

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2017

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

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Education ("DfE") for information about the performance of Regional Schools Commissioners against their Key Performance Indicators.
2. The Commissioner's decision is that the DfE did not deal with the request for information in accordance with the FOIA in the following way: it failed to provide a response to the request within the statutory timeframe of 20 working days as set out in section 10 of the FOIA.
3. As a response has now been provided, the Commissioner requires the DfE to take no steps.

Request and response

4. On 15 June 2016, the complainant contacted the DfE on Twitter and requested information in the following terms:
"can you please release RSC KPI performance"
5. After receiving no response, the complainant wrote to the DfE on 5 August 2016, reiterating her request for information.

6. The DfE responded on 17 August 2016, confirming that the information was held. However, it refused to provide the information, citing the following exemptions under FOIA: section 22 – Information intended for publication, and section 36(2)(c) – Prejudice to the effective conduct of public affairs.
7. The complainant requested an internal review on 30 September 2016.
8. Following an internal review, the DfE wrote to the complainant on 16 January 2017. It stated that the information previously withheld under section 22 FOIA had now been published, and provided a link. With regard to the other information, it provided some but continued to withhold the rest under section 36(2)(c).

Scope of the case

9. The complainant contacted the Commissioner on 3 November 2016 to complain about the way her request for information had been handled. She asked the Commissioner to request that the DfE provide her with the outcome of its internal review. The Commissioner subsequently contacted the DfE on several occasions between November 2016 and January 2017.
10. Following receipt of the internal review outcome on 16 January 2017, the complainant returned to the Commissioner and asked for a decision notice to be issued to consider the DfE's compliance with section 10 of the FOIA.
11. The Commissioner has therefore had to consider whether the DfE has handled the request in accordance with section 10 of the FOIA.

Reasons for decision

12. Section 10 of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
13. From the information provided to the Commissioner in this case, it is evident that the DfE did not respond to the request within the statutory timeframe of 20 working days. She has therefore found the DfE to be in breach of section 10 FOIA.

Other matters

14. The Commissioner notes that there was a lengthy delay in this case between the request for internal review (30 August 2016), and the outcome of the internal review being issued (16 January 2017). Although there is no requirement under FOIA for an internal review to be carried out, the Commissioner considers it best practice for one to be done.

15. In future cases, the Commissioner would advise the DfE to respond to internal review requests as soon as possible and in any event within 20 working days of the date of receiving the request, or, in exceptional circumstances, within 40 working days of the date of receiving the request. The Commissioner's guidance on carrying out internal reviews can be found here¹ in the section *"What if the requester is unhappy with the outcome?"*

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Right of appeal

16. 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

17. 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.
18. 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