

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2017

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

Decision (including any steps ordered)

1. The complainant made a request to the Education Funding Agency (EFA), an executive agency of the Department for Education (DfE), for a copy of an internal audit report carried out on Collective Spirit Multi Academy Trust.
2. The DfE refused the complainant's request, citing the exemptions under sections 36(2)(b)(ii) (free and frank exchange of views), 36(2)(c) (otherwise prejudice effective conduct of public affairs) and 33 (audit functions) of the FOIA.
3. The Commissioner's decision is that section 36(2)(b)(ii) is engaged and that, in all the circumstances, the public interest in disclosure is outweighed by the public interest in withholding the requested information. Accordingly she has not gone on to consider sections 36(2)(c) or 33.
4. The Commissioner does not require the DfE to take any steps as a result of this decision notice.

Request and response

5. On 29 September 2016 the complainant wrote to the DfE and requested information in the following terms:

"Can you please disclose the internal auditing report that was carried out recently on collective spirit multi academy trust based in manchester which runs creative studios in manchester and collective spirit school in oldham."

6. The DfE responded on 7 November 2016. It confirmed that it holds the requested information, however refused to disclose it citing sections 36(2)(b)(ii) and 36(2)(c) of the FOIA. The DfE apologised to the complainant for the delay in responding.
7. On 8 November 2016 the complainant requested an internal review of the DfE's response. He followed this with a further email on 8 December 2016 asking for a review of the DfE's decision not to release the report.
8. Following an internal review the DfE wrote to the complainant on 13 December 2016 upholding its application of sections 36(2)(b)(ii) and 36(2)(c). The DfE also applied a further exemption under section 33(1)(a) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 21 December 2016 to complain about the way his request for information had been handled and asked the Commissioner to encourage the DfE to provide the requested information.
10. The Commissioner considers that the scope of the case is whether the exemptions under sections 36(2)(b)(ii), 36(2)(c) and 33(1)(a) of the FOIA were applied correctly by the DfE.

Reasons for decision

Section 36 – effective conduct of public affairs

11. The Commissioner firstly considered the DfE's application of section 36(2)(ii) of the FOIA.
12. Section 36(2)(b)(ii) states that:
 - 2) *Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –*
 - (b) *would, or would be likely to, inhibit-*
 - (ii) *the free and frank exchange of views for the purposes of deliberation.*
13. During the course of the Commissioner's investigation the DfE advised that it has already had an information request in relation to the exact same withheld information; the internal report entitled "FS50660873

MCS-CSFS-Final-Fact-Finding-Report". The request has already been considered by the Commissioner and the case reference is FS50660873. The decision can be found via this link:

<https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014362/fs50660873-redacted-dn.pdf>

14. The DfE confirmed that the submissions it made during the Commissioner's investigation under case reference FS506660873 and the decision notice that followed apply equally in this case.
15. During the Commissioner's investigation under case reference FS50660873 the DfE was asked to reply to a series of questions relating to the claim that complying with the request would, or would be likely to inhibit the free and frank exchange of views for the purpose of deliberation. The DfE's submissions can be found in paragraphs 14 to 21 of her decision notice under this case reference).
16. The DfE confirms that it wishes to rely on these arguments for the application of section 36(2)(b)(ii) of the FOIA in this case. As the Commissioner is content that the arguments relate to a request for the identical information she sees no need to repeat these arguments here.
17. Paragraphs 22-26 of the decision notice for FS50660873 outline the Commissioner's reasoning for upholding section 36(2)(b)(ii) of the FOIA in this case. And, again, as this analysis is equally applicable in this case there is no need to repeat it here.
18. In paragraphs 27 to 52 the Commissioner considered the public interest test and overall decided that the public interest rested in maintaining the application of this exemption. Again, this decision is directly applicable in this case, as the requested information is exactly the same, so there is no need to repeat this here.

Conclusion

19. The Commissioner is satisfied, for the reasons explained in her decision notice of 22 May 2017 under case reference FS50660873 that section 36(2)(ii) has been applied appropriately in this case and that the public interest in maintaining the exemption outweighs the public interest in disclosure. As a result the Commissioner has not gone onto consider the DfE's application of sections 36(2)(c) or 33 of the FOIA.

Other matters

20. Section 10(1) of FOIA states that

"subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

21. The Commissioner notes that the request was made on 29 September 2016 and confirmed received by the DfE on 7 October 2017. The DfE issued its response on 7 November 2016, outside 20 working days from the date of receipt of the request.
 22. The Commissioner finds that the DfE did not comply with the requirements of section 10(1) when responding to this request.
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Right of appeal

23. 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

24. 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.
25. 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

Pamela Clements
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