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Our ref: 193828  
Your ref: Hoar002/1

31 January 2006

*Dear Nick,*

Thank you for your letter of 3rd January on behalf of your constituent, about the coverage of Academies under the Freedom of Information Act 2000 (the FOI Act).

The FOI Act covers a body if it is listed in schedule 1, or is designated by order under Section 5 or is a publicly owned company. Academies are not listed in Schedule 1 and no bodies have yet been designated by order under Section 5 (which I discuss further below). Academies are not publicly owned companies, since they are not wholly owned by any public authority. Therefore, academies are not public authorities within the meaning of the FOI Act.

For a body to be added to Schedule 1 of the FOI Act it must satisfy both of two conditions. These conditions are laid down by Section 4 of the FOI Act:

- i) That the organisation was established by Crown prerogative, statute, a Government department or the National Assembly for Wales, or a Minister; and
- ii) that appointments to the organisation are made by the Crown, a Government department or the National Assembly for Wales, or a Minister.

No appointments to Academies are made by the Crown, a Government department or the National Assembly for Wales, or a Minister and therefore the second condition is not satisfied and Academies cannot be added to Schedule 1.

Whilst, technically, Academies are not and cannot be added to Schedule 1, it is the Government's intention to consult on their inclusion within the FOI regime by means of powers in the Section 5 of the Act.

Under Section 5 of the Act, the Secretary of State has the power to designate as a public authority any private organisation that appears to him to be performing functions of a public nature. The scope of the power in Section 5 is very wide ranging, enabling the designation of bodies that appear to the Secretary of State to be exercising

functions of a public nature and those that are providing, under contract with a public authority, services whose provision is a function of that authority.

No Section 5 orders have yet been made. We felt that it was important to gain evidence of how FOI has impacted on the bodies that meet the existing criteria, as specified in Sections 4 and 6 of the Act, before taking forward work to extend coverage of the Act under Section 5.

I am enclosing a copy of this letter for you to pass to  
so.

should you wish to do

*Yours sincerely,*

*Cat Ashton*  
**CATHERINE ASHTON**