

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 October 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 information relating to correspondence between the Department for Education (DfE) and Great Ormond Street Hospital and Ofsted. The DfE said that section 35(1)(a) was applicable in this case but has not provided its public interest considerations to the complainant and therefore hasn't determined where the balance of public interest lies.
2. The Commissioner's decision is that the DfE has breached section 10(1) of FOIA as it has not provided the complainant with a full refusal notice within the statutory time for compliance. Although the DfE has complied with section 17(1) in stating which exemption is being relied upon, it has failed to comply with section 17(3) by failing to communicate the outcome of the public interest consideration within a reasonable time.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The DfE should provide the complainant with a full refusal notice including public interest arguments or it should disclose the requested information.
4. The public authority 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

5. On 15 December 2012, the complainant wrote to the DfE and requested information in the following terms:

- "1. Copies of all communication/correspondence sent between the Department of Education (specifically the Secretary of State's office) and the Chief Executive or any members of the Board of Great Ormond Street Hospital between 1st August 2008 and 1st April 2009.
2. Copies of all communication/correspondence sent between the Department of Education (specifically the Secretary of State's office) and Ofsted relating to the Joint Area Review between 1st October 2008 and 1st January 2009.

In terms of communications this should include (but is not limited to) letters, emails, faxes, memos, minutes of meetings and discussions."

6. The DfE responded on 16 January 2012. It stated that section 35(1)(a) FOIA was applicable in this case however it said it required an extension of time to consider the public interest.
7. On 13 February and 6 March 2012 the DfE wrote to the complainant to explain that it was still considering the public interest in this case.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant explained that she was dissatisfied as she had not been provided with the public interest arguments from the DfE nor had she received a copy of the requested information. The Commissioner has therefore considered the DfE's handling of this request.

Reasons for decision

9. Section 1 of 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. Section 10(1) of the FOIA states that section 1 of the FOIA should be complied with within 20 working days.
11. Section 17(1) states that where a public authority refuses a request for information it must provide the applicant with a refusal notice explaining the exemption or exemptions relied upon. This notice must be provided within the timescale set out in section 10(1), i.e. 20 working days.
12. Section 17(3) states that if a public authority decides that the requested information is exempt by virtue of a qualified exemption, it may extend the time for compliance in order to consider the public interest. The authority may take such time as is “reasonable in the circumstances”, and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
13. Although the FOIA does not define what a reasonable time is, it is the Commissioner’s view that public authorities should aim to complete their consideration of the public interest within the normal 20 working days. In exceptional circumstances the Commissioner accepts that it may require up to 40 working days to complete this consideration, but in no case should it take longer than this.¹
14. In this case the DfE has informed the complainant that it considers that section 35 of the FOIA applies to the requested information. However, it originally advised the complainant that it needed to extend the time for compliance until 2 March 2012. The DfE subsequently contacted the complainant on several occasions, and has continued, on each occasion, to further extend the estimated time as to when it expects to have completed its consideration of the public interest.
15. The Commissioner wrote to the DfE on 4 July 2012 and 17 August 2012 to ask it to provide a full refusal notice, including public interest considerations to the complainant but has not received a response.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_4.pdf

16. Taking into account the amount of time since the request was made, the Commissioner does not consider that the time taken by the DfE to consider the public interest test to be reasonable in the circumstances.
17. Therefore, the Commissioner finds that the DfE has breached section 10(1) of the FOIA. Although the DfE has complied with section 17(1) in stating which exemption is being relied upon, it has also failed to comply with section 17(3) in failing to communicate the outcome of the public interest consideration within a reasonable time.

Right of appeal

18. 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

19. 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.
20. 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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Information Commissioner's Office
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SK9 5AF