

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2017

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

Decision (including any steps ordered)

1. The complainant has requested the spellings used in the literacy test taken by prospective trainee teachers over a 12 month period. He asked for each spelling and data showing which were mostly misspelt and which were mostly spelt correctly. For each of the spellings mostly misspelt he required the absolute number of candidates and percentage of candidates for each word.
2. The DfE refused to disclose the requested information citing section 36(2)(c) of the FOIA.
3. The Commissioner's decision is that the DfE acted appropriately by refusing to disclose the requested information under section 36(2)(c) of the FOIA. As a result she does not require any further action to be taken.

Request and response

4. On 11 December 2015, the complainant wrote to the DfE and requested information in the following terms:

"In the literacy test that all prospective teachers have to sit there is a section at the start where applicants have to spell ten separate words that are spoken to them through a set of headphones. Using the most convenient dates please provide me with a table showing the words that were most frequently misspelt, and those that were most frequently

spelt correctly? Please ensure that for each word you state the percentage of applicants and the absolute number of applicants that misspelt the word. Please also state the time period that you have used. Ideally I prefer if the time period was a year-long."

5. The DfE responded on 1 February 2016. It refused to disclose the requested information citing section 36(2)(c) of the FOIA.
6. The complainant requested an internal review on 4 April 2016.
7. The DfE carried out an internal review and notified the complainant of its findings on 3 May 2016. It confirmed that it remained of the opinion that section 36(2)(c) of the FOIA applied in this case.

Scope of the case

8. The complainant contacted the Commissioner on 15 June 2016 to complain about the way his request for information had been handled. Specifically, the complainant disagreed that the requested information is exempt from disclosure under section 36(2)(c) of the FOIA.
9. During the Commissioner's investigation the complainant clarified that he required:

"... the information for any 12 month period that is convenient for the DfE prior to my request being lodged. However, if you need me to be more specific then the 2014-15 financial year would be the period requested."
10. The Commissioner will now go on to consider the application of section 36(2)(c) of the FOIA to the request.

Reasons for decision

11. Section 36(2)(c) of the FOIA states that information is exempt from disclosure if, in the reasonable opinion of a qualified person, disclosure would or would likely to prejudice the effective conduct of public affairs.
12. Section 36(2)(b)(i) and (ii) refer to the likely prejudice to the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation. As section 36(2)(c) is worded specifically as "would otherwise prejudice", it is the Commissioner's opinion that if a public authority is claiming reliance on section 36(2)(c) of the FOIA the prejudice claimed must be different to that which would fall in section 36(2)(b)(i) and (ii).

13. The Commissioner considers section 36(2)(c) of the FOIA is concerned with the effects of making the information public. It can refer to an adverse effect on the public authority's ability to offer an effective public service or to meet its wider objectives or purpose. She considers the effect does not have to be on the authority in question; it could be an effect on other bodies or the wider public sector. It may also refer to the disruptive effects of disclosure, for example, the diversion of resources managing the effect of disclosure.
14. The DfE confirmed that the qualified person for the purposes of section 36 of the FOIA is Minister Gyimah. Having received a detailed submission setting out the request, the nature of the withheld information and the arguments for and against disclosure, the Minister authorised the use of section 36(2)(c) of the FOIA in this case on 12 January 2016.
15. The Commissioner now needs to consider whether this opinion is a reasonable opinion to hold. It is important to highlight that it is not necessary for the Commissioner to agree with the opinion of the qualified person in a particular case. The opinion also does not have to be the only reasonable opinion that could be held or the 'most' reasonable opinion. The Commissioner only needs to satisfy herself that the opinion is reasonable or, in other words, it is an opinion that a reasonable person could hold.
16. The DfE explained that the professional skill tests for prospective teachers assess the core skills that teachers need to fulfil their professional role in schools, rather than the subject knowledge needed for teaching. This is to ensure all teachers are competent in numeracy and literacy regardless of their specialism. The tests are a key part of the qualification for qualified teacher status (QTS). All current and prospective trainee teachers must pass the skills tests in numeracy and literacy before they can be recommended for the award of QTS. All applicants to Initial Teaching Training must pass the skills tests before starting their course and over 100,000 tests are taken each year.
17. There are four elements to the literacy skills tests; spelling, punctuation, grammar and comprehension. The complainant's request focuses on the spelling section. The DfE explained that this is an audio test in which the majority of candidates listen to words via headphones and then have to spell them. There is a non-audio version for candidates that are hearing-impaired. The spelling element is worth around 20% of the overall marks. The words tested are those that teachers could reasonably be expected to use in their professional life. The words are not especially obscure or technical but are used frequently in professional writing.

