

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2021

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

Decision (including any steps ordered)

1. The complainant requested data on the number of pupils not engaging with remote lessons at school. The Department for Education ("the DfE") initially relied on section 22 of the FOIA (intended for future publication) to withhold the information, but then reversed itself and said that it held no relevant information.
2. The Commissioner is satisfied that, on the balance of probabilities, the DfE does not hold the requested information and has therefore complied with its duty under section 1(1) of the FOIA. However, in failing to inform the complainant, within 20 working days, that it did not hold the requested information, the DfE breached section 10 of the FOIA.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 30 November 2020, the complainant requested information of the following description:

"Under the FOIA 2000, please provide the total number of children known to have not been engaging with teaching materials while absent from school broken down by school, school type and geographic area since the beginning of the term following the summer break. Schools have been required to submit this information to the DfE. Please provides [sic] this as a xlsx or csv spreadsheet."

5. On 13 January 2021, the DfE responded. It stated that it held the requested information, but refused to provide it. It relied on section 22 to withhold the information as it was intended for future publication.
6. The complainant requested an internal review on 21 January 2021. The DfE sent the outcome of its internal review on 19 February 2021. It now revised its position and said that it did not hold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 23 February 2021 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of her investigation is to determine whether, on the balance of probabilities, the DfE holds any information within the scope of the request.

Reasons for decision

9. 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.*
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
11. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

12. The complainant stated that he had conversations with schools who “say they are obligated to send this information to the DfE” – although he offered no evidence of such conversations or what the schools had actually been asked to provide.

The DfE’s position

13. The DfE stated that it did not hold the requested information because it did not collect this particular data from schools.
14. When the Commissioner queried why it had initially indicated that it did hold the requested information, the DfE responded that:

“We had previously applied this exemption as it was believed that some of the data requested was held via the department’s omnibus survey of pupils and their parents or carers. The survey consists of a panel of pupils and parents, randomly sampled from the National Pupil Database. The panel is regularly surveyed on a range of topics. At various points since August 2020, the survey has asked pupils and parents about engagement with remote learning. Where pupils haven’t been attending school in the period prior to the survey, they have been asked how many hours a day children had typically spent learning.

“On further consideration and review of the questions asked via the surveys, the department found that, while the survey data cited is likely the closest to what was requested, the actual data as requested is not actually collected via the surveys.”

15. Nevertheless, the DfE did carry out searches to satisfy itself that it did not hold the information:

“In terms of searches carried out, which led us to the conclusion that the department does not hold the requested information, we reviewed the information held from the Educational Settings Status (EdSet) form. Education settings complete and submit this data on a daily basis, with this data helping government to: monitor the impact of coronavirus (COVID-19) on settings; focus support more effectively; and keep children safe.

“By reviewing specifications which record all questions included in the survey during the 2020/21 academic year, we found that no such questions were included in the survey through which the information requested would be collected, i.e. no questions related to the “number of children known to have not been engaging with teaching materials while absent from school”. The fact that such questions were not included confirms that the data wasn’t collected via the EdSet daily survey and is therefore not held...

"...We also checked the department's data collection 'master list'. This is a complete list of formal data collections undertaken by the department, providing a searchable database that contains the title, data source and type for each collection. It was confirmed using the 'master list' that the requested information has not been collected and is therefore not held by the department.

We also liaised with colleagues dealing with the policy area surrounding remote education, who would be aware if this was collected at the level of detail requested. These colleagues confirmed that this information is not collected by the department and, therefore, is not held by the department.

16. The DfE also provided two files to the Commissioner which detailed the data that the DfE had been collecting from schools.

The Commissioner's view

17. On the balance of probabilities, the Commissioner is satisfied that the DfE does not hold the requested information.
18. The Commissioner accepts that whilst the DfE may have collected some similar data via its survey, this is not what the complainant asked for. The request seeks totals, whereas the survey only examines a random sample of pupils. The request also seeks breakdowns by school and, even if the survey did record such information, it is unlikely that the sample size is large enough to produce statistically reliable data at that granular level.
19. It is somewhat unfortunate that the DfE "muddied the waters" by claiming in its original response that this information fell within the scope of the request – however it does not alter the fact that the DfE held no relevant information.
20. The Commissioner is satisfied that the DfE has carried out appropriate searches and that the officers who had been consulted would have been fully aware if the DfE was collecting such information. Having viewed the information that the DfE is collecting, the Commissioner notes that nothing within the questions would provide data that would address the complainant's request.
21. It is not clear what conversations the complainant has had and what exactly he has been told about the types of data being collected and by whom. However, no substantive evidence has been put forward to undermine the DfE's assertions.
22. The Commissioner is therefore satisfied that, on the balance of probabilities, the DfE does not hold the requested information.

Procedural matters

23. Section 10 of the FOIA states that a public authority must comply with its duty under section 1(1) of the Act "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
24. In this case, the DfE held no information within the scope of the request and should have informed the complainant of that fact within 20 working days. As it failed to do so, the Commissioner considers that the DfE breached section 10 of the FOIA.

Right of appeal

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

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