

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2016

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

Decision (including any steps ordered)

1. The complainant has requested from the Department for Education (the 'DfE') information relating to the Teachers' Superannuation ('TAVC') and its members.
2. The Commissioner's decision is that the DfE does not hold the requested information. Therefore, she does not require the DfE to take any steps.

Request and response

3. On 21 February 2016 the complainant wrote to the DfE and requested information in the following terms:
 - a. *"Please supply a copy of the With Profits Fund document that was available to TAVC member investors in 2000 or confirm that no such document was available in 2000"*
 - b. *You claim that the Teachers' Superannuation (AVC) Regulations 1994 has been sent to me but I have no record or copy of this. Please state when this was sent and in any case I request that you re-send this document*
 - c. *I confirm that I have what I believe is The Deed of Agreement between the DfE and Prudential July 1998 (front cover missing from my copy) but this was sent without Schedule B.*

Please confirm that the document I hold was relevant to my membership throughout 2000, 2010 and supply the missing schedule B.

- d. You have stated that the Secretary of State for Education is responsible for investing member's contributions. You have presented an unexplained link to the Government Actuary Department and Treasury whilst at the same time Prudential oversee the With-Profits Fund and pay annuity rates at a rate decided by them self.*
- i. Please explain the role of the Actuary Department with regard to the TAVC and its members*
- ii. Please explain the role of the Treasury Department with regard to the TAVC member contributions*
- iii. The Secretary of State for Education invests TAVC member contributions. Please explain how claimant members are refunded / paid their contribution from this fund*
- iv. If TAVC members contributions are placed in an investment fund by the Secretary of State for Education and these are not audited. Does the Government Treasury place these monies into the Treasury for wider use as the Government sees fit. In other words that it is a form of taxation against TAVC members?*
- a. Does the DfE pay Prudential for running the TAVC contract? If so, what is the annual fee 2000, 2015 and what is the cost per member? Please show any paperwork that members receive regarding this contribution.*
- b. TAVC members were encouraged and advised to invest in the With-Profits Fund (indeed this is the DfE's default Fund). You reveal that Prudential operates this fund. Is this fund outside of the contributions invested by the Secretary of State for Education and totally separated from any other fund?*
- i. Please explain why this fund is unprotected by the DfE and not paying above market levels with profits added.*
- ii. Do TAVC members who are advised to invest in the With-Profits Fund also contribute toward the funds invested by the Secretary of State for Education? If yes, where are members told this in paperwork given to members at the point of investment?"*
- 4. On 18 March 2016 the DfE responded. In relation to part (a) of the request, the DfE stated that it does not hold this information. In relation to part (b) the DfE said that this information is available on the*

legislation website and to part (c) of the request, the DfE provided the information.

5. The DfE did not provide responses to the remaining parts of the request, it argued that it does not consider the questions fall under the FOIA criteria. Therefore the DfE did not provide answers to these questions.

Scope of the case

6. The complainant contacted the Commissioner on 21 March 2016 to complain about the way his request for information had been handled.
7. During the investigation, the Commissioner asked the complainant on 4 April 2016 to confirm his latest request. It was explained to the complainant that the investigation would focus on whether the DfE holds only information falling within the scope of part (a) of the request. The complainant did not dispute this.
8. In regards to part (b), following a search on the Legislation website for information, details were located relating to this part of the request. Regarding the remaining parts of the request, the questions do not fall under the FOIA. The complainant accepted this and said that he would return to the DfE with his questions reworded.
9. The Commissioner therefore considers the scope of the case is to determine whether the DfE holds any information falling within the scope of part (a) of the request.

Reasons for decision

Section 1 – information not held

10. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
11. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of proof, the balance of probabilities.

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

The DfE's position

13. The DfE was asked by the Commissioner a number of questions relating to its application of section 1 of the FOIA and it provided its response. The DfE confirmed that both electronic and manual searches for information within the scope of the request were undertaken. It explained that this involved searching a shared electronic folder exclusive to team colleagues who had worked on the TAVC team, containing historic data going back to 1999 which sits on the shared area platform.
14. The DfE added that a manual search of papers held in the pension team filing storage had been conducted and that all possible resources had also been searched. This included electronic data and on networked resources and emails.
15. The DfE confirmed that no information relating to the request was ever held and due to this, no information, electronic or otherwise, had been deleted or destroyed. It also reported that there is no business purpose for which the DfE should hold or retain the information requested.
16. The DfE argued that there are no statutory requirements under the TAVC regulations for it to hold or retain the information requested. It said that the complainant may be able to obtain this information from Prudential. The DfE could not confirm whether or not a copy of the information requested at part (a) of the complainant's request was available in 2000. It explained that Prudential were and are the administrators of the scheme and it said that Prudential may be able to provide the complainant with an answer to this.

The complainant's position

17. The complainant explained to the Commissioner that he has been involved for some time in correspondence with the DfE regarding contracted issues related to his pension. He has also been in contact with the Teachers' Pensions Scheme, Prudential and the Pensions Ombudsman concerning this matter.
18. The complainant stated that there is a history with the DfE of refusal to answer questions or respond within the FOIA deadline. He argued that since he voiced his initial concerns, the DfE had not answered his questions.

19. The complainant expressed his dissatisfaction with the DfE regarding a number of issues of its handling of his request. This included the DfE's FOIA timeframe releases and information which he considered to be missing. He further argued that he had tried on at least three occasions for the DfE to consider his complaints via its "*internal system*" and that on each occasion the DfE did not respond.
20. The complainant reported the despatch of unprotected and inappropriately packaged paperwork. He complained that the DfE continued to send information via email although he had specified not to use this method as he had no secure system. He stated that the DfE had sent information that was not in his view, officially presented on headed paperwork or signed off, was not clear and that paperwork had been sent in "*flimsy torn envelopes*".
21. The complainant argued that the DfE refused to communicate with him unless he submitted FOIA requests. He said that the DfE had not always provided information that he believes is within its ability to do so and that he had to repeat his request for some information which was eventually provided.
22. The complainant considers that the DfE has not always acted in accordance with the requirements and he believes that the whole situation concerning his requests for information needs to be investigated. The complainant argued that records are kept in "*Education circles*" and he disputes the DfE's response that it does not hold information at part (a) falling within the scope of his request.

The Commissioner's position

23. The Commissioner notes that the complainant has been corresponding with the DfE since 2011 about his issues concerning the TAVC. She acknowledges that the complainant has had a complaint dealt with through the Independent Dispute Resolution Process by the DfE and his complaint had been processed by Prudential and heard by the Pension Ombudsman.
24. It is clear that the complainant is dissatisfied with the DfE in regards to obtaining the information requested. He is of the view that there has been neglect and maladministration by the DfE which has resulted in him requesting information broadly relating to contract obligations.
25. The Commissioner accepts that the complainant has concerns about this matter. However, apart from his dispute regarding information (part (a) of request) held by the DfE, it is noted that many of the complainant's concerns are outside the scope of the ICO's remit.

26. Taking into account the arguments submitted by both the complainant and the DfE, the Commissioner considers that no information is held that is relevant to the request.
27. The Commissioner has considered whether the DfE had any reason or motive to conceal the requested information. She has not seen any evidence of this and she is satisfied with the steps the DfE had taken to search for the information. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the DfE's position that it does not hold information relevant to this request.
28. Therefore, the Commissioner is satisfied on the balance of probabilities, that the DfE does not hold any recorded information falling within the scope of part (a) of the request.

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: 0870 739 5836

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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