

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2023

Public Authority: Education and Skills Funding Agency
(Department for Education)

Address: Piccadilly Gate
Store Street
Manchester
M1 2WD

Decision (including any steps ordered)

1. The complainant has requested information about a decision not to challenge the salary of the Chief Executive of a particular academy. The above public authority ("the public authority") stated that it held no information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has complied with its duties under section 1(1) of FOIA.
3. The Commissioner does not require further steps to be taken.

Nomenclature

4. The Education and Skills Funding Agency (ESFA) is not listed as a separate public authority in Schedule 1 of the FOIA because it is an Executive Agency of the Department for Education. Although the ESFA has its own FOI unit and the complainant has corresponded with "the ESFA" during the course of the request and complaint, the public authority is, ultimately, the Department for Education.

Request and response

5. On 1 April 2023, the complainant wrote to the public authority and, referring to a specific academy and its CEO, requested information in the following terms:
 - "[1] If ESFA has challenged this excessive salary there must be documentation. This I request to see.
 - "[2] If there was no challenge to this excessive salary then an explanation will be required."
6. The public authority responded on 18 April 2023. It confirmed that it had not challenged the salary. It provided some general information about how it expected academies and academy trusts to set salary levels. It upheld this position following an internal review.

Scope of the case

7. The complainant contacted the Commissioner on 8 August 2023 to complain about the way his request for information had been handled.
8. At the outset of the investigation, the Commissioner wrote to the complainant to offer an initial view of the complaint. The Commissioner noted that the grounds of complaint and grounds for requesting a review were that the public authority "ought" to have challenged the salary level. The Commissioner noted that such matters were outside his jurisdiction. He also noted that the public authority was only obliged to provide the information it held in recorded form. It was not obliged by FOIA to create new information or justify a decision it had taken. The Commissioner explained that pursuing a complaint under section 50 of FOIA seemed unlikely to resolve the complainant's underlying concerns and that, in any case, no reasons had been put forward to suggest why further recorded information was held. He therefore invited the complainant to withdraw the complaint.
9. The complainant declined to withdraw his complaint. He did not offer any further arguments as to why recorded information would be held and instead continued to challenge the salary level.
10. The Commissioner considers that the scope of his investigation is to determine whether the public authority has complied with its duty under section 1(1) of FOIA.

Reasons for decision

11. When a public authority receives a request for information, unless exemptions apply, section 1(1) of FOIA requires that public authority to tell the requester whether it holds any relevant information in recorded form and, if it does, to provide that information to them.
12. FOIA only obliges a public authority to provide the information it already holds in recorded form. Public authorities are not required to create or acquire information to satisfy a request. Nor are they required to justify their actions or decisions they have taken.
13. Where there is a dispute over the extent of the information a public authority holds, the Commissioner's role is to determine whether it is more likely than not that all relevant information has been provided.
14. It is not the Commissioner's role to determine whether or not the salary ought to have been challenged.
15. The public authority has stated that it did not challenge the salary level and there is no evidence that it did. As no challenge was made, the public authority cannot hold any information within the scope of part [1] of the request.
16. As regards part [2], the Commissioner is sceptical that this constitutes a request for information, as it appears aimed at asking the public authority to justify a decision it has taken.
17. However, the Commissioner took a generous view that this part of the request could be construed as seeking any information the public authority held that would explain why this particular salary was not challenged.
18. The public authority has explained to the Commissioner that no formal pay challenge had been made during the years that the complainant had been making requests. It noted that it had already explained to the complainant, on several occasions, that Covid-19 and concerns around data accuracy were the reasons challenges did not happen.
19. Whether the complainant considers the public authority's explanation to be satisfactory or not is a matter for him. The public authority has provided the information it holds in recorded form and that is all FOIA obliges it to do.
20. On the balance of probabilities, the Commissioner is satisfied that the public authority has complied with its duty under section 1(1) of FOIA.

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

22. 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.
23. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF