

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 February 2014

**Public Authority:** Council for the Curriculum Examinations & Assessment

**Address:** 29 Clarendon Dock  
Clarendon Road  
Belfast  
BT1 3BG

#### **Decision (including any steps ordered)**

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The complainant has requested information from the Council for the Curriculum Examinations & Assessment ("CCEA") regarding checks undertaken for GCE Mathematics examination papers. CCEA provided the complainant with all information it held relevant to his request other than certain personal information which was redacted from the information provided, citing section 40(2) of FOIA as a basis for non-disclosure. The complainant had no issue with the redaction, however he considered that CCEA held more information than that which it provided to him. The Commissioner's decision is that CCEA has provided the complainant with all information it holds within the scope of his request other than the withheld redacted information. Therefore, the Commissioner requires no steps to be taken.

## Request and response

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1. On 16 September 2012, the complainant wrote to CCEA and requested information in the following terms:-
  1. copies of all the external correspondence relating to Mathematics in summer 2012, at GCSE, Additional Maths and A-level.
  2. copies of all internal communications relating to the A-level C4, M1 and M4 papers, and the Additional Mathematics paper 2 (Mechanics and Statistics).
2. In CCEA's Action Plan, in the update w/e 18.5.12 of the Monitoring grid, items C7, C8 and C11 refer to items which [name redacted] identified as not being available to him. For each of these I would like to request under the FoI Act:
  3. copies of the documents which CCEA say they now have.
  4. copies of whatever documentation exists of the review process which turned these items up.
  5. copies of the correspondence with [name redacted] in relation to these three items, where his report identifies these documents as not being in the places that CCEA now simply assert that they were in.
3. CCEA wrote to the complainant on 2 October 2012, seeking clarification of the information sought in parts 1 and 2 of his request. The complainant responded on 4 October 2012. CCEA provided its response to the complainant on 19 October 2012. That response provided some information relevant to parts 1 and 3 of the complainant's request - some of that information (names of individuals) was redacted as CCEA stated that it was exempt from disclosure under section 40(2) of FOIA. CCEA stated that it did not hold information relevant to parts 2 and 4 of the request and provided some information relevant to part 5.
4. The complainant wrote to CCEA on 25 October 2012, seeking further information to clarify some aspects of CCEA's response. CCEA replied to that letter on 26 October 2012, providing further clarification in relation to outstanding issues. The complainant requested an internal review of CCEA's decision on 7 December 2012. The response to that internal review request was issued on 11 January 2013. The reviewer provided some further clarification to the complainant.

## **Scope of the case**

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5. The complainant contacted the Commissioner on 16 February 2013 to complain about the way his request for information had been handled. He specifically stated that he believed CCEA ought to hold more information within the scope of his request and asked the Commissioner to investigate this. The Commissioner has considered this issue in his investigation.

## **Reasons for decision**

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### **Does CCEA hold any further information relevant to the complainant's request?**

#### **Section 1**

6. Section 1(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.
7. The Commissioner has considered whether CCEA has complied with section 1 of FOIA.
8. On 19 September 2013, the Commissioner asked CCEA the following questions to determine what information it held that was relevant to the scope of the request:
  - Was any further recorded information ever held, relevant to the requested information, by CCEA or anyone on behalf of CCEA?
  - If so, what was this information? What was the date of its creation and deletion? Can CCEA provide a record of its deletion/destruction and a copy of CCEA's records management policy in relation to such deletion/destruction? If there is no relevant policy, can CCEA describe the way in which it has handled comparable records of a similar age?
  - Is there a reason why such information (if held or ever held) may be concealed?
  - What steps were taken to determine what recorded information is held relevant to the scope of the request? Please provide a detailed account of the searches that you have conducted to determine this.

- If the information were held would it be held as manual or electronic records?
  - Is there a business purpose for which the requested information should be held? If so what is this purpose?
  - Are there any statutory requirements upon CCEA to retain the requested information?
  - Is there information held that is similar to that requested and has CCEA given appropriate advice and assistance to the applicant?
9. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency*<sup>1</sup> in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is the test the Commissioner will apply in this case.
10. In discussing the application of the balance of probabilities test, the Tribunal clarified that test required consideration of a number of factors:
- the quality of the public authority's initial analysis of the request;
  - the scope of the search that it decided to make on the basis of that analysis and the thoroughness of the search which was then conducted; and the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light.
11. The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.

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<sup>1</sup> EA/2006/0072

12. The Commissioner is also mindful of *Ames v the Information Commissioner and the Cabinet Office*<sup>2</sup>. In this case Mr Ames had requested information relating to the "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the dossier was "*...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what...*" However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not "*...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one...*" Therefore the Commissioner is mindful that even where the public may reasonably expect that information should be held this does not necessitate that information is held.
13. On 14 October 2013 CCEA responded to the questions detailed at paragraph 8 above. It explained that the complainant had had received all recorded information held by CCEA within the scope of those requests. No relevant recorded information was withheld by CCEA.
14. CCEA explained to the Commissioner that any relevant information would be held by CCEA electronically, as any information coming in via paper copy or e-mail would be transferred to an electronic log. It specified a number of individuals and teams which it had questioned in order to ascertain whether they held any information relevant to the complainant's request. It explained that any such information held by those individuals and teams was provided to the complainant, and detailed where this was the case. CCEA holds no further information other than that which has been redacted and withheld under section 40(2) of FOIA.
15. The Commissioner has considered CCEA's explanation of its search procedures and has concluded that these were thorough and that CCEA took all reasonable steps to ascertain what recorded information, if any, it held which was relevant to the complainant's request. CCEA explained to the Commissioner that it is a member of the Joint Council for Qualifications and that it is required by the regulations of that Council to offer a feedback mechanism to examination centres in relation to question papers. CCEA complies with this requirement through the Subject Comments Logs. CCEA informs the Commissioner that it has provided the complainant with all information within the scope of his request by way of the spreadsheet containing the full Subject Comments Log for GCE Mathematics. This had previously been provided to the complainant minus comments made by the

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<sup>2</sup> EA/2007/0110

complainant himself. Therefore, CCEA considers that it has provided all advice and assistance to the complainant that it is able to. The Commissioner is satisfied that there was no further information other than the withheld information within the scope of the complainant's request held by CCEA at any time.

16. In reaching a conclusion in this case, the Commissioner has taken into account the responses provided by CCEA to the questions posed by him during the course of his investigation. The Commissioner is also mindful of the Tribunal decisions highlighted at paragraphs 12 and 15 above. The Commissioner considers that on the balance of probabilities CCEA holds no further recorded information relevant to the scope of the complainant's request.

## Right of appeal

17. 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:

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

18. 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.
19. 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 .....**

**Rachael Cragg**  
**Group Manger**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**