18. The DfE stated that it is the qualified person's opinion that disclosure of the requested information in this case would be likely to prejudice the effective conduct of public affairs for a number of reasons.
19. Over 100,000 tests are taken each year. Each candidate is given a unique reference number and is randomly allocated one of the live test papers in operation. They are allowed three attempts and each time the system used randomly allocates another live test which has not already been attempted by the applicant. If the candidate fails the third attempt they have to wait two years before attempting it again.
20. All the live tests currently in operation are used many times over by various candidates in a 12 month period. The live tests contain 10 spellings each which have been thoroughly tested and evaluated before going into operation. All current live test papers are used and many have been used for a number of years. In the qualified person's opinion disclosure in this case for the specified time period put forward by the complainant (a 12 month period) would in effect disclose all spellings that are currently used and are available for use by the DfE. This is because all live papers currently in operation are used over and over again within a 12 month period simply due to the number of tests that are taken each year. Disclosure would therefore be likely to prejudice the effective conduct of public affairs. It would leave the DfE with no bank of spellings that have been developed, tried and tested to use in further tests. It would leave no tests for use thereby hindering prospective trainee teachers from attaining the QTS qualification until new tests are developed.
21. Other than the live tests currently in operation, no other tests are ready for use. The DfE has said that it is developing new tests but these are still in the course of development and testing. If disclosure took place all spellings currently used would be released into the public domain, allowing prospective candidates knowledge of them up front. In the qualified person's opinion disclosure would damage the integrity of the test system, the point to testing prospective candidate for literacy in the first place and damage the integrity of the QTS qualification as a whole. The DfE would have no alternative but to either suspend testing until new tests are available or continue to use the current live tests. This would be likely to prejudice the effective conduct of public affairs. It would prevent prospective teachers from either gaining the QTS qualification for the foreseeable future or allow potentially unsuitable candidates to gain this status and proceed on to teach in our schools.
22. The Commissioner has considered these arguments in detail and she is satisfied that the qualified person's opinion that disclosure would be likely to prejudice the effective conduct of public affairs is a reasonable opinion to hold. The DfE has explained how many live tests it currently

has in operation, how many tests are taken in a 12 month period and confirmed that each of the live tests is used many times over in this timeframe. On this basis she agrees that disclosure in this case would result in all current spellings used by the DfE being disclosed into the public domain. The DfE has explained how this would be likely to prejudice the effective conduct of public affairs above and she is satisfied that the qualified person's opinion is a reasonable opinion to hold.

23. For these reasons, the Commissioner is satisfied that section 36(2)(c) of the FOIA applies in this case. She will therefore now go on to consider the public interest test.
24. The public interest test considerations under section 36 of the FOIA require the Commissioner to consider the extent, severity and frequency of the inhibitions claimed.
25. The DfE advised that there is a general public interest in openness and accountability. It understands that the tests affect a significant number of people – both the individuals seeking to begin their teaching careers and, if successful, the students who they will eventually teach. It stated that the tests have a reasonable impact on career decisions and pathways, as they determine whether or not a candidate can begin initial teaching training and ultimately use that qualification to apply for posts and teach in our schools.
26. The DfE also explained that it understands disclosure would show the suitability of test questions. This would reassure the public that the skills tests are a reasonable measure to determine potential teachers' proficiency in English.
27. However, the DfE stated that the requested information relates to the live tests being sat by current candidates for initial teaching training. Release of the words would provide candidates with the answers in advance meaning they would be able to memorise them. It confirmed that it would not be possible to respond to this request without rendering this section of all tests currently in use meaningless and void.
28. It explained that the tests are designed to ensure that initial teacher training candidates have the required level of literacy and numeracy skills expected of any teacher. These are important skills for any teacher to have and to be able to demonstrate. The tests are a fundamental part of the qualification package. Spellings are selected to be appropriate challenging words which a teacher might encounter in his or her professional career. There are a limited number of such words and disclosing any would reduce the pool of appropriate words for use in future tests. As stated above, the DfE explained that all the words on

which it has trial data are used in tests currently in use and disclosure would result in the DfE being unable to use any of its live tests again. There are no new tests sufficiently tested and developed as of yet to replace them and the development and testing of new tests costs a significant amount of money.

