

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2015

Public Authority: Oxford Cambridge and RSA Examinations
Address: 1 Hills Road
Cambridge
CB1 2EU

Decision (including any steps ordered)

1. The complainant has requested from Oxford Cambridge and RSA ("OCR") information concerning a statement that was made by an employee at the OCR about the change in the English Literature GCSE curriculum.
2. The Commissioner's decision is that OCR has provided the complainant with all the recorded information that falls within the scope of the request.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 26 June 2014, the complainant wrote to OCR and requested information in the following terms:

"I now request the following information under the Freedom of Information Act:

- *All documents including, but not limited to, minutes notes, memoranda, emails and policy documents relating to the statement reported in the Sunday Times (dated 25th May 2014) and attributed to Mr Paul Dodd implying that changes in the English Literature GCSE curriculum were as a result of pressure from the Education Secretary, Michael Gove and/or the Department for Education;*
- *For the avoidance of doubt I am requesting sight of all materials both internally and externally generated leading up to Mr Dodd's statement and all documents generated as a reaction to it".*

5. OCR responded on 22 July 2014. It stated that it held no recorded information within the scope of the request. However, in order to be helpful it directed the complainant to a document on the Department for Education's (DfE) website titled 'Subject Content and assessment objectives for GCSE's in English Literature'. It explained that this publication sets out the learning outcomes and content coverage required for GCSE specifications in English Literature and from the document, Awarding Organisations create their specification. OCR also explained that on this website, the complainant could view the Government's response to the consultation on the subject content for the new GCSE in English Literature.
6. On 10 August 2014 the complainant returned to OCR. He argued that "*it is not credible that there were no internal communications at OCR no dialogue with the Government and no correspondence between OCR and the press or public following the widespread reaction to Mr Dodd's words*". The complainant subsequently repeated the request he made on 26 June 2014.
7. OCR responded on 18 September 2014. It maintained its position that it held no recorded information that fell within the scope of the request. Specifically it confirmed that it did not have any documentation between itself and the Government, there was no correspondence between itself and the Government and no meetings took place. It also confirmed that after the press release, a number of journalists phoned OCR but it held no record of these conversations.
8. On 5 October 2014 the complainant returned to OCR and expressed dissatisfaction with the responses he had received. An internal review was carried out and the outcome was sent to the complainant on 10 October 2014. OCR disclosed some internal correspondence which it considered to fall within the scope of the request. It also confirmed that no further information within the scope of the request was held.

Scope of the case

8. The complainant contacted the Commissioner on 16 October 2014 to complain about the way his request for information had been handled.
9. Specifically the complainant argued that OCR would hold recorded information that fell within the scope of his request.
10. The Commissioner has therefore had to consider whether OCR holds any further recorded information sought by the complainant.

Reasons for decision

11. 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".

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

13. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

14. The complainant disputed OCR's claim that he had received all recorded information within the scope of his request.

15. The Commissioner has investigated the complaint by returning to OCR and asking it a number of questions in order to determine whether OCR holds any recorded information sought by the complainant. When doing so, the Commissioner took into account the arguments raised by the complainant which supported his position that recorded information would be held.

16. The Commissioner asked OCR to detail the searches it had carried out and why these searches would have been likely to locate the requested information.

17. OCR explained that every time that it received a request from the complainant, it would contact the senior management team in order to determine whether it held any information within the scope of the request. OCR stated that each time it asked the senior management team whether it held any recorded information, it confirmed that no information was held.

18. The Commissioner returned to OCR and explained that he needed further detailed submissions from it in order to be satisfied on the

balance of probabilities that the request information was not held. Specifically he asked OCR to address the following two questions:

"1. From a neutral perspective, it would seem reasonable to assume that Mr Dodd's statement was directly informed by discussions with Mr Gove and, or the DfE. In this regard, I am not aware of anything in the Awarding Organisation specification itself that would lend support to the statement. I would therefore be grateful if you could explain from what information Mr Dodd's statement derived, or is likely to have derived.

2. It would also be reasonable to assume that the OCR would hold information generated as a reaction to the statement. For example this could include complaints from the public or requests from the media for interviews. I would therefore appreciate it if you could describe the searches that have been carried out in order to determine that no recorded information has been generated as a consequence of Mr Dodd's statement".

19. In response to 1, OCR explained that the matter had been discussed with Mr Dodd. OCR confirmed that Mr Dodd did say that the Secretary of State was disappointed that more than 90% of candidates just read Of Mice and Men. However OCR explained that this was interpreted in the press as Mr Gove did not like Of Mice and Men.
20. OCR considered that the statement Mr Dodd made was nothing new. It explained that the Secretary of State made the comments in 2011 and again in 2013. OCR argued that the internal correspondence that it had provided to the complainant supported this and also provided him with articles written in 2011 and 2013 when the comments were made by the Secretary of State.
21. OCR stated that Mr Dodd (the Director concerned with General Qualification reform) attended a series of discussions with the DfE regarding the content of the qualifications as OCR was seeking greater flexibility within the qualification. OCR confirmed that statements were made by civil servants in these meetings about Mr Gove's views which were already in the public domain. OCR confirmed that these meetings were not minuted. OCR explained *"Mr Dodd's statement was not directly informed by discussions with Mr Gove and or the DfE, the views of Mr Gove on this matter were already known and had been reported on, Mr Dodd responded to a question which was then interpreted differently"*.
22. In response to the Commissioner's second question, OCR explained *"the Secretary of State's views on this subject were already known so the news story did not generate a huge amount of interest for the public and we did not have any complaints from the public, Members of staff are*

not permitted to discuss any OCR business with the media and we have a code of conduct in place for this”.

23. OCR explained that Mr Dodd is permitted to speak to the press freely on this matter and will have done so without notes or appointments being made. It explained that other than this, it has a Public Affairs division which respond to media requests. It confirmed that this division has undertaken a search and all information that was located has been disclosed to the complainant. It further noted that due to the relationship that the Public Affairs division has with the media, there will have been telephone conversations with the media but these were not documented or recorded.
24. ORC concluded by stating that its specification along with all other Awarding Organisations specifications are created from the DfE's subject content document, *"at no time did the Secretary of State discuss directly with OCR subject content or any other matter relating to this request”.*
25. The Commissioner acknowledges the complainant's arguments and why he considers that recorded information would be held by OCR. However, based on the submissions provided by OCR, the Commissioner is satisfied that on the balance of probabilities the requested information is not held.

Right of appeal

26. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

27. 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.
28. 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 Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF