

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2019

Public Authority: The Department for Education
Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested information consisting of the responses from members of the public and other stakeholders in relation to the proposals to transfer schools that were part of Wakefield City Academy Trust (WCAT) to other academy sponsors. The Department for Education (DfE) withheld the requested information under section 36 – prejudice to the effective conduct of public affairs. However, during the investigation by the Commissioner the DfE disclosed the information to the complainant.
2. The Commissioner's decision is that the DfE failed to disclose the requested information within the statutory timeframe and consequently breached section 10(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 12 February 2018, the complainant wrote to the DfE and requested information in the following terms:
"Please send me copies of the responses from members of the public – parents, teachers, governors and other "stakeholders" – that the Department received in relation to the proposals to transfer schools that

were part of Wakefield City Academy Trust (WCAT) to other academy sponsors. This should include all correspondence of this nature sent to the relevant email address, but also responses sent by other means (by post, by email or transcripts of recorded telephone communications) that relate to the above.

I appreciate that it would be appropriate for the Department to redact personal details contained in the emails and other correspondence..."

5. The DfE responded on 8 March 2018 and refused to provide the requested information citing the exemptions at section 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the FOIA.
6. The complainant requested a review on 18 April 2018. Following a reminder from the Commissioner, the DfE provided the outcome of the review to the complainant on 7 June 2018. The DfE maintained its original position whilst indicating that it intended to release information in the future.

Scope of the case

7. The Commissioner received correspondence on 23 May 2018 from the complainant about the way his request for information had been handled. He contended that the DfE was using the exemption "unlawfully" because it wanted to withhold the requested information.
8. On 25 October 2018 the Commissioner confirmed that her investigation would consider whether the DfE had correctly withheld the requested information under section 36 of the FOIA.
9. The Commissioner set out the scope of her investigation to the public authority on the same date. Subsequently the DfE disclosed the requested information to the complainant. The information was provided in its entirety except for some third party personal data redactions that the complainant had already accepted.
10. The complainant was then invited to withdraw his complaint but he declined to do so explaining that it was his view that the information had been delayed in order to avoid scrutiny concerning the decision that had been taken. The question of time had been crucial. Therefore he required a decision notice.

11. The complainant was advised that where information has been disclosed either before or during an investigation the Commissioner's policy is to focus solely on the timeliness, not the substantive exemption/s cited.

Reasons for decision

Section 10(1) – time for compliance

12. 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, and
- (b) if that is the case, to have that information communicated to him.”

13. Under section 10(1) of the FOIA public authorities must comply with their duty under section 1(1) promptly and *“not later than the twentieth working day following the date of receipt”*.
14. The complainant submitted his request on 12 February 2018 and was only provided with the requested information on 29 November 2018. Therefore the DfE failed to provide the information within the statutory timeframe and breached section 10(1) of the FOIA.

Right of appeal

15. 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

16. 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.
17. 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

Pamela Clements
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