

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 January 2014

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

Decision (including any steps ordered)

1. The complainant requested information about care requirements for children. The Department for Education (DfE) did not initially consider the request under the FOIA. It provided some general information and directed the complainant to publications and websites where more information it considered relevant was publically available. During the Commissioner's investigation the DfE acknowledged the request as an FOIA request. It said that it did not hold the information and cited section 21 of the FOIA (information accessible by other means).
2. The Commissioner's decision is that, on the balance of probabilities, the DfE does not hold the requested information. The Commissioner considers that the DfE contravened the requirements of section 1 and 10 of the FOIA in the handling of this request.
3. He also considers that the DfE incorrectly cited section 21 as it does not hold the requested information that would be exempt from disclosure under this section.
4. The Commissioner does not require the DfE to take any further action.

Request and response

5. On 31 May 2013, the complainant wrote to the DfE and requested information in the following terms:

"I am writing to request a copy of any policy documents / training materials which raise awareness / the principles which you take into consideration when assessing the care requirements for a child.

The care requirements I raise are

"who is a suitable carer"

"What might make an unsuitable carer"

"when you deem it suitable to remove a child from their parent"

"is it in the child's best interest to remove a child from their mother"

"is it in the child's best interest to remove a child from their father"

"mental health implications of removing a child from the stability of their home life"

(note: this is not a full list of my requested information, but just to highlight the type of information I am requesting.)

Specifically, in addition to the above, I wish to know:

1) If the parents are "fit" to care for a child... is it in the child's best interests to remove the parents from the child's life - this includes information on circumstances IE: immigration, personal finances, personal health etc.

2) Is it in the child's best interest to alter a child's current living situation if it is not necessary...

3) What implications on a child's health can arise from changes to a child's home environment."

6. The DfE responded on 17 June and provided the complainant with general information it considered relevant to their request and a link to an online publication where they could find more information it considered would be relevant to their request.
7. The complainant was not satisfied with the response and requested an internal review. The DfE told the complainant on 8 July that it was not treating their request as a request for information under the Freedom of Information Act because the information was already publically available online. It did not therefore intend to carry out an internal review.

8. The complainant nonetheless made two further requests for an internal review. On 26 July the DfE again explained that it had not considered the request as an FOIA request – because of the reason given at paragraph 7 - and did not intend to carry out a review. It directed the complainant to online departmental publications it considered to be relevant to the complainant's request, and cited the exemption under section 21 of the FOIA (information accessible by other means). The DfE told the complainant that its response and reasoning would be the same if it were to treat the request as an FOIA request.

Scope of the case

9. The complainant contacted the Commissioner on 26 July 2013 to complain about the way their request for information had been handled.
10. After contact with the complainant, the Commissioner focussed his investigation on whether or not the DfE held the requested information and whether it had been correct to cite section 21. He also considered the DfE's handling of the request more broadly.

Reasons for decision

11. In its submission to the Commissioner, the DfE acknowledged that when it received the request, it should have recognised it as a request for information under the Freedom of Information and handled it accordingly.
12. Section 1 of FOIA provides 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."
13. The DfE initially provided the complainant with some information it considered relevant to their request and directed them to information publically available online that it judged would also be relevant.

14. Following intervention from the Commissioner, the DfE handled the request in line with the FOIA, considering it again to determine whether or not it held the requested information.
15. In its submission to the Commissioner, the DfE said that it did not undertake a search for the information as it does not hold it internally. However, it did consider the request again and remains satisfied that it does not hold information on "*assessing the care requirements for a child*". This is because although the DfE is the lead Department on policy concerned with children in care, decisions on assessing the care requirements of children are carried out at local level.
16. The care arrangements for individual looked-after children are determined by local authorities working alongside the family courts, on a case-by-case basis, and in accordance with the Children's Act 1989 and the relevant regulation and guidance.
17. The key document to which the DfE directed the complainant is '*Working Together to Safeguard Children (2013)*¹'. This provides core legal guidance around safeguarding vulnerable children. The DfE argues that it is intended to provide a national framework within which agencies and professionals at local level – individually and jointly – draw up and agree on their own ways of working together to safeguard and promote the welfare of children, including looked after children.
18. When a public authority claims the information is not held, the Commissioner decides whether this is the case on the balance of probabilities. He reaches a decision based on the adequacy of the public authority's search for the information and any other reasons explaining why the information is not held, such as there being no business need to record it.
19. In this case, the Commissioner has decided that on the balance of probabilities the DfE does not hold the specific information requested. He agrees that the DfE generates high level policy concerned with children's welfare but that decisions on children's care needs are taken at a local level on a case by case basis.

¹ [Working together to Safeguard Children \(2013\)](#)

20. The Commissioner recognises that the DfE acknowledged in its submission that by not handling the request as an FOIA request, it had contravened section 1 of the Act by not clearly informing the complainant that it did not hold the information they had requested.
21. Section 10 of the FOIA provides that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."
22. By failing to treat the information request as an FOIA request, the DfE also failed to provide the complainant with a satisfactory response within 20 working days.

Other matters

23. The DfE had told the complainant that it was not treating their request as an FOIA request as the information was already available online, and cited the exemption under section 21 of the FOIA.
24. Section 21 says that information is exempt from disclosure if it is accessible to the applicant by other means.
25. The DfE would have been correct to cite this exemption if it held the requested information and the information was already publically accessible in the online publications and websites to which it had directed the complainant.
26. The Commissioner recognises that the DfE was being helpful in directing the complainant to online information that it considered would be relevant to their request.
27. However, the DfE says, and the Commissioner agrees, that it does not hold the specific information that was requested, so the section 21 exemption cannot be engaged.

Right of appeal

28. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
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SK9 5AF