

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2012

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

Decision (including any steps ordered)

1. The complainant requested copies of advice or guidance on whether the use of private emails for government business is covered by the Freedom of Information Act. The Commissioner's decision is that the Department for Education (DfE) failed to respond to the request and therefore breached section 10 of the FOIA. The Commissioner requires the DfE to take the following steps to ensure compliance with the legislation.
 - State whether it holds the requested information.
 - Either disclose the information that is held or issue a valid refusal notice compliant with section 17 of the FOIA.
2. 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 Act and may be dealt with as a contempt of court.

Request and response

3. On 21 September 2011 the complainant requested the following information from the Department for Education (DfE):

"Please provide me with any written advice, correspondence or guidance, contained in any format (including emails) and obtained from any source internal or external, on whether emails sent using private email accounts about government business are covered by the Freedom of Information Act."

4. The DfE acknowledged the request on 21 September 2011.
5. As there was no further response from the DfE the complainant repeated his request on 23 October 2011 and again on 8 November 2011.
6. On 8 November 2011 the DfE said it would respond as soon as possible.
7. Despite further reminders from the complainant the DfE did not provide a response to his request.

Scope of the case

8. On 20 February 2012 the complainant complained to the Commissioner that the DfE had failed to respond to his request.

Reasons for decision

9. Section 1 of the FOIA provides a right of access to information held by a public authority. On receiving a request for information the public authority must state whether it holds it and if so provide it unless there is a valid exemption under the FOIA.
10. Section 10 states that a public authority must comply with section 1 promptly and in any event within twenty days of receiving the request.
11. By failing to respond to the request the DfE breached section 10 of the FOIA.

Right of appeal

12. 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

13. 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.
14. 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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