29. Due to the specific time period over which the complainant has requested the information, all spellings currently used in its live tests would have to be disclosed. It would then either have to suspend all testing until new tests have been developed and tested or continue to use the current tests knowing that the bank of spellings currently in use has been disclosed to the wider public. Neither scenario is in the wider interests of the public. There is a public interest in allowing suitable candidates to continue to take this qualification and advance into our schools. There is also a significant public interest in knowing the right candidates get this far.
30. The DfE further explained that there is already plenty of information available to potential candidates to meet the public interest in adequate preparation. Information regarding the performances of candidates taking the literacy skills tests is available on the DfE website via this link:

<http://sta.education.gov.uk/>

This includes practice examples of benefit to prospective candidates wishing to prepare for their own test and the wider public who may be interested in how the test is structured and its ability level.

31. It argued that this information provides an understanding of the abilities of the applicants and their educational suitability for the role. The release of the withheld information would not increase the public's understanding of candidates' suitability to teach and therefore disclosure in this case would not meet any public interest in this area.
32. Overall the DfE confirmed that it considers the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.
33. The Commissioner accepts that there are public interest arguments in favour of disclosure. There is a public interest in openness and transparency and in understanding more clearly how candidates entering the teacher training programme are tested and effectively selected. There is significant public interest in the education sector, in learning how our children are educated and by whom and in knowing that the right candidates, with the appropriate knowledge and skills, have been selected for our schools. Disclosure would provide added

transparency of the testing process and the sorts of spellings that are used to test candidates' literacy skills. It would reveal the spellings used and provide data to the wider public on which spellings were correctly spelt and which ones were not during a 12 month period.

34. However, in this case the Commissioner considers the public interest arguments in favour of maintaining this exemption are much stronger and she believes the effects of disclosure would be fairly severe and far reaching.
35. The DfE has confirmed that all current live tests are used and some have been for several years. During a 12 month period (the time period for the request) each test available for use is used many times over, as over 100,000 tests are taken each year. Disclosure would effectively be disclosing to the public each and every spelling currently available for use and for testing. This would have a severe impact on the integrity of the current testing system and provide prospective candidates with the answers to one element of the test up front. The DfE has confirmed that it has no other tests available to it, so if disclosure took place here, it would either have to continue using the same tests (and therefore the same spellings released into the public domain) or suspend all testing until new tests have been developed and appropriately tested and analysed. Neither situation is in the interests of the wider public.
36. The DfE explained that it is developing new tests but currently there are none which has been through its vigorous testing process at this stage and which could replace those that would be disclosed. It confirmed that it can take up to 24 months to produce new tests and this process is at significant cost to the public purse.
37. The Commissioner is satisfied that disclosure would be likely to compromise the integrity of the current tests and potentially lead to unsuitable candidates getting through the testing system and into teaching. It is in the interests of the wider public to ensure that the integrity of the current system is maintained, continues to be available for use by prospective candidates and that those suitable candidates, with the necessary proficiency in literacy, are those that attain this qualification rather than unprepared and unsuitable individuals.
38. If current testing had to be suspended until new tests are developed there would be a period in which no new trainee teachers could take the qualification and commence their teaching careers. This could potentially lead to a shortage in appropriately qualified teachers for our schools. If testing was not suspended and the current tests continued to be used, it could lead to those without the necessary skills required to teach attaining this qualification and ultimately entering our schools. The education of children in the UK and ensuring that standards are as high

as possible is at the heart of educational policy. It would not be in the interests of the public to allow unsuitable candidates to enter the teacher training process and ultimately end up teaching in our schools.

39. The DfE has confirmed that there is sufficient information already available for prospective candidates to use if they wish to prepare before their tests, such as practice papers. These practice papers also allow those interested in the structure of the test and the types of spellings used to scrutinise the current testing process and understand more clearly what types of questions prospective candidates may face. The DfE has also confirmed that it publishes information on the performance of candidates on its website.
40. For the above reasons, the Commissioner is satisfied that section 36(2)(c) of the FOIA is engaged and that public interest in this case rests in maintaining this exemption.

Procedural matters

41. Section 10(1) of the FOIA states that a public authority should respond to a request promptly and in any event no later than 20 working days of receipt. It is apparent in this case that the DfE failed to respond to the complainant's request within 20 working days and so breached section 10(1) of the FOIA.

Right of appeal

42. 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

43. 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.
44. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF