

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 December 2013

Public Authority: Department for Education (DfE)

Address: Sanctuary Buildings
Great Smith Street
London
SW1P3BT

Decision (including any steps ordered)

1. The complainant requested information about the DfE's investigations into applications by Steiner schools and Maharishi schools to enter the free schools programme.
2. The Commissioner's decision is that the DfE has correctly relied upon s35(1)(a) to withhold the information in respect of the Maharishi application. The exemption is engaged in relation to the Steiner investigation but the Commissioner has decided that the public interest in maintaining the exemption does not outweigh that of disclosure. Therefore the information regarding the Steiner investigation should be disclosed.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the 2010 submission to ministers regarding Steiner schools withheld under section 35.
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 8 May 2012 the complainant requested the following information:

(a) digital or written correspondence, minutes of meetings or agendas from May 2010 onwards related to anthroposophy and Steiner schools within the context of the Free Schools programme.

(b) any internal briefings or investigations on this matter, including a copy of the internal investigation carried out by the Free Schools team into Steiner schools.

(c) digital or written correspondence, minutes of meetings or agendas from May 2010 onwards related to Transcendental Meditation and Maharishi schools within the context of the Free Schools programme.

(d) correspondence with the Maharishi Schools Trust, the Maharishi School in Lancashire, Derek Cassells and Richard Scott.

(e) any internal briefings or investigations on this matter, including a copy of the internal investigation carried out by the Free Schools team into Maharishi schools.

6. On 28 May 2012 the DfE informed the complainant that it did not hold minutes of meetings or agendas in relation to (a) or (c). It withheld the remaining information under s35 FOIA.

7. The complainant appealed the DfE's refusal to communicate the information it held related to (b) (d) and (e) on 12 July 2012. On 7 August 2012 the DfE's internal review upheld its decision to withhold the information under s35 FOIA.

Scope of the case

8. The complainant complained to the Commissioner on 19 February 2013 about the way his request for information had been handled.

9. The scope of the investigation is to ascertain whether the information requested at (b) (d) and (e) has been appropriately withheld under s35(1)(a) FOIA.

Reasons for decision

10. Section 35(1)(a) FOIA provides that information held by a government department is exempt if it relates to the formulation or development of government policy. The exemption is qualified and therefore subject to the public interest test.
11. The Commissioner asked the DfE for a copy of the withheld information. He asked the department to clarify which government policy the information related to and why it considered that the formulation or development of the policy was ongoing at the time of the request.
12. The DfE provided the Commissioner with the withheld information. It submitted that the information related to the development of criteria for testing which groups are eligible for the free schools programme.
13. The withheld information supplied to the Commissioner comprised:
 - (a) documentation from 2010 related to whether Steiner schools would be likely to meet the criteria for entry to the free schools programme.
 - (b) documentation relating to the DfE's consideration of the application for two Maharishi schools to join the free schools programme.
14. The Commissioner considers that the term 'relates to' within the wording of s35 FOIA should be interpreted broadly to include any information concerned with the formulation or development of policy. It does not specifically need to be information on the formulation or development of that policy.
15. He is satisfied that the withheld information relates to the development of policy regarding applications for entry to the free schools programme. Accordingly he finds that s35(1)(a) is engaged in relation to the withheld information.
16. The exemption at s35(1)(a) is subject to the public interest test whereby the information can only be withheld if the public interest in maintaining the exemption outweighs that of disclosure. The Commissioner has first considered the public interest in disclosure.
17. The DfE acknowledged that there is a general public interest in disclosure. It said that knowledge of the way that government works is increased if the information upon which key decisions have been made is available. This can lead to a more effective public contribution to the policy making process. The DfE also acknowledged that there is a

general public interest in being able to see if ministers are being briefed effectively by their civil servants in the policy areas that the department is taking forward.

