

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 October 2024

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested DfE to disclose all information on the Moderator Proposition, as submitted by them to the DfE. DfE refused to comply with the request citing section 14 of FOIA.
2. The Commissioner's decision is that DfE is not entitled to rely on section 14 of FOIA.
3. The Commissioner requires DfE to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant, which does not rely on section 14 of FOIA.
4. The public authority must take these steps within 30 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**

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5. On 5 February 2024, the complainant wrote to DfE and requested information in the following terms:

"...please furnish all information recorded on the Moderator Proposition as submitted to the Department of Education."

6. DfE responded on 26 February 2024. It refused to comply with the request citing section 14 of FOIA.
7. The complainant requested an internal review on the same day.
8. DfE carried out an internal review and notified the complainant of its findings on 26 March 2024. It upheld its previous application of section 14 of FOIA.

### **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the DfE's handling of their request. They dispute that section 14 of FOIA applies and believe DfE should comply with their request and disclose all requested information.
10. During the Commissioner's investigation DfE changed its approach, as it considered that it had initially interpreted the complainant's requests too broadly. It informed the Commissioner that it considered the scope of the request (and the only objective reading of it) to be for the correspondence the complainant had submitted to DfE on the Moderator Proposition. DfE advised that it would be happy to provide this documentation to the complainant as a means of informally resolving the complaint.
11. The Commissioner put this to the complainant and they expressed their dissatisfaction with DfE's latest interpretation of their request. They confirmed that they do not require access to the correspondence they submitted to DfE and advised that the original request was not worded this way. The complainant stated that they require access to all recorded information DfE holds on the Moderator Proposition.
12. The Commissioner is satisfied that DfE's original interpretation of the request is the correct one and the only objective reading of it. The request is clearly worded to say that they require all information held 'on' the Moderator Proposition. The Commissioner believes the words 'as submitted to..' were used to provide the necessary context to the request and be clear that they required all information of the proposition they submitted – known as the Moderator Proposition. The Commissioner does not agree that the request is limited to just the complainant's correspondence on the proposition, but rather encompasses everything DfE holds on or relating to it.

13. The Commissioner will therefore be taking the initial interpretation of the request forward and he will consider DfE's application of section 14 of FOIA.

## Reasons for decision

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### Section 14 – vexatious request

14. Section 14 of FOIA states that a public authority may refuse to comply with a request if it considers that request to be vexatious. More details of this exemption and how it applies can be accessed via the following link:

[Decision notice support materials | ICO](#)

15. DfE advised that the complainant has been in contact with it since at least 2021 with their proposal 'the Moderator Proposition'. It stated that this proposal relates to the complainant putting forward a proposition to government, which it understands is to re-deploy, without modification, technology which is already installed in security bodies in the UK and the US. It understands the complainant believes this to be a proposition which will deal with systematic problems around multi-agency working and information sharing.
16. DfE advised that the complainant has also previously contacted a number of different channels in relation to the proposition: Isabelle Trowler (Chief Social Worker for Children and Families), the Panel Secretariat and Ofsted, all of whom passed the contact onto DfE as the lead department.
17. It explained that correspondence increased following the publication of the Independent Care Review<sup>1</sup> and DfE's initial response to the Review in 2022. It confirmed that the initial response from DfE referenced some early commitments to the recommendations made by the Review including DfE's intention to establish a new advisory board of senior stakeholders to support Ministers at the time with a reform programme – the National Implementation Board (NIB).
18. DfE commented that the complainant's main request at this point was for the NIB to review their proposition, as they perceived them to have a

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<sup>1</sup> [Independent review of children's social care: final report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/111111/independent-review-of-childrens-social-care-final-report.pdf)

formal decision-making function over DfE's reform programme. In response, and as an alternative, DfE offered a meeting with officials from the Data and Digital division. Along with a number of data expert colleagues, they met the complainant and concluded for various reasons at the end of the meeting that the matter was closed. Although it said the complainant was encouraged to pursue the normal commercial routes into DfE should they still wish for it to consider the proposal.

