

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2024

Public Authority: School Teachers' Review Body
Address: 10 Victoria Street
London
SW1H 0NB

Decision (including any steps ordered)

1. The complainant has requested information about the last two pay remit rounds. The above public authority ("the public authority") provided some information but relied on section 36 of FOIA (prejudice to the effective conduct of public affairs) to withhold the remainder.
2. The Commissioner's decision is that the public authority has correctly relied on section 36(2)(b)(ii) of FOIA and that the public interest favours maintaining the exemption.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 26 February 2024 the complainant requested information of the following description:

"[1] Please provide copies of all correspondence between the School Teachers Review Body and the Department for Education or employees of the Department containing information about the STRB 34th Remit. These requests include copies of all information in the STRB's possession. This includes, but not limited to:

- a) All exchanges between the Chair of the STRB and the Department over the Remit letter and the timetable for the remit, prior to the publication of the Remit letter;
- b) Copies of all internal and external documents in the STRB's possession including correspondence from the STRB to the Department regarding its evidence and timing;
- c) Correspondence from the Secretary of State for Education to the STRB regarding the Government evidence and the timing;
- d) Correspondence from the STRB to the Secretary of State for Education regarding the evidence and the timing;
- e) Correspondence between the STRB and the Treasury regarding the 34th Remit
- f) Correspondence between the STRB and the Prime Minister's Office at No 10 Downing Street regarding the 34th Remit

"[2] Please provide copies of all correspondence between the School Teachers Review Body and the Government or employees of the Government containing information about the STRB 34th Remit. These requests include copies of all information in the STRB's possession. This includes, but not limited to:

- a) Correspondence between the STRB and the Treasury regarding the 34th Remit
- b) Correspondence between the STRB and the Prime Minister's Office at No 10 Downing Street regarding the 34th Remit

"[3] Please provide copies of all correspondence between the School Teachers Review Body and the Department for Education or employees of the Department containing information about the STRB 33rd Remit. These requests include copies of all information in the STRB's possession. This includes, but not limited to:

- a) All exchanges between the Chair of the STRB and the Department over the Remit letter and the timetable for the remit, prior to the publication of the Remit letter;
- b) Copies of all internal and external documents in the STRB's possession including correspondence from the STRB to the Department regarding its evidence and timing;
- c) Correspondence from the Secretary of State for Education to the STRB regarding the Government evidence and the timing;
- d) Correspondence from the STRB to the Secretary of State for Education regarding the evidence and the timing;
- e) Correspondence between the STRB and the Treasury regarding the 33rd Remit
- f) Correspondence between the STRB and the Prime Minister's Office at No 10 Downing Street regarding the 33rd Remit

- “[4] Please provide copies of all correspondence between the School Teachers Review Body and the Government or employees of the Government containing information about the STRB 34th Remit. These requests include copies of all information in the STRB’s possession. This includes, but not limited to:
- g) Correspondence between the STRB and the Treasury regarding the 34th Remit
 - h) Correspondence between the STRB and the Prime Minister’s Office at No 10 Downing Street regarding the 34th Remit
- “[5] Please provide copies of minutes or notes of any meetings between the Department and the Chair of the STRB and/or staff members relating to the 33rd and 34th Remit.
- “[6] Please provide copies of guidance or documents providing the rules for decision making by the STRB on the 33rd and 34th Remit regarding the timetable.
- “[7] Please provide copies of any guidance or direction issued by the Government, Department or Treasury to the STRB in relation to the 33rd and 34th Remit.
- “[8] Please provide details relating to the operating expenditure of the STRB in relation to the 33rd and 34th Remit. This request includes but is not limited to information relating to the breakdown of annual operating costs and expenditure per each remit in the last 5 years.”
5. On 25 March 2024, the public authority responded. It provided some information, but refused to provide the remainder. It relied on section 36 of FOIA to withhold the information. At internal review it additionally relied on section 22 of FOIA (intended for publication) to withhold some information.

Scope of the case

6. Regrettably, the public authority did not respond to the Commissioner’s initial investigation letter and he had to serve an information notice to access the withheld information.
7. In their grounds of complaint, the complainant has not challenged the public authority’s reliance on section 22 of FOIA. The Commissioner has therefore restricted his consideration to whether the public authority

was entitled to rely on section 36 of FOIA to withhold the information it has withheld.