18. The Commissioner recognises that the free schools policy has attracted significant public debate and the policy is a significant change in the direction of educational policy. He is aware that people hold strong and divergent views about the effectiveness of the free schools programme. The programme attracts substantial sums of public money. Increasing public understanding of all the issues involved would therefore be in the public interest.
19. The complainant submitted that the DfE had previously carried out investigations into whether Steiner and Maharishi schools *as entire categories of school* should be eligible to gain state funding through the free schools programme before any individual proposals for such schools were considered. This was done because of the unique nature of these categories of school: Steiner schools have their own educational pedagogy and have been underpinned by anthroposophy, a unique philosophy; Maharishi schools are built around the teachings of the Maharishi Mahesh Yogi and teach transcendental meditation, the science of creative intelligence and consciousness-based education.
20. The complainant considered that for these reasons the two types of school have attracted unique attention by gaining state funding in instances where they have been allowed entry to the free schools programme. He has observed that both the Steiner and the Maharishi groups consider themselves to constitute non-religious world views and that their gaining of public funds represents the first time that schools holding such views have entered the state sector. The complainant contends that there is therefore a strong public interest in the transparency of decisions to admit such categories of school to the state sector and that the public should be enabled to understand the reasoning behind this.
21. During the course of the Commissioner's investigation the DfE said that in both the Steiner and the Maharishi cases policy development was not yet complete. This was because the department was constantly reviewing the position on each.
22. In favour of maintaining the exemption the DfE submitted the following 'safe space' argument. The term 'safe space' refers to the need for a protected space in which to formulate policy, debate live issues and reach decisions without hindrance from external or media comment. The DfE said that formulation of government policy and decision making required a self-contained space to ensure that it is done well. It said that good government depends on good decision making which needs to be

based on the best advice available and a full consideration of the options. Therefore in its view it was not in the public interest to disclose early supporting material provided by proposers as this would be likely to prejudice decision making and policy development.

23. The DfE also said it was important for officials to feel comfortable when developing government policy. In the early stages of the free schools policy the department had researched a number of options in order to identify potential risks and provide advice to ministers. It submitted that releasing this early research could put the reputation of the free schools programme at risk.
24. The DfE submitted the following 'chilling effect' argument in favour of maintaining the exemption. The term 'chilling effect' refers to an adverse effect on the frankness and candour of participants in the policy making process. The DfE said that the department should be able to consult and discuss any emerging issues with relevant groups in confidence. It submitted that disclosing information thought to have been shared in confidence could prevent organisations from coming forward with potentially useful information in the future. The DfE maintained that this could jeopardise future policy making and the quality and thoroughness of the research that it was able to conduct on potential free school applicant groups.
25. The DfE said it was important that advice provided to ministers should be as clear and frank as possible when a topic is controversial as it was in this instance. It submitted that without protecting the ability for ministers and officials to receive free and frank advice there is likely to be a corrosive effect on the conduct of government with a risk that decision making will become poorer and recorded inadequately.
26. With regard to the latter point the Commissioner is mindful that the Information Tribunal has given little weight to arguments that disclosure will lead to poorer record keeping. It is considered to be a matter of effective staff management for government to ensure that complete advice is made available to decision makers and that it is properly recorded.
27. In reaching a decision as to where the public interest lies the Commissioner acknowledges that the requested information relates to on-going policy review issues concerning these particular free school applications. He considers that the DfE's arguments about safe space for further development of the policy are subsequently valid and that a chilling effect could be likely in some quarters as a result of disclosure.
28. The Commissioner is aware of the significant public debate concerning the ideologies and methodologies of both organisations. He recognises

that concerns about aspects of the Steiner methodology have been disseminated extensively on the internet and are widely documented within the general public domain. The DfE itself has conducted and commissioned public research into this area - for instance DfE *Research Report RR65 – 'Steiner Schools in England'*.¹ The Commissioner has identified a strong specific public interest in this information being disclosed, which will add to the other information in the public domain and further enhance the public's understanding of how the DfE were considering the issues.

29. The Commissioner has concluded that the public interest favours maintainance of the exemption with regard to the DfE's consideration of the application for the Maharishi schools to join the free schools programme. Therefore this information should be withheld.
30. With regard to the information from 2010 which was designed to test whether Steiner schools met the criteria for entry to the free schools programme he has concluded that the public interest favours disclosure. This is because the linkage of that document with current issues is weaker than that concerning the Maharishi application. The Commissioner considers the public interest in disclosure of the 2010 submission to be particularly strong as a Steiner school has subsequently entered the free schools programme. Therefore this information should be disclosed.

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<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/RR645.pdf>

31. Right of appeal

32. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. 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.
34. 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

Steve Wood
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