

Freedom of Information Act 2000 (FOIA)

Date: 13 August 2013

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

Decision (including any steps ordered)

1. The complainant requested information from the Department for Education relating to Free School proposals received in 2013 for opening in September 2014.
2. The Department for Education initially withheld the information under section 22 of the FOIA but during the course of the Commissioner's investigation made it available on its website.
3. The Commissioner's decision is that the Department for Education did not deal with the request in accordance with the FOIA. The information was not supplied within 20 working days and therefore the Department for Education breached section 10(1).
4. As the requested information was provided during the course of the Commissioner's investigation he does not require the Department for Education to take any further action.

Request and response

5. On 4 March 2013, the complainant wrote to the Department for Education (the DfE) and requested information in the following terms:

'I am seeking the following information in electronic form.

A list of Free School proposals received by the Department for Education during the "forth wave" (i.e. received in 2013 for opening from September 2014), giving for each:

- *The name of the project*
- *The local authority/area of the proposed school*
- *The previous name (if applicable) of the proposed school*
- *The faith (if any) of the proposed school*
- *Whether the proposal was received in the first wave, second or third waves (and if so, which).*

By "faith (if any)", I mean either a formally designated religious character or a faith ethos (recorded in two separate columns).

I am aware that my colleague, Richy Thompson, has made a separate FOI request for the same information¹. However, as his FOI request has been rejected due to being made sooner after the closure of the application window than in the waves 1/2 FOI request today – today being a date that this is later than the date of the FOI request that the Tribunal considered'.

6. The DfE responded on 27 March 2013 and confirmed it held the requested information. However, it stated that it was applying the exemption under section 22 of the FOIA to withhold it on the basis that it was intended for future publication. It also confirmed the public interest was balanced in favour of maintaining the exemption.
7. On 3 April 2013 the complainant requested an internal review and asked the DfE when the requested information would be published.
8. The DfE responded on 19 April 2013 and asked the complainant if he still wanted an internal review as it was its intention to publish the requested information at the end of May 2013. The confirmed that he did on 22 April.
9. Following an internal review the Department for Education wrote to the complainant on 22 May 2013 and stated that it was upholding its original decision under section 22 of the FOIA and advised him that the requested information was now likely to be published at the end of June 2013.

Scope of the case

¹ The complaint relating to this request is dealt with by the Commissioner in his Decision Notice FS50494802

10. The complainant's colleague contacted the Commissioner in April to complain about the way his request for information had been handled. In particular, he complained about the DfE's initial decision to withhold the requested information under the exemption in section 22 of the FOIA. He also said that he was awaiting the outcome of his internal review request.
11. In May 2013 the complainant's colleague contacted the Commissioner again following the internal review and explained that he had made an identical information request on behalf on the British Humanist Association on 7 January 2013.
12. This request is dealt with by the Commissioner's in his separate but related Decision Notice under reference: FS50494802.
13. On or about 28 July 2013 the DfE made the requested information available on its website².
14. This Decision Notice does not include any analysis of whether or not the requested information was correctly withheld using the exemption under section 22 of the FOIA because it has now been disclosed.
15. Accordingly, this Decision Notice deals with the procedural aspects of the complaint only.

Chronology

16. On 5 August 2013 the Commissioner wrote to the complainant's colleague and pointed out that it appeared the information he had requested on 4 March 2013 was now available for viewing on the DfE's website.³ In view of this, the Commissioner asked the complainant whether he was satisfied with the information which had now been made available and also whether he still wanted a Decision Notice.

² <http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/b00222077/pre-opening>

³ See;

<http://media.education.gov.uk/assets/files/xlsx/f/wave%20%20free%20school%20applications.xlsx>

<http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/b00222077/pre-opening>

17. The complainant responded the same day and indicated his satisfaction with the information which had been made available but said that he still wanted the Commissioner to issue a Decision Notice.
18. The Commissioner replied to the complainant on 6 August 2013 confirming that he would draft a Decision Notice dealing with the procedural aspects of the complaint in accordance with the his published lines to take.
19. On 6 August 2013 the Commissioner also wrote to the DfE requesting its confirmation that it no longer wished to rely on section 22 of the FOIA in view of the information which had recently been made available on its website in July 2013⁴.
20. The DfE responded on 9 August 2013 and confirmed that it no longer intended to rely on section 22 of the FOIA as the information requested had since been made available on its website.

Reasons for decision

21. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
22. In this case the Department for Education disclosed the information in question by making it available on its website outside of the statutory time limit for compliance with requests. The Commissioner has therefore found that the Department for Education breached the requirements of section 10(1) of FOIA.

⁴ See;

<http://media.education.gov.uk/assets/files/xlsx/f/wave%204%20free%20school%20applications.xlsx>

<http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/b00222077/pre-opening>

Right of appeal

23. 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

24. 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.
25. 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

Rachael Cragg
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Wilmslow
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SK9 5AF