

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2019

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

Decision (including any steps ordered)

1. The complainant requested information regarding numbers of complaints to the Education and Skills Funding Agency (ESFA). The Department for Education (DfE) estimated that the cost of complying with the request would exceed the cost threshold but then released the information during the Commissioner's investigation. The complainant remains dissatisfied with the length of time it took the DfE to comply with its duties under section 1(1) of the FOIA.
2. The Commissioner's decision is that the DfE's response to the complainant's request of 11 October 2018 breached section 10(1) of the FOIA as the DfE did not comply with section 1(1) within 20 working days. The information has now been released and the Commissioner does not require the DfE to take any steps to ensure compliance with the legislation.

Request and response

3. On 11 October 2018 the complainant made the following request for information under the FOIA:

'The number and nature of complaints the ESFA received in 2017-18.

The number and nature of complaints received by the EFA and SFA for the period, JUNE 2016 -April 2017.'

4. The Education and Skills Funding Agency (ESFA) is an executive agency of the government that is sponsored by the Department for Education (DfE). ESFA went on to correspond with the complainant but, in the circumstances, the Commissioner is satisfied that the complainant's correspondence was with, in effect, the DfE.
5. On 8 November 2018 the DfE responded. It refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £600. The DfE suggested it may be able to comply with a new request for a narrower category of information.
6. On 8 November 2018 the complainant requested an internal review.
7. The DfE sent the outcome of its internal review on 3 June 2019 upholding its original position. It also apologised for the delay in conducting the internal review.

Scope of the case

8. The complainant contacted the Commissioner on 25 February 2019 to complain about the way his request for information had been handled.
9. The Commissioner first chased the DfE to provide an internal review response which was provided on 3 June 2019. The complainant then confirmed that he wished to pursue the complaint.
10. During the Commissioner's investigation the complainant provided a document that appeared to be ESFA's annual report showing the number of complaints reported centrally in 2017. This document was shared with the DfE. It revisited the request and after revising the interpretation of the scope of the request released the information to the complainant.
11. The DfE explained that its initial interpretation was of a request for all complaints received by the ESFA and the searches through thousands of pieces of information led the DfE to apply Section 12.
12. On revisiting the request and with particular reference to the figures quoted on page 34 of the ESFA's 2017-2018 Annual Report, the DfE believed that the scope of the request was for the number of complaints received about the ESFA. It apologised for not checking this earlier.
13. The DfE disclosed the information to the complainant on 2 September 2019 with a copy to the Commissioner. However, the complainant stated that he did not receive this until the Commissioner forwarded her copy on 3 October 2019. The Commissioner contacted the DfE who confirmed

that the disclosed information had not been sent to the complainant on 2 September 2019.

14. As the information was disclosed, the Commissioner sought an informal resolution with the complainant and did not investigate whether section 12 was correctly applied at the time of the request or whether the DfE's interpretation of the scope of the request was a reasonable one to take.
15. The complainant asked the Commissioner to consider the many delays in this case as it has taken nearly a year to disclose the information.
16. The Commissioner's investigation has focussed on the DfE's compliance with section 1 and section 10 of the FOIA. She has discussed other aspects of the DfE's handling of the request under 'Other Matters'.

Reasons for decision

Section 10 – time for compliance

17. Section 1(1) of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to them.
18. 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".
19. The request was submitted on 11 October 2018 and the complainant received a formal response on 8 November 2018, 21 working days following receipt and the disclosed information was received by the complainant from the DfE on 7 October 2019. The Commissioner therefore finds that the public authority breached section 10(1) of the FOIA by failing to comply with section 1(1)(a) within the statutory time period.

Other matters

20. The code of practice produced under section 45 of the FOIA recognises that there are no statutory time limits on how long an internal review should take to complete. Nevertheless it provides that any deadlines set by the public authority should be reasonable.

21. The Commissioner considers that generally an internal review should take no longer than twenty working days to complete. In exceptional circumstances it may be necessary to extend that to forty working days. (<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>)
22. In this case the complainant requested an internal review on 8 November 2018 which was acknowledged by the DfE. The complainant sent a chasing letter in January 2019.
23. On 14 March 2019 the Commissioner chased for an internal review response. On 20 March DfE stated that it had scheduled this as a priority.
24. On 6 May 2019 the complainant informed the Commissioner that he had not received a response. The Commissioner again chased for an internal review response. The DfE provided the outcome of its internal review on 3 June 2019, 141 working days following receipt.
25. The Commissioner does not consider this to be satisfactory and would expect the DfE to deal with reviews within the suggested deadlines in the future.
26. The Commissioner is also disappointed that the DfE failed to forward the disclosed information to the complainant on 2 September as indicated in the copy of the letter sent to the Commissioner. It was only the Commissioner's attempt to resolve the case informally and the complainant's reply that the Commissioner was able to alert the DfE that the disclosed information had not been sent to the complainant. The Commissioner expects the DfE to make improvements in the accuracy of their correspondence with complainants and its record keeping in the future.
27. Finally, the Commissioner would remind the DfE to consider each FOIA request very carefully so that all possible information that is potentially within the scope of the request is identified and considered at the time of the first response to the complainant. If the FOIA request is unclear or open to interpretation in any way, the Commissioner expects the public authority to seek clarification with the complainant.

Right of appeal

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

29. 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.

30. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**