

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2014

Public Authority: Her Majesty's Chief Inspector for Education and Training in Wales (Estyn).

Address: Anchor Court
Keen Road
Cardiff
CF24 5JW

Decision (including any steps ordered)

1. The complainant requested various items of information in relation to an inspection of St. Peter's RC Primary School and Estyn, including the inspection report. Estyn withheld the report by virtue of section 22 of the FOIA but also confirmed that the request could encompass some additional information which may not be included in the inspection report itself and suggested that once the report was published, the complainant should contact it again if he sought the release of any additional information.
2. The Commissioner's decision is that Estyn did not deal with the request in compliance with section 1(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response under the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 June 2013, the complainant wrote to Estyn and requested the following information:

"...all memos, notes, diaries and records how the report is being conducted and what data has been collected under Freedom of [i]nformation [sic] Act 2000 dealing with the school in question (St. Peter's RC Primary School) and Estyn."

6. Estyn responded on 12 July 2013. It confirmed that it held relevant information but cited sections 21 and 22 of the FOIA in respect of the information.
7. Estyn provided a link to its website in respect of information refused on the basis of section 21 of the FOIA and provided further details of how to access information relating to the inspection process and how the inspection reports are formulated.
8. In respect of information withheld by virtue of section 22 of the FOIA, Estyn confirmed that it would be publishing the report on 6 August 2013. It also informed the complainant that his request could encompass some additional information which may not be included in the inspection report itself and suggested that once the report was published, he should contact it again if he sought the release of any additional information.
9. Whilst the complainant confirmed that he would await the publication of the report, he did not consider that the workings to produce the report, which also formed part of his request, would be covered by either section 21 or section 22 of the FOIA.
10. Following an internal review, Estyn wrote to the complainant on 9 August 2013. It reiterated comments from its original decision that once the complainant had had the opportunity to consider the report, he should contact it again identifying what further information he was seeking.

Scope of the case

11. The complainant contacted the Commissioner on 18 August 2013 to complain about the way his request for information had been handled.
12. The complainant stated that section 22 has now been rendered inapplicable due to the release of the report and that Estyn could not rely on section 21 of the FOIA to obstruct the memos, transcripts, internal meeting minutes, email communications and all the workings to

produce the report. He added that he did not consider the report itself to be sufficient for wider scrutiny of the evidence versus the report.

13. As the report has now been published, the Commissioner's investigation will not include an assessment of section 22 of the FOIA. The Commissioner also notes that as Estyn has not relied on section 21 in respect of the memos, notes, diaries and other documents falling within the scope of the request, his investigation will not include a consideration of section 21 but will be restricted to whether Estyn has complied with its obligations under section 1(1) of the FOIA in its response to this request.

Reasons for decision

Section 1 – General right of access to information held

14. Under section 1(1) of the FOIA, in response to a request for information a public authority is required to provide all recorded information it holds falling within the scope of the request. However, it is not required to create new information in order to respond to a request.
15. As stated in paragraph 13 of this notice, the Commissioner's investigation is focused on whether Estyn has complied with its obligations under section 1 of the FOIA.
16. In his assessment of section 1 of the FOIA, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
17. However, in this particular case, the Commissioner notes that in its refusal notice dated 12 July 2013, Estyn confirmed that:

"...your request for information could encompass some additional information held by Estyn which may not be included in the inspection report."
18. Similarly, the internal review informed the complainant:

"...if there is further information that you seek which is not contained in the report, then we would suggest that you contact us again identifying what further information you are seeking."

19. The Commissioner also notes, that during a telephone conversation with Estyn on 10 December 2013, that it confirmed that it held additional information, some of which it would be looking to refuse on the basis of sections 33, 36 and 40 of the FOIA.
20. It is clear to the Commissioner therefore, that Estyn holds additional information falling within the scope of the request and that being the case, that it has failed to comply with its obligations under section 1 of the FOIA in respect of this request for information.

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF