

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 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 a policy document on the future of the careers service. The Department for Education (DfE) refused to provide the requested information under section 35(1)(a) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the DfE has correctly applied section 35(1)(a) to withhold the requested information in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 1 October 2011, the complainant wrote to the DfE and requested information in the following terms:

"Following the email discussions between yourself [DFE official] and [named individual] beginning on 20 July 2011, I understand that you have produced a policy document on the future of the careers service. Please can you provide a copy of this research. AS you will be aware it is a crucial time in the future of the careers service in terms of policy and legislative development. It is vital during this period that we are able to consider information relevant to this. Please also treat this request formally under the Freedom of Information Act 2000."

5. The DfE provided a response to the complainant on 11 November 2011 in which it refused to disclose the information requested on the basis of the exemption contained in section 35(1)(a) FOIA.
6. The complainant requested an internal review of the DfE's decision on 23 December 2011. On 15 February 2012 the DfE wrote to the complainant with the details of the result of the internal review it had carried out. It upheld the application of section 35(1)(a) FOIA.

Scope of the case

7. The complainant contacted the Commissioner to make a complaint about the DfE as it had refused to provide the requested information. The Commissioner has considered whether or not the DfE was correct to withhold the requested information under section 35(1)(a) FOIA.

Reasons for decision

8. Section 35(1)(a) of FOIA states that, "Information held by a government department or by the National Assembly for Wales is exempt information if it relates to- (a) the formulation or development of government policy".
9. The Commissioner has first considered whether the information in question relates to the formulation or development of government policy.
10. The Commissioner takes the view that the formulation of government policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to a minister. Development may go beyond this stage to the processes involved in improving or altering already existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
11. The DfE has explained that careers services for young people were previously provided through the Connections Service which was brought under local authority control in 2008. It explained that a significant amount of its resources were used on its youth support role. Information and advice for adults was provided by the Next Step Service. It explained that Alun Milburn originally advocated changes to careers services in his report of fair access to the professions, 'Unleashing Aspiration: The Final Report of the Panel on Fair Access to the Professions (July 2009)'. He called for schools and colleges to be given

direct responsibility, working with local authorities, for making their own decisions about careers guidance for young people. Delivery through an all-age careers service model was included in pre-election manifestos and following the establishment of the coalition government, policy development to achieve this began. The DfE explained that on 4 November 2010, John Hayes, the Minister of State for Further Education, Skills and Lifelong Learning announced the establishment of an all-age careers service by April 2012, with as much as possible in place by September 2011.

12. It said that DfE and the Department for Business, Innovation and Skills (DBIS) then worked together to develop plans for the new service, including plans for managing a smooth transition from the then current local authority commissioned services for young people. It explained that on 26 March 2012, the DfE published statutory guidance to support schools in planning for the introduction of section 29 of the Education Act 2011 which requires them to secure access to independent careers guidance for pupils in years 9-11. The new duty will be introduced from September 2012.
13. It explained that the DfE and DBIS officials with policy responsibility for careers, commissioned DfE analysts to review the evidence on careers services, as part of its approach to evidence based policy making. The research paper provides an accessible overview of research on types of careers provision, delivery models and the impact of careers services for young people and adults. The paper was discussed at an internal seminar in May 2011. Following discussions between Ministers and officials it was agreed that no further work would be done on the evidence paper. As a result of this decision, plans for publication have been deferred but its content has since been used to inform policy development in this area. It is this research paper which has been requested.
14. The DfE explained that at the time the FOIA request was made in October 2011 the Education Bill was largely complete but policy decisions had not been taken in respect of the content of the statutory guidance. The guidance was subsequently completed and published on 26 March 2012, however as the new duty on Schools does not commence until September 2012, lessons will be learned from how Schools and careers providers respond to the guidance in the intervening months. Finally it explained that on 5 April 2012 DBIS launched the National Careers Service. It said that plans were in place to evaluate all aspects of this policy area during the initial months of operation and this will be used as a benchmark for future policy development in this area.

15. The Commissioner considers that the policy to which the withheld information relates is the development of the careers service. The withheld information is a research paper which was commissioned by DfE and BIS policy officials. He considers that at the time of the request the DfE were in the process of developing its policy in this area as it was still considering the statutory guidance which would underpin the new duties set out in the Education Bill. The Commissioner is also aware that the new duties do not commence until September 2012, and whilst the statutory guidance has now been published, the policy continues to be monitored and developed during this transitional period. The Commissioner therefore considers that the requested information does relate to the development of government policy and therefore falls within the exemption contained at section 35(1)(a) FOIA.

Public Interest Test

16. Section 35(1)(a) is a qualified exemption and accordingly subject to the public interest test. The Commissioner has therefore gone on to consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In *DfES v The Information Commissioner and the Evening Standard* (EA/2006/0006) the Tribunal set out 11 principles that should be used as a guide when weighing up the balance of the public interest in connection with section 35(1)(a). The Commissioner has considered the principles that are relevant to this case.

Public interest arguments in favour of disclosing the requested information

17. The DfE has explained that it recognises that the following public interest arguments favour disclosure of the requested information:
- The publication of an overview of research on the types of provision, delivery and impact of careers services for young people and adults could support assessment of the quality of advice being given to Ministers and subsequent decision making in respect of careers guidance policy in England. This can lead to public contribution to the policy making process becoming more effective.

Public interest arguments in favour of maintaining the exemption

18. The DfE has explained that it believes the following public interest arguments favour maintaining the exemption:

Safe Space

- It is in the public interest that the development of government policy and government decision making can proceed with the relevant parties afforded the necessary space and time to ensure that it is done well.

Chilling Effect

- Ministers and officials need to be able to conduct candid and rigorous risk assessments of policy without there being premature disclosure which might close off options that represent better value for money or curtail Ministers' scope to have full and frank discussions with officials about policy development.

Timing

- The DfE explained that despite the fact that the statutory guidance has now been published, the careers duty does not come into force until September 2012 and it is currently in a critical period where schools are making important decisions about the impact of the new requirement and shaping provision for the future. Furthermore, the consultation on extending the duty is taking place over the next three months and there is already proving to be considerable public interest in this. Recommendations will be made to Ministers in the summer, on the basis of the consultation results to determine whether further developments/amendments are required. The DfE said that robust conversations with Ministers about the continuing development of the policy will continue to take place throughout this period.

Balance of the public interest arguments

19. The Commissioner considers that disclosure of the requested information would enable the public to glean a better understanding of the issues in this area and would thereby further public discussion and debate. This adds weight to the public interest in favour of disclosure.
20. The Commissioner also considers that the future development of the careers service will affect a substantial number of individuals in relation to a very important service and how this is provided and accessed. Again this adds weight to the public interest in favour of disclosure.
21. The Commissioner does however consider that the relevant government policy in this case is still under development and therefore there is a strong public interest in protecting the safe space for Ministers and officials to be able to develop policy of a live issue away from external

scrutiny. However he is mindful of the decision in *DBERR v the Information Commissioner and Friends of the Earth*, in which the Tribunal commented in relation to the need for a private "thinking" space; "This public interest is strongest at the early stages of policy formulation and development. The weight of this interest will diminish over time as policy becomes more certain and a decision as to policy is made public." The Commissioner does consider in this case that the policy was not in the early stages and has therefore reduced the weight attributed to this argument accordingly. The Commissioner does however consider that there is a strong public interest in Ministers and officials being able to discuss issues openly and candidly. If the requested information were disclosed whilst the government policy is still under development Ministers and officials may be less open in their further discussions planned to proceed the public consultation.

22. The Commissioner considers that the timing of the request adds significant weight to the public interest in favour of maintaining the exemption. Whilst the Commissioner accepts that the statutory guidance has now been published, he is aware that the legal duty does not come into force until September 2012. The DfE has confirmed that the policy is still under development prior to this date. Furthermore the Commissioner would highlight that at the time of the request in October 2011 the statutory guidance had not been published.
23. The Commissioner considers that whilst there is a public interest in informing public debate surrounding an issue which will impact a significant number of individuals, he considers that in this case there is a very strong public interest in allowing Ministers and officials the safe space to further develop the policy in question and to be able to continue to effectively discuss issues in a frank and open manner. The Commissioner therefore considers that the public interest in disclosure is outweighed by the public interest in favour of maintaining the exemption in this case.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

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

Pamela Clements
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