

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2017

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

Decision (including any steps ordered)

1. The complainant has requested information about a decision to publish particular figures. The Department for Education (DfE) has released information within the scope of the request and its position is that its response fully addresses the complainant's request.
2. The Commissioner's decision is that DfE has released information that addresses the request; that particular information DfE has withheld does not that fall within the scope of the request; and that DfE has complied with its obligations under section 1(1) of the FOIA.
3. The Commissioner does not require DfE to take any steps to ensure compliance with the legislation.

Request and response

4. On 3 February 2017, the complainant had requested information on the costs of re-brokering academies. DfE had withheld the information it holds under section 22 of the FOIA, because the information was intended for future publication. On 5 April 2017, the complainant wrote to DfE and requested information in the following terms:

"...can I have a copy of any documents that show the decision to publish these figures was made before my [previous] request."

5. DfE responded on 21 April 2017 and released some information; namely a heavily redacted briefing paper dated 8 February 2016.
6. The complainant did not consider that this information addressed his request. Following an internal review DfE wrote to the complainant on 23 May 2017 and released further information. This was a short email exchange. Much of the exchange was redacted and DfE explained that this was because the information was either exempt under section 40(2) of the FOIA (third person personal data) or because the information did not fall within the scope of the request. The released information indicated that, on 19 February 2016, Lord Nash (then Parliamentary Under Secretary of State for Schools) had agreed that the costs associated with re-brokering academies would be published.
7. A technical issue had allowed the complainant to see the information that had been redacted. This information concerned *how* the re-brokerage costs might be published.

Scope of the case

8. The complainant contacted the Commissioner on 24 May 2017 to complain about the way his request for information had been handled. He was concerned that DfE had committed an offence under section 77 of the FOIA (that is, had deliberately concealed information to which the complainant would have been entitled).
9. Following correspondence with the Commissioner, the complainant agreed to progress his complaint as a section 50 matter (the right to apply to the Commissioner for a decision). He does not appear to have concerns about the information DfE has withheld under section 40(2) or the timeliness of DfE's response. The Commissioner's investigation has focussed on whether DfE complied with its obligations under section 1(1) of the FOIA.

Reasons for decision

10. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled a) to be told if the authority holds the information and b) to have the information communicated to him or her if it is held.

11. It appeared clear to the Commissioner that the information DfE had released on 23 May 2017 addresses the complainant's request for "*a copy of any documents that show the decision to publish these figures was made before my request*" ie his request of 3 February 2017. The email dated 19 February 2016 concerning Lord Nash's decision provided this evidence.
12. The complainant preferred to progress his complaint to a decision notice, however, for the following reasons. He considers that i) the information withheld on 23 May 2017 falls within the scope of his request; ii) the meaning of the document was altered by unnecessary redactions that iii) were never explained; and iv) he did not receive a copy of the 'document' he had requested.
13. First, the Commissioner disagrees that the information withheld on 23 May 2017 falls within the scope of his request. The complainant had requested information that showed that the decision to publish the information he had requested on 3 February 2017 was taken before this request.
14. The released information clearly shows that, on or before 19 February 2016, Lord Nash had made the decision to publish the information the complainant had requested on 3 February 2017. The redacted information meanwhile concerns two options as to *how* this information might be published and the Commissioner is satisfied that this does not fall within the scope of the complainant's request.
15. The Commissioner also disagrees that the meaning of the document was altered by unnecessary redactions. She considers the redactions were either appropriate because the information that was redacted fell outside the scope of the complainant's request, or necessary because the information was the personal data of third persons. Furthermore, enough information was left, in terms of design and layout and email transmission details as well as the released text of the email, to make it quite clear that the released information was taken from an email that concerned re-brokerage costs and which was sent from Lord Nash to various DfE officials on a particular date. The Commissioner simply does not agree that the 'meaning' of this information was altered through the redactions.
16. With regard to the complainant's third point – that the redactions were never explained – again, the Commissioner disagrees. In its internal review correspondence to the complainant of 23 May 2017, the DfE quite clearly states that it had redacted some of the information because it is the personal data of third persons and so exempt under section 40(2) of the FOIA, and some of the information was redacted because it falls outside the scope of the complainant's request.

17. Finally, regarding releasing 'documents' and releasing 'information', as the complainant has observed to the Commissioner, the FOIA provides a right to recorded 'information' and not to the documents that hold the information. The Commissioner's guidance¹ may well advise that in most cases it may be practical and expedient to release whole documents. However, the guidance also states that the Act does not confer any explicit rights to copies of original documents. The Commissioner cannot therefore require a public authority to release a copy of the actual document that holds particular requested information, even where an applicant has specifically requested a 'document' or 'documents'.
18. In this case, the information released on 23 May 2017 looks, to all intents and purposes, like a copy of an email and the Commissioner considers it is likely that the original email was simply copied and pasted into a Word document. In effect, it seems to the Commissioner that, on this occasion, the complainant *did* receive a copy of a document, albeit one that was redacted.
19. In a submission to the Commissioner, DfE has confirmed it does hold further information relating to re-brokerage costs but that this is broader information about the wider policy and therefore not within the scope of the complainant's current request. DfE considers that the scope of the request is clearly defined, narrow and specific and that it has provided the complainant with the information he has requested.
20. DfE considers Lord Nash's authority to publish the information that the complainant requested on 3 February 2017 to be the point of 'decision' referred to in his current request, and the notice of Lord Nash's agreement (the email of 19 February 2016) to be the evidence the complainant has requested.
21. The Commissioner is satisfied that DfE complied with section 1(1) of the FOIA with regards to the complainant's request. She is satisfied that DfE released information to him that addresses the specifics of the request he had submitted to it, and has not inappropriately withheld information that falls within the scope of the request.

¹ <https://ico.org.uk/media/for-organisations/documents/1621/the-right-to-recorded-information-and-requests-for-documents.pdf>

Right of appeal

22. 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

23. 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.
24. 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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SK9 5AF