

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 February 2014

Public Authority: Department for Education (the "DfE")

Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested information to the DfE relating to the most recent publications which outlines the slogan "Breast is Best". The DfE stated that the information requested is not held.
2. The Commissioner's decision is that the DfE does not hold information within the scope of the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 11 August 2013, the complainant wrote to the DfE and requested information of the following description:

"Since the public health minister Tessa Jowell first launched a campaign in May 1999 which was aimed at encouraging more mothers to breastfeed their babies... There have been a number of campaigns by the NHS / DoH / DfE outlining the slogan "Breast is Best" referring to the fact that it is in fact in a baby / child's best interest to be breast fed.

1) Can you please provide me with the most recent publications which outline this fact, which are easily accessible. For example: (a) Advertisement / Video's, (b) Posters, (c) Leaflets.

I am happy to be directed to an Internet URL such as YouTube for

videos. However, should you require my postal address to ease the release of the information then I am happy to provide such information to yourself.

I would however, prefer the release to be in a digital format if this is possible - but with the obvious size of Videos ETC, I assume it would be easier to post a CD/DVD of the video files).

2) As the government actually make the statement that "Breast is Best", (a) are there any reports held by yourselves that outline this fact. (b) if so, can you please provide me with a copy of such reports.

I am aware that this information may well be produced by the DoH. However, as the DfE is responsible for EDUCATION, it seems clear that publication of leaflets / flyers ETC for SureStart centres who educate parents would be the responsibility of the DfE."

5. The DfE responded on 15 August 2013. It stated that the information requested is not held by the DfE. It advised the complainant to contact the Department of Health (the "DoH") and provided him with contact details for the DoH via a link.
6. Following an internal review the DfE wrote to the complainant on 25 September 2013. It upheld the original decision that it does not hold the information he requested.
7. The DfE explained to the complainant that although the DfE's website makes some references to breastfeeding and directs the reader to the DoH, it does not produce any adverts, videos, posters or leaflets on the issue (as requested in point 1 of the complainants request).
8. In response to point 2 of the request, the DfE confirmed that it does not hold any reports making the statement "Breast is Best". It referred the complainant to its website which the DfE stated contained reports about breastfeeding and a number of relevant publications which include links to this subject.
9. On the same day, the complainant expressed his dissatisfaction to this response from the DfE and he re-iterated that his request focuses on "*the fact that breast feeding is in the best interests of a child*". The complainant stated he is certain that the DfE does hold information asserting this fact.

10. On 16 October 2013 the DfE stated that after considering the complainant's latest letter, it had nothing to add to its response of 25 September 2013. It informed him that the DfE had concluded the internal review of his request and advised the complainant to appeal to the Information Commissioner's Office if he is unhappy with the decision.

Scope of the case

11. The complainant contacted the Commissioner on 16 October 2013 to complain about the way his request for information had been handled.
12. The Commissioner has to consider whether the DfE holds information within the scope of request.

Reasons for decision

13. 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". In this case the DfE has stated that it does not hold the requested information.
14. During the Commissioner's investigation into this complaint, there was evidence to show that the complainant had been provided with his requested information by the DoH.
15. The complainant acknowledged this but he believes that the DfE did not follow the terms of the FOIA and that it holds relevant information which it refuses to release. He stated that although the DoH had provided him with "*useful information*", he believes that "*a substantial amount more is held by the DfE.*"
16. The Commissioner asked the complainant to clarify the information which he believes the DfE holds and which it is refusing to disclose.
17. The complainant clarified that his request was for the information that the DfE stores which outlines the fact that breastfeeding is in the best interests of a child. He stated that despite the DfE providing him with a number of links, he believes that the DfE still holds information that is within the scope of his request.

18. Following the Commissioner's request to the DfE for written submissions, the DfE clarified how it had interpreted the scope of the request as: *"The Department has interpreted the first part of the complainant's request as being for copies of advertisements, videos, posters or leaflets produced under the slogan of "Breast is Best" or advocating breastfeeding."* It confirmed that the DfE had not produced any material relating to the first part of the request and that it does not hold any such material.
19. The DfE explained that it had made clear to the complainant that while local Sure Start Children's Centres ('SSCCs') may publish their own leaflets or flyers which make reference to breastfeeding, such publications would not be cleared, or directly funded by the DfE. It stated that the DfE does not produce its own leaflets or flyers for SSCCs.
20. In connection with the second part of the complainants' request, the DfE interpreted this to be connected with reports making the statement "Breast is Best." The DfE confirmed that its initial searches did not produce these reports.
21. The DfE explained to the Commissioner how the links to information provided in correspondence to the complainant, were considered as information which falls within the scope of the request. The link which the DfE had provided to the complainant following the internal review did have material which the DfE stated was produced jointly with the DoH officials and the text in this material referring to breastfeeding was produced by DoH officials. The DfE added that it had provided this information in an effort to be helpful to the complainant *"by signposting him to material that may be of interest to him."*
22. The DfE confirmed that it does not hold information on either reports or the most recent publications outlining the slogan "Breast is Best" which refer to the fact that it is in a baby / child's best interest to be breast fed. The DfE explained that it was the DoH who has policy responsibility for promoting the Government's approach to breastfeeding. It added that although the DfE's website makes some references to breastfeeding and that it directs the reader to the DoH, it specified that the DfE does not produce any adverts, videos, posters or leaflets on the issue.
23. The DfE stated that it was aware that the complainant had made numerous requests for information via the whatdotheyknow.com website to Government Departments, other councils and Agencies. The DfE had informed the Commissioner that the complainant had received a comprehensive response from the DoH following an identical request

which he had made to the DoH and with which the complainant was content.

24. The DfE explained that there was nothing that it could add to the material already provided to the complainant by the DoH.
25. Following an internal review meeting, the DfE did acknowledge that its website does make references to breastfeeding and informed the complainant of this. However, the DfE explained that the review panel concluded that making factual statements on the web about breastfeeding did not constitute "holding reports" making the statement that "Breast is Best". It stated that it did not consider the factual references on the DfE website to be within the scope of the request.
26. The DfE maintained that it had endeavoured to assist the complainant by providing him with related information, links and contacts to the DoH, the "*lead Department in this area*".

Conclusion

27. The Commissioner recognises that the DfE had tried to help the complainant in directing him to online information that the DfE considered to be relevant to his request.
28. However, the Commissioner considers that, based upon the submissions provided by the DfE and the complainant and given the clear scope of this request, on the balance of probabilities the information requested is not held by or on behalf of the DfE.

Right of appeal

29. 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

30. 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.
31. 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
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