

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2016

Public Authority: Office of Qualifications and Examinations
Regulation (Ofqual)

Address: Spring Place
Coventry Business Park
Herald Avenue
Coventry
CV5 6UB

Decision (including any steps ordered)

1. The complainant has requested information about an awarding body's regulation of a training company.
2. The Commissioner's decision is that Ofqual failed to provide a response to the request. This constitutes a breach of section 10 of FOIA which requires that a public authority responds to a request within twenty working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To issue a response under FOIA.
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.

Request and response

5. On 7 July 2015 the complainant requested information in the following terms:

"... all information held by Ofqual in relation to the awarding body NCFE, Ascentis, OCR and Highfield regarding the former centre Bright International Training Ltd from date of inception to present date."

6. Following correspondence with Ofqual the complainant refined her request as follows:

"I would like to reduce my request to please request copies of the 88 case files relating to the awarding body NCFE."

7. On 5 October 2015, following further correspondence with Ofqual, the complainant provided further clarification as to the scope of her request:

"My request is for any case files that Ofqual hold in relation to NCFE's regulation of Bright International Training Ltd and NOT of Ofqual regulatory activities. I am also not requesting any information related to any on-going investigations that Ofqual may or may not be carrying out over NCFE.

To be clear I am requesting NCFE case files that relates solely to "Bright International Training Ltd" and not any other centre."

8. The complainant contacted Ofqual on the 14 November 2015 to remind them that she had not yet received a response.
9. On the 25 November 2015 Ofqual wrote to the complainant. It confirmed that it had received her request of 5 October 2015 on 12 October 2015. It explained that it was currently working on providing her with a response but that it was taking longer than expected to extract the information that had been requested.
10. As she had not yet received a response the complainant contacted Ofqual again on 8 January 2016 and asked them to send her the requested information.
11. To date Ofqual have not responded to the request.

Scope of the case

12. The complainant contacted the Commissioner on 16 February 2016 to complain about the way her request for information had been handled.
13. The Commissioner considers that the matter to be decided is whether Ofqual has responded to the request in accordance with the provisions of FOIA by either communicating the information it holds and/or issuing a refusal notice under section 17.

Reasons for decision

Section 10 – time for compliance

14. Section 1(1) of FOIA provides that a person making a request for information to a public authority is entitled to be told whether the information is held and if so, to have that information communicated to them.
15. However FOIA also provides grounds for refusing to comply with section 1(1). These include where the information is subject to one of the exemptions contained in Part II of the Act, where it would exceed the cost limit for dealing with a request as set out in regulations made under section 12 and where the request is either a repeat request or vexatious as set out in section 14.
16. Where a public authority is relying on any of these provisions it is obliged under section 17 to inform the person making the request what those grounds are. If the public authority is relying on an exemption to refuse the request it is, in broad terms, obliged to identify the specific exemption and if it is not obvious, explain why the exemption applies. If that exemption is subject to the public interest test the refusal notice should also set out why the public authority considers the public interest favours maintain the exemption and withholding the information.
17. Both the duty under section 1 to confirm whether information is held and, if so, to communicate that information, and the obligation to issue a refusal notice under section 17 are subject to time limits of twenty working days.
18. The duty to comply with section 1 within twenty working days is set out in section 10. This states that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
19. It is clear from the complainant's submission that she has received neither the information she requested nor a valid refusal notice within the twenty working days.
20. Where a public authority simply fails to provide any response to a request as in this case, the Commissioner's approach is to treat that failure as a breach of section 10.
21. After the complainant had contacted the Commissioner on 16 February 2016 he wrote to Ofqual 29 February 2016 advising it to respond to the request within ten working days. When on 16 March 2016 the complainant contacted the Commissioner again to say she had still not

received a response, he wrote to Ofqual again on 23 March 2016 and informed it that he would be investigating the complainant's concerns.

22. On the 19 May 2016 the Commissioner contacted Ofqual which confirmed that a response had not yet been provided but that one was due to be sent out the following day.
23. It follows that the Commissioner finds Ofqual has breached section 10 and is therefore required to issue a response under FOIA.

Right of appeal

24. 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

25. 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.
26. 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

Rob Mehan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF