

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 July 2024

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

Decision (including any steps ordered)

1. The complainant has requested information contained in a file relating to an enquiry. The DfE refused the request under section 14(1) FOIA.
2. The Commissioner's decision is that the DfE has correctly applied section 14(1) and refused the request as vexatious.
3. The Commissioner does not require any steps.

Request and response

4. On 11 September 2023, an MP wrote to the DfE on behalf of a constituent (the complainant) and requested information in the following terms:

"... "YOF/57 volume 1 Center Parcs – Hartsdene Trust Enquiry by Essex SSD" is one of the files she is seeking. Can you please provide a copy of the entire contents for my constituent?"
5. The DfE responded on 15 January 2024 refusing the request under section 14(1) FOIA as it the information was in large hard copy format and it would be a diversion of resources to consider the redactions needed.

6. An internal review response was sent on 12 March 2024 upholding the decision to refuse the request under section 14(1), explaining a sample review was carried that showed that a range of exemptions may apply to the requested information, including section 40 (personal data), section 41 (information provided in confidence), section 36 (prejudice to the effective conduct of public affairs) and section 38 (health and safety).

Scope of the case

7. The complainant contacted the Commissioner on 15 March 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to be to determine if the DfE has correctly relied on section 14(1) to refuse to provide the requested information.

Reasons for decision

9. The request in this case is for a copy of volume 1 of a file related to an enquiry completed by Essex County Council for the Department of Health in 1994. This was transferred to the DfE in 2004 and exists in hard copy.
10. The DfE has explained that this is one of a number of repeated FOIA requests for this information and the DfE has provided the Commissioner with evidence of the previous requests and responses. The DfE has, in response to an earlier request from the same complainant, disclosed Appendix 1 of the report whilst maintaining that Appendix 2 and the report itself should be withheld.
11. As such the DfE maintains that responding to the request would impose an unnecessary and undue burden on it.
12. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
13. Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. In circumstances where a public authority wishes to apply section 14(1) based on the grossly oppressive burden that compliance with a request would cause, it must balance the impact of the request against its

purpose and value to determine whether the effect on the authority would be disproportionate.

15. The DfE has provided additional arguments to the Commissioner to explain its reasoning for considering the request vexatious.
16. The DfE's main arguments related to the burden on itself and its staff in responding to the request. It states that since 2019 it has received over six requests in relation to this information which has taken considerable resource over this period. The DfE released the information it considered it was able to when responding to an earlier request from the complainant but continues to argue the information in the file would require a systematic, page-by-page, line-by-line review, to ascertain whether information engages any of several exemptions. The DfE has provided a scanned sample of the report to the Commissioner and he notes the sensitivity of much of the information contained in it and acknowledges this is only a small sample from over 200 pages of information.
17. The DfE doesn't consider it would be reasonable to be expected to go through the report line-by-line given the repeated nature of this request and the fact that some information was released four years ago. It believes the request would do little more than place a further burden on the DfE and its staff without a serious purpose to justify this.
18. The DfE argues there are a number of FOIA exemptions that may apply to information in the file and it undertook a sampling exercise as part of its internal review. This found that sections 36, 38, 40 and 41 may apply to information in the file.
19. Whether the DfE is entitled to withhold the requested information under any of these exemptions is not the scope of the Commissioner's investigation. The Commissioner's consideration in this case is to determine whether it would be grossly oppressive for the DfE to review and prepare the information for disclosure, including the consideration and applications of any redactions.
20. Within the sample the DfE identified information that might engage section 36 and considered all three limbs of section 36 would need to be considered due to the free and frank nature of the content of the reports and correspondence in the file. The DfE argued that the reports and exchanges are, by their very nature, shared for the process of deliberation and it would need to determine if disclosing some of the exchanges would be prejudicial to the effective sharing of such information. It would need to seek the opinion of the qualified person to establish this.

21. In terms of sections 38 and 41, the DfE has provided the Commissioner with its reasoning as to why some of the information may engage these exemptions and would need to be considered to determine if it should be redacted. The Commissioner has not included this reasoning here as to do so may reveal some of the contents of the sample report.
22. For section 40(2), the DfE has pointed to references within the report to named individuals in various capacities and levels of detail.
23. The DfE's arguments expand beyond the oppressive and unjustified burden of preparing the information for disclosure and considering if any of the above exemptions apply. The DfE has also argued that the motive of the request appears, in its view, to be to impact its resources by revisiting a request that has been made previously. The DfE states it has provided advice to the complainant in the past and suggested narrowing the scope of any future requests but this advice has not been taken. The DfE therefore considers the motive of the request is to prolong correspondence.
24. Similarly, the value and serious purpose of the request is questioned by the DfE as some of the information requested has previously been released and any remaining information has been withheld. The DfE believes that the ongoing nature of the requests and the persistence of the complainant shows they are attempting to reopen an issue which has been comprehensively addressed by the DfE and the requests demonstrate an unreasonable persistence.
25. The complainant argues there is a serious purpose to the request and the information still has significant value despite the age of the file. They consider it shows that the DfE and Essex County Council (who undertook the enquiry) withheld evidence of serious child safeguarding issues.
26. The Commissioner is satisfied that the complainant has requested a large volume of information and that the DfE would need to consider several exemptions in the event that it complied with request in full. The Commissioner is also satisfied that the exempt information is scattered throughout the information. Some of this may be isolated easily, for example the personal data, but not all information is personal data, it is clear that some information will require further consideration and it will take time to go through all of the over 200 pages of information.
27. When considering the application of section 14(1), where compliance with the request would impose a grossly oppressive burden, the Commissioner expects the public authority to provide clear evidence to substantiate its claim and the DfE has not given the Commissioner any estimated time for compliance. Whilst the Commissioner accepts it is likely to require some time to go through the file and consider if any

information engages the exemptions it would be difficult to conclude this time would be grossly oppressive with no specific time estimate.

28. However, in this case the DfE is not arguing that complying with the request would be vexatious solely because preparing the information for disclosure, including the consideration and application of any redactions, would be grossly oppressive. It is also arguing the request is vexatious due to the lack of clear motive for the request, the unreasonable persistence of the request and the motive of the request.
29. On these points the Commissioner accepts that this is a repeated request from the same requestor and the DfE has disclosed previously the only information in the file it considered it was able to. The DfE's position has not changed and any suggestion made to the complainant on narrowing the scope of the request has not been taken. This does suggest to the Commissioner there is an degree of unreasonable persistence to the request and the motive for making repeated requests when the same outcome is expected is questionable.
30. Even where the Commissioner accepts that compliance with a request would impose a burden, demonstrates unreasonable persistence and has little or no legitimate motive, the public authority must still balance the impact of the request against its purpose and value to determine if the request is vexatious or not.
31. The Commissioner recognises that responding to the request will cause some disruption to the DfE but the subject matter of the file in question relates to child safeguarding. It cannot be said there is no wider interest in this area in general. The DfE has also recognised this is an area of concern and interest and has disclosed the information it considers it is able to from the file to meet any wider interest in the information.
32. The file relates to an enquiry from 1994. This information is not new or current. It is clearly of interest to the complainant and the Commissioner appreciates they are keen to know if there is information in the file that suggests any wrongdoing on the part of either the DfE or Essex County Council. However, its value outside of this is not clear and the Commissioner, with no compelling evidence to the contrary, does not consider there is significant public interest in the information in the file.
33. On this basis, the Commissioner does not consider that the value or purpose in the requested information outweighs the burden compliance with the request would impose upon the public authority.

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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