

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2022

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

Decision (including any steps ordered)

1. The complainant made a request for information relating to the Review of Post-18 Education and Funding. The Department for Education (DfE) confirmed that it does not hold some of the requested information (part 1 of the request) and refused to comply with part of the request as it does not consider it to be a request for recorded information (part 2 of the request).
2. The Commissioner considers that DfE does not hold the information requested at part 1 of the request under section 1(1)(a) FOIA and as part 2 of the request asks for an assurance rather than recorded information DfE is not obliged to respond under FOIA. This is because FOIA only applies to information that a public authority already holds in recorded form at the time of a request.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made the following information request to DfE on 10 February 2021:
 - If the Review of Post-18 Education and Funding has rejected the debt-free Equity product proposal DfE is again asked to help public debate and political consideration by making the relevant summary section of the Review's working papers available, redacted where appropriate.

- If the Review has not rejected the debt-free Equity product proposal kindly assure the proposal's author that the experience of impartial very-high-volume retail systems experts will be taken into account as recommended in 2019.
5. DfE responded on 23 August 2021, it confirmed it does not hold the information requested. The complainant requested an internal review on 1 October 2021. DfE provided the result of the internal review on 11 January 2021. It confirmed that it does not hold information in relation to the first part of the request and provided the complainant with an explanation as to why this is the case. It refused to respond to the second part of the request as it does not consider that this is a request for recorded information and therefore DfE is not obliged to comply under FOIA.

Scope of investigation

6. The complainant contacted the Commissioner as he was dissatisfied with the way his request was handled.
7. Specifically the complainant asked the Commissioner to take the following action:
- “If DfE has rejected the debt-free equity product as an alternative, the Information Commissioner is asked to confirm that DfE’s decision accords with the fifth principle of public life, with supporting rationale.
- “If, on the other hand, DfE’s Review of Post-18 Education and Funding has yet to decide whether to offer applicants the choice of a debt-free equity product as an alternative to SLC’s debt product, the Information Commissioner is asked to obtain some indication of DfE’s intended decision-making timetable.”
8. It is not within the Commissioner’s remit to take the action requested by the complainant. The Commissioner has therefore determined whether DfE was correct to confirm that it does not hold the information requested at part 1 of the request under section 1(1)(a) FOIA and whether DfE is obliged to comply with part 2 of the request under FOIA.

Reasons for decision

Part 1

9. Section 1(1) FOIA provides that:
- “Any person making a request for information to a public authority is entitled –
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”
10. The Commissioner has sought to determine whether, on the balance of probabilities, DfE holds the information requested at part 1 of the request.
11. DfE explained that it does not hold a “relevant summary section of the Review’s working papers”. Whilst DfE confirmed it has access to records of the Independent Panel’s working papers, after a comprehensive search it has not found a record of how an individual submission may have been used by the Panel, given the broad and thematic nature of its discussions.
12. It provided an explanation of the responsibilities of the Independent Panel and DfE’s current work to conclude the Review of Post-18 Education and Funding. It said that the Panel comprised “experts from across post-18 education and the business world,” was “independent and impartial” and aimed to provide an objective assessment of the current Post-18 education arrangements. As such it confirmed that the DfE had no input into which submissions were or were not referenced in its final report presenting its recommendations to government.
13. DfE went on that in the current phase of work, following the publication of the Independent Panel’s report, it is primarily using the formal recommendations laid out in the report as the basis for considering proposed reforms to the higher education system. As such the Post-18 Review team does not possess a ‘relevant summary section’ of working papers which would formally accept or discount individual submissions initially made to the Independent Panel. This is why DfE does not hold the recorded information requested at part 1 of this request.
14. In this case, as DfE does not hold recorded information on how individual submissions were used by the Independent Panel or which formally accept or discount a particular submission, the Commissioner can only conclude on the balance of probabilities that the information

requested at part 1 is not held by DfE under section 1(1)(a) FOIA.

Part 2

15. Part 2 of the request asked for an assurance rather than a request for recorded information. FOIA only applies to information that a public authority already holds in recorded form at the time of a request. A public authority is not obliged to create information to respond to a request. As asking for an assurance is not a request for recorded information DfE was not obliged to respond to this part of the request under FOIA.

Right of appeal

16. 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: 0870 739 5836

Email: grc@Justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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.....

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF