilities. The Commissioner must therefore decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches and other explanations offered as to why the information is not held.
23. As part of his investigation the Commissioner has had to consider the nature and scope of the searches undertaken by the College to ensure that there is no additional information which could be construed as coming within the scope of the request.
24. In its response to the Commissioner the College has confirmed that it provided the complainant with a copy of the college's admission policy in January 2014. It explained that due to its re-organisation at the time the request was made it could not be certain that the request had been dealt with correctly as it did not have written evidence of the searches that had been undertaken at this time to locate information that may have come within the scope of the request.
25. It further explained that from verbal enquiry of the staff members involved it had been advised that searches had been made of the electronic database held by the College and also manually held documents which could be considered to potentially come within the scope of the request.
26. The College advised the Commissioner that because of the lack of clarity as to the way in which the request had initially been dealt with and because of the delay in providing a response it had carried out additional searches again in January 2014 to try and identify any documents which may have come within the scope of the original

request. This resulted in some information being identified and provided to the complainant together with an apology for the delay and the inadequate way in which his request had been dealt with.

27. As part of its submission to the Commissioner the College advised that the search terms used included "admission", "admissions", "code of practice", "students admissions" and "policy". Searches were made of both electronic and manual records systems including information held on personal and networked computers. The College maintains that it has conducted all possible searches it believes are within the scope of the original request and no further information in relation to the request is held.
28. In considering the obligations of the College under the FOIA the Commissioner is mindful that the civil standard of the balance of probabilities has to be applied.
29. The Commissioner has taken into account the explanations provided by the College as to the searches it has conducted, the nature of the subject matter itself and how such information is likely to be recorded. Having done so the Commissioner considers that on the balance of probabilities no further information is held.
30. The Commissioner is therefore satisfied that the College has met its obligations under the FOIA and requires no further action to be taken.

## Right of appeal

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17. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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**