19. DfE explained that the complainant was unhappy with the meeting with officials, the fact it did not bypass the 'normal commercial routes' into DfE and that it did not share their proposal with the NIB.
20. DfE advised that as well as the recorded Treat Official (TO) cases (which provide a policy response to questions raised) and subsequent FOIA requests, the complainant regularly contacted officials directly where they had their details. It confirmed that this led to an increase in the volume of correspondence and it reached the point where it was no longer appropriate to respond to TOs (the complainant, for the purposes of their TO cases, was considered as a 'serial correspondent'). As part of this it notified the complainant that it would not be replying any further on anything related to the Moderator Proposition.
21. It stated that from this point, the complainant has continued to contact DfE (by letter and regularly by telephone) and begun using FOIA as a correspondence route.
22. It also said that the complainant has contacted the Parliamentary Health Service Ombudsman to complaint about DfE. It stated that the complainant had not followed all of the steps required before the Ombudsman would consider their case, so the complaint got passed back to DfE as a 'formal stage 1' complaint. DfE went on to say that it did not uphold the complaint, which was in similar vein to the issues raised through the FOIA requests it has received. It advised that it responded to the complainant in Spring 2024. At the time of its submissions to the Commissioner, it stated that the complainant had not yet indicated whether they wish to dispute the complaint outcome and progress to the next stage of DfE's own complaints process.
23. DfE further advised that the complainant has used the phrases FOI and SAR (subject access request) interchangeably. It stated that where such terms have been used, including in correspondence submitted as a TO, it has considered these requests individually to ensure that it is responding under the correct regime. To clarify, it stated that to date it has not had any cases where it has considered that the request falls under the remit of a SAR.

24. DfE advised that it is of the view that responding to this request will not satisfy the complainant but would give rise to further complaints and requests without serious purpose or value, especially in light of previous requests from the complainant for information it has already provided.
25. Having considered the criteria as set out in the Commissioner's guidance, DfE has said that this request meets a number of those criteria. It also considers that, given the repetitive requests for the same information made under FOIA and other correspondence, it would place an unnecessary and unwarranted strain on its resources and contribute to the aggregated burden it has already identified. It argued that given its previous responses and release of information in scope it is likely to be a deliberate, systematic and consistent abuse of the FOIA legislation.
26. In terms of burden, DfE has said that since 2021 it has received in the region of 40 requests (TOs, FOIs and direct emails) from the complainant in relation to this information. This has taken a considerable amount of resource over this period. It confirmed that it has already disclosed some information to the complainant relating to this matter. It argued the effort required to meet this request would place an unnecessary and oppressive burden on DfE in terms of time and resources, as it would involve re-releasing information it has already disclosed and considering over 100 pieces of information that is in scope.
27. DfE confirmed that due to ongoing correspondence from the complainant and the fact that the complainant has, in this request, requested some information that would have been previously disclosed under previous requests, it considers this request is aimed at doing little more than placing further burden on DfE and its staff.
28. It further commented that there would be a number of other exemptions that it would need to consider, for example section 36(2) (prejudice to the effective conduct of public affairs) and 40 (personal data). DfE stated that given that this is a repeated request, spanning four years, the burden and effort required to undertake this work (to consider in the region of over 100 pieces of information in scope) would be disproportionate, especially in light of any serious purpose or value in processing the request. It provided its refusal notice to the complainant's earlier request of 18 April 2023 to highlight the information falling in scope and the exemptions that would be required.
29. Regarding motive, it believes the motive appears to be to unnecessarily impact on DfE's resources, by prolonging and revisiting the proposition the complainant submitted to the department. It stated again that it has disclosed information previously, it has made it clear what its position is on the proposition put forward and advised the complainant what the

correct route is to follow to formally put that proposition to DfE for consideration. It can therefore only conclude that the motive behind this request is to simply prolong correspondence.

30. In respect of any serious purpose or value, DfE confirmed that it does not see that there is any serious purpose or value to this request, given that it has previously disclosed the information it holds subject to any exemptions. Again it refers to this request being a repeated request, which includes information it has previously disclosed to the complainant over the last four years. It can therefore only reach the view that this specific request is without value or serious purpose.
31. DfE commented that the complainant is using FOIA to reopen an issue which has already been comprehensively addressed by it, in the form of previous responses and a face to face meeting.
32. The Commissioner notes that the complainant has been in correspondence with DfE in relation to their Moderator Proposition for a few years. There is evidence of previous requests – both FOIA and TOIs, correspondence and a face to face meeting on 13 March 2023 to discuss the matter. He notes that the complainant was told at the meeting that in terms of NIB considering the proposition the matter was closed but they were advised to pursue the matter via the correct commercial routes into DfE should they still wish for DfE to consider their proposal.
33. It is clear that the complainant was not content with the outcome of this meeting. DfE believes the complainant was unhappy that it couldn't bypass the normal commercial routes into the department and that it did not share the proposal with NIB. The Commissioner notes from 2022 and certainly from this point onwards too the complainant has continued to contact DfE regarding this matter and has sought to use their rights of access under FOIA.
34. However, it is not clear to the Commissioner to what extent FOIA has been used to obtain relevant information or indeed pursue this ongoing matter. DfE has said that it has received 40 requests in total but it has not said how many of these are FOIA requests and how many have been made up to the date of this request. Although the number of requests is not a decisive factor, it often highlights the extent to which FOIA is used by an applicant and can often demonstrate any potential misuse or abuse of the legislation. The Commissioner must also be certain that he is only considering the circumstances leading up to the date of the request. He cannot take into account any correspondence, contact, events or requests that post-date it.
35. It is also not clear to what extent this request is repeated and how burdensome compliance would be. If much is repeated and qualified

exemptions have been applied previously, the Commissioner would assume that the task of processing an up to date request would just be a case of considering the passage of time.

36. DfE refers to having to consider 100+ pieces of correspondence again and provided the Commissioner with its previous response to the complainant's request of 18 April 2023 as an example. However, this response seems to confirm that very little or no information is held by DfE in relation to the Moderator Proposition (its response to questions one, two, six and eight of this request), and that the information disclosed and the exemptions considered at this time (sections 22 and 35 of FOIA) would not fall within the scope of this request (questions, three, four, five and seven, which asked for the minutes of the latest NIB meeting and any associated documents and evidence of the use of AI in resolving deficiencies in multiagency working and information sharing in DfE).
37. DfE has referred to the burden of considering sections 36(2) and 40 of FOIA. However, it has not provided any evidence of where such exemptions would apply to any relevant information and demonstrated just how burdensome the task of redaction would be. This would be information the Commissioner needs to support an application of section 14 of FOIA based on burden.
38. Not knowing the complete history to this request, the Commissioner cannot also be confident that the request does not have any serious purpose or value at this stage. The complainant has invested significant time and resource into their proposition. It is reasonable to assume that they would want to see how this proposition was considered by DfE and what its thoughts were (although it does seem from the refusal notice that was issued on 18 April 2023 that little information is held of this nature, given that it was not actually considered at the time. The complainant was just directed to the commercial route for submission.)
39. The Commissioner has provided DfE with opportunities to provide additional information surrounding these points. It has however focussed its further responses on the scope of the request, which is addressed in paragraphs 10 to 13 above.
40. Based on the submissions he has received, the Commissioner is not convinced that section 14 of FOIA applies. He therefore cannot uphold the application of the exemption.
41. The Commissioner would like to point out that this decision has been made because of insufficient information from DfE. Section 14 of FOIA may indeed apply, he just cannot make such a determination on the evidence provided to date. It is also not to say that if the exemption

does not apply, that the complainant is not approaching the relevant threshold for its application.



## **Right of appeal**

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42. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Samantha Coward**  
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