

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 April 2012

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

Decision (including any steps ordered)

1. The complainant has requested details of the measures in place to retain data relating to the work of the Department for Education (the "DfE") from the private email accounts of its employees, including civil servants and special advisors, who subsequently leave the DfE. The complainant has not received a substantive response to this request.
2. The Commissioner's decision is that the DfE has breached section 10(1) of the FOIA by failing to respond to the complainant's request promptly or at all within 20 working days. The Commissioner requires the DfE to take the following steps to ensure compliance with the legislation:
 - state which information it holds within the scope of the complainant's request; and
 - communicate the information it holds to the complainant and/or issue a refusal notice in respect of all or the parts of the information it intends to withhold in accordance with section 17 of the FOIA.
3. The DfE 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 19 December 2011, the complainant wrote to the DfE and made the following request:

"...please inform me what measures [the DfE] has in place to retain data relating to the work of the [DfE] from the private email accounts of employees, including civil servants and special advisors, who subsequently leave the [DfE]."

5. The DfE acknowledged this request in an email dated 20 December 2011. However, it did not provide any further response in relation to this request.

Scope of the case

6. On 1 February 2012 the complainant contacted the Commissioner to complain that his request had not been responded to by the DfE.

Reasons for decision

7. Section 1(1) of the FOIA provides 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 the information of the description specified in the request, and
 - b. if that is the case, to have that information communicated to him.
8. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than twenty working days following the date of receipt.
9. In this case, the complainant submitted his information request to the DfE on 19 December 2011. However, other than an acknowledgement email sent the day after the request was made, the DfE has not provided a response to this request. Consequently, the Commissioner finds that the DfE has breached section 10(1) of the FOIA by failing to comply with its obligations under section 1(1).

Right of appeal

10. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

11. 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.
12. 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

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**