Reasons for decision

8. Section 36(2)(b)(ii) of FOIA allows a public authority to withhold information whose disclosure may, in the opinion of a very senior person within the organisation (known as the "qualified person"), inhibit the free and frank expression of views for the purposes of deliberation.
9. The public authority provided the Commissioner with a chain of emails sent to and from Mr David Fry, the Director of the Office for Manpower Economics (OME). OME provides secretarial support to the public authority and seven other pay review bodies.
10. The Commissioner queried whether Mr Fry was entitled to act as the public authority's qualified person, given that he is employed by a different organisation.
11. In response, the public authority pointed to an archived version of a webpage hosted by the former Department of Constitutional Affairs. That page listed the public authorities where a specific officer (or specific officers) had been authorised by a minister to act as the qualified person for the purposes of section 36 of FOIA. The [public authority's entry](#) states that the "Director and Head of OME" has been authorised to act as its qualified person.
12. The Commissioner notes that this webpage is no longer live and has not been updated for more than 15 years. He also notes that it is unusual for someone, not employed by an organisation, to act as its qualified person.
13. However, the Commissioner is not aware of any evidence suggesting that a minister has altered the public authority's designation in the intervening period. He is therefore satisfied that Mr Fry was entitled to act as the public authority's qualified person.
14. On 21 March 2024, Mr Fry sent an email stating that he was happy that section 36(2)(b)(ii) of FOIA would apply to the withheld information and that its disclosure would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
15. The Commissioner is therefore satisfied that the qualified person has given an opinion and that it was given on 21 March 2024.

What was the qualified person's opinion and was it reasonable?

16. The qualified person was of the opinion that disclosing the withheld information "would, or would be likely to" inhibit the free and frank exchange of views.
17. The withheld information in this case comprises of three sets of minutes. Two of these relate to the 33rd pay remit and one to the 34th pay remit.
18. In its submission, the public authority explained that there were two parts to its evidence-gathering. Firstly, the various stakeholders would make a written submission setting out their formal position. This would then be followed by sessions to receive oral evidence.
19. The oral evidence sessions were, the public authority explained, a chance for each stakeholder to explain its position more candidly and for its priorities to be probed.
20. Those that participated in oral sessions did so in the expectation that, unlike their written submissions, their oral evidence would remain private and not disclosed to any of the other parties. This, the public authority argued, allowed it to test various hypothetical scenarios to understand how each stakeholder would respond and what its priorities were. It also needed some internal discussion space so its members could discuss the evidence candidly and reach a conclusion.
21. The qualified person's opinion only has to be a reasonable one. It does not have to be the most reasonable opinion a person could hold and it does not necessarily have to be one the Commissioner agrees with. However it must not be irrational or absurd.
22. The qualified person did not give his view on the likelihood of prejudice occurring. The terms "would" and "would be likely to" carry different meanings in the context of FOIA. The former means that harm is more likely than not to occur. The latter indicates the chance of harm is less than 50% but remains more than a remote or hypothetical chance.
23. The Commissioner has therefore assumed that the qualified person was referring to the lower bar of "would be likely to" cause prejudice.
24. In the Commissioner's view it is neither irrational nor absurd to believe that participants may be more guarded in their evidence in future if, contrary to expectations, their previous evidence was made public. The opinion is therefore reasonable and this is sufficient to engage the exemption.

Public interest test

25. Even where this exemption applies, the information must still be disclosed unless the balance of the public interest favours maintaining the exemption.
26. The complainant stated that the balance of the public interest should favour disclosure – though they provided no reasons why this should be the case. Nor did they identify any public interest factors in favour of disclosure – though in fairness the complainant did note that the public authority had not, in either of its responses, explained why the public interest should have favoured maintaining the exemption.
27. The Commissioner recognises that the public sector as a whole employs a very large number of teachers and therefore decisions on teachers' pay affect a very large number of households.
28. Whilst the final decision on pay is one for ministers to make, the public authority's recommendation is likely to carry significant weight – particularly in setting a frame of reference for the final decision. The public authority's recommendation is likely to be used as a benchmark in assessing the generosity of the government's offer.
29. As such, there is a strong public interest in understanding how the public authority came to make the recommendation, the factors it took into account and the influences it was subjected to.
30. However, given the Commissioner has accepted that it is reasonable to expect that some form of inhibition would be likely to result from disclosure, there will be an inherent public interest in preventing this from happening. The weight to be attached to this interest will depend on the likelihood of the harm and the severity if it were to occur.
31. The public authority has explained the two stages of its process and the value of conducting each stage in the manner that it does. The Commissioner accepts that there is a public interest in allowing stakeholders to have a safe space in which to discuss issues and hypothetical scenarios with the public authority's officials – without fear of being bound in future discussions. The public authority also needs a space in which to carry out its own internal deliberations before making a recommendation.
32. The Commissioner expects public officials to be robust and not easily swayed from giving candid advice. Interest groups such as trade unions and industry bodies are also unlikely to be easily dissuaded from seeking to represent their members interests.

33. However, the candid nature of the discussions (which is reflected in the withheld information) is likely to be affected by disclosure. All parties are likely to participate less fully in the oral evidence stage if they are concerned that their views – particularly on hypothetical scenarios – will become public knowledge. This in turn will make the public authority's task of making independent, fair recommendations more difficult.
34. In the Commissioner's view the public interest in transparency is already met through publication of the correspondence from the Secretary of State and from the public authority's Chair setting out the recommendation and the reasoning behind it. Providing a higher level of detail would provide some additional transparency but would come at the cost of inhibiting the free and frank exchange of views, thereby harming the public authority's ability to carry out such work effectively in future.
35. The Commissioner therefore finds that, in the circumstance of this case, the balance of the public interest favours maintaining the exemption.

Right of appeal

36. 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

37. 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.
38. 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
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Wycliffe House
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