

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 February 2024

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

Decision (including any steps ordered)

1. In a three-part request, the complainant requested information from the Department for Education (DfE) about Early Career Framework providers. DfE addressed two parts and relied on section 43(2) of FOIA (commercial interests) to refuse to disclose the information requested in Q2.
2. The complainant was dissatisfied with DfE's response to Q2 and Q3.
3. During the Commissioner's investigation DfE confirmed it's relying on section 43(2) of FOIA in respect of Q3 and that it has also now applied section 36(2)(c) to both Q2 and Q3. Section 36 concerns prejudice to the effective conduct of public affairs.
4. The Commissioner has decided that the information the complainant has requested in Q2 and Q3 is exempt from disclosure under 43(2) of FOIA.
5. It's not necessary for DfE to take any corrective steps.

Background and context

6. In its submission to the Commissioner, DfE has provided the following background and context:

"Teachers deserve high quality support throughout their careers, particularly in those first years of teaching when the learning curve is steepest. Just as with other esteemed professions like medicine and law, teachers in the first years of their career require high quality,

structured support in order to begin the journey towards becoming an expert. During induction, it is essential that early career teachers are able to develop the knowledge, practices and working habits that set them up for a fulfilling and successful career in teaching.

However, too often, new teachers have not enjoyed the support they need to thrive, nor have they had adequate time to devote to their professional development. The department's Early Career Framework (ECF) underpins an entitlement to a fully-funded, two-year package of structured training and support for early career teachers linked to the best available research evidence. The package of reforms will ensure new teachers have dedicated time set aside to focus on their development.

The department's vision is for the ECF to build on high-quality Initial Teacher Training (ITT) and become the cornerstone of a successful career in teaching.

As part of the delivery of ECF, the department has engaged and contracted with seven providers to deliver this package of training and support, at a total budgeted cost of £250 million for the roll-out of ECF. To date, over 73,000 teachers and over 59,000 mentors have received such packages of training and support."

Request and response

7. On 19 May 2023, the complainant wrote to DfE and requested information in the following terms:
 - "1. For each of the early career framework providers, their contract for each year since they begun being contracted.
 2. How much each provider was paid each academic year (or financial year, whichever the DfE uses to measure this).
 3. How each provider has performed against their key performance indicators each academic year (or financial year, whichever the DfE uses to measure this)"
8. DfE disclosed information relevant to Q1 and Q3. For Q3, it provided a link to where relevant key performance indicator (KPI) information is published for five of the six providers and it provided that same information for the sixth.
9. DfE withheld the information requested in Q2 under section 43(2) of FOIA.
10. The complainant asked DfE to review its response to Q2 and Q3. Regarding Q3, the complainant asked:

"...can you just confirm that there's no other KPIs that the government measures providers against? I would also like the actual figures of target vs performance, rather than just 'met/not met'"

11. DfE maintained its reliance on section 43(2) regarding Q2. Regarding Q3, DfE again provided a link to where relevant information is published and it also provided the complainant with relevant information set out in a table. Finally, DfE provided further narrative information and explanation about KPIs.

Scope of the case

12. The complainant contacted the Commissioner on 20 October 2023 to complain about the way their request for information had been handled.
13. For Q2, they couldn't see a reason why the DfE can't provide contract values / how much each was paid for each ECF provider. The complainant said that DfE routinely publishes these online for singular contracts. The online information on this that DfE referred to in its response only shows the overall value for all contractors, rather than each one.
14. For Q3, the complainant said that they couldn't see the actual performance figures in the data DfE provided. They said they wanted actual target vs actual performance figures, whereas what DfE provided is a percentage range figure.
15. As a result of the complaint to the Commissioner, DfE reconsidered its response to the request. It confirmed that it continued to rely on section 43(2) of FOIA in respect of Q2. However, DfE indicated that it's also now relying on section 36(2)(c) to withhold that information.
16. Regarding Q3, the complainant asked for information on "How each provider has performed against their key performance indicators each academic [or financial] year". They didn't ask for the information in a particular format, such as "actual" figures at that point.
17. In its original response, DfE provided a link to where KPI information for five of the six providers is published. It also provided the complainant with the information for the sixth provider.
18. As noted, in their request for an internal review, the complainant said they wanted "actual" figures not "met/not met" indicators.
19. In its submission to the Commissioner, DfE noted how the original request was phrased. It considers that it responded to this request

correctly, sharing its published data in the form of percentages. This is because the original request didn't ask for specific numbers.

20. DfE went on to note that there was a "further request within the request for an internal review" when the complainant asked for any further data relating to the KPIs. DfE said it provided the KPI data as DfE report it ie as a percentage of target met, rather than actual figures which are less useful at a reporting level when comparing providers.
21. DfE said it uses percentage of target as a reporting metric for KPI reporting as it's a more meaningful measurement. Actual figures vary per provider so using percentage figures allows for comparison across providers and this is why DfE uses percentage figures in its internal reporting.
22. DfE concluded by confirming that in line with its transparency obligations it also already publishes KPI data on GOV.UK for the government's most important contracts, with KPI's reported as 'Good', 'Approaching Target', 'Requires Improvement', or 'Inadequate' as per Cabinet Office guidelines. Ofsted also publishes reports on DfE's ECF providers.
23. DfE is correct that in their original question, the complainant didn't request KPI information in any particular format, they simply requested information on how each provider had performed. However, in their request for an internal review, the complainant stated that they were seeking "actual" figures.
24. The Commissioner asked DfE to clarify its FOIA position on Q3.
25. DfE confirmed that it holds the "actual figures" the complainant is seeking in Q3 and is also relying on section 43(2) and 36(2)(c) to withhold this information.
26. The Commissioner's investigation has therefore focussed on DfE's application of section 43(2) or section 36(2)(c), or both, to Q2 and Q3 of the request.

Reasons for decision

Section 43 – commercial interests

27. DfE has applied section 43(2) of FOIA to the information requested in Q2 and Q3 of the request ie how much each ECF provider was paid each academic or financial year, and the actual target v performance figures for those providers.

28. Under section 43(2) information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
29. When he's deciding whether section 43(2) is engaged, the Commissioner considers whether the envisioned harm relates to commercial interests, why disclosing the information would or could prejudice those commercial interests and how likely it is that the envisioned prejudice will happen.
30. Regarding Q2, in its submission to the Commissioner DfE has explained that releasing the payment information would allow providers, or any third parties, to determine individual providers' per-participant rates. This is because the delivery volumes are in the public domain via Ofsted inspection reports. Providers would be able to determine what their competitors charge and, along with the information already in the public domain via the Core Induction Programme and Ofsted inspection reports, determine their delivery model.
31. DfE says that the Early Career Framework and future procurement exercises are highly competitive environments, where it seeks to receive competitive bids and secure the best expertise and value for money possible. Disclosure would directly impact on providers' ability to be competitive in these environments and the broader market. Their competitors would have their 'per participant costs' and delivery model information and these are the two main drivers for competition and differentiation of providers in this market.
32. In addition, DfE says, it would prejudice its own ability to secure value for money because:
 - Competition and differentiation on price would be likely to be reduced if providers know each other's per-participant cost (which is the basis for the price evaluation); and
 - With a full understanding of per-participant costs and delivery models, it may lead to providers that are receiving a lower per-participant payment to push for renegotiations with DfE. DfE is conