

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 December 2013

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

#### Decision (including any steps ordered)

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1. The complainant has requested information broadly concerning Special Advisers' use of Twitter accounts during their official duties.
2. The Commissioner's decision is that the Department for Education (DfE) does not hold information within the scope of the request.
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. On 5 February 2013, the complainant wrote to the DfE and requested information in the following terms:
  1. *"What twitter accounts are Department for Education Special Advisers permitted to use as part of their official duties?"*
  2. *"Since the current government has been in office, has the department been aware of any of its Special Advisers using any other twitter accounts during their working hours? If so which twitter accounts?"*
  3. *"How many times have messages been sent from these other twitter accounts during their working hours and is the Department aware of the content of all of those messages?"*

4. *"Is the Department aware of any messages sent by Special Advisers that may contravene the Special Advisers' code of conduct? If so could I have copies of such twitter messages?"*
5. The DfE responded on 1 March 2013. It provided a response to request 1. However, for the remaining requests, it explained the information was not held.
6. Following an internal review the DfE wrote to the complainant on 24 May 2013. It confirmed its original position that it does not hold information within the scope of the request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 13 June 2013 to complain about the way his request for information had been handled. Specifically, the complainant asked the Commissioner to investigate the DfE's response to request 2.
8. The Commissioner has to consider whether the DfE holds information within the scope of request 2.

### **Reasons for decision**

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9. During the Commissioner's investigation into this complaint, the DfE raised the possibility that the request for information was not valid for the purposes of FOIA. The Commissioner has therefore had to consider whether the request for information was valid.
10. The Commissioner notes that any genuine attempt to describe the information requested will be enough to trigger the Act, even if the description is unclear, too broad or unreasonable. Essentially any written question for recorded information to a public authority is technically an FOI request.
11. The Commissioner disagrees with the DfE and considers that in the circumstances of this case, the request for information should be construed, for the purposes of FOIA, as a valid request for the information concerning the use of Twitter accounts by Special Advisers. The Commissioner will therefore now consider whether the requested information is held by the DfE.
12. Section 1(1)(a) of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by

the public authority whether it holds information of the description specified in the request.

13. Where there is a difference between the amount of relevant information identified by a public authority and the amount of relevant information that the complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of proof, the balance of probabilities. The Commissioner must decide whether on the balance of probabilities the public authority holds (or held at the time of the request) any information which falls within the scope of the request.
14. The Commissioner understands that the requests for information were made after allegations that Special Advisers within the DfE contributed to or had control of the Twitter account @toryeducation. The DfE has confirmed that it has one Twitter account for conducting official business (@educationgovuk) which is operated by officials from the DfE's Communications Division. The DfE also confirmed that the Communications Division determines the content that is tweeted.
15. The complainant has argued that the DfE must hold information that would answer request 2. He also explains that the DfE stated to him that the Permanent Secretary, the Cabinet Secretary and the Secretary of State have all asked for evidence relating to the allegations raised in the media. He therefore argues that it is inconceivable that nobody within the DfE has already made enquires and obtained information required to answer his request 2. He further argues that internet usage within departments will be monitored and recorded and therefore the DfE would hold information within the scope of his request.
16. During his investigation, the Commissioner asked the DfE what searches had been carried out for information falling within the scope of request 2 and whether any information relevant to the scope of the case had been destroyed. The Commissioner also asked the DfE whether it had carried out any kind of investigation into Twitter usage (irrespective of whether this flowed from the media coverage) and he asked it to confirm what specific department within DfE monitors the usage of Twitter.
17. The DfE explained that it believed no reasonable searches could be carried out in relation to the request. It argued that despite the allegations reported in the media, there was no evidence that advisers (or anyone else) were using Twitter accounts (other than @educationgovuk) to conduct government business. The DfE explained that its 'Social Media guidance for Civil Servants' allows civil servants to use social media in their personal capacity and in their own time, subject to obligations in their terms and conditions of employment. It stated that Special Advisers are also permitted to undertake political activity,

subject to additional obligations in the Code for Special Advisers. The DfE then confirmed that it would only have an interest in tweeting by civil servants in their personal capacity, or in tweeting by Special Advisers in their political capacity, if there were some evidence of breach of the relevant obligations under the employment contract or relevant code.

18. The DfE explained that at internal review, it considered again whether there were any searches it could carry out. It confirmed with its IT department that it does not monitor Twitter usage beyond its official account and it does not monitor the log-ins for @educationgovuk or any other accounts. It therefore argued that this confirms its view that there were no searches it could carry out for information falling within the scope of the request.
19. The DfE also confirmed that at internal review it clarified with the Principal Private Secretary and Permanent Secretary's office that no investigation was conducted by the DfE into the Special Advisers' Twitter usage. It explained that it was not aware of any basis for an investigation into inappropriate Twitter usage.
20. The DfE confirmed that no information falling within the scope of the request had been deleted or destroyed.
21. During the investigation, the DfE confirmed it held information which was released in response to a previous FOI request concerning Special Advisers commenting about certain Twitter accounts, albeit to reject allegations about their involvement. The DfE explained that it considered that this information did not fall within the scope of the request. The Commissioner accepts this conclusion.
22. The Commissioner notes that, at first glance, there may be an expectation that the DfE would hold information within the scope of the request. However, given the terms of the request and the submissions he has received, the Commissioner considers, on the balance of probabilities, that the information requested is not held by the DfE.

## Right of appeal

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23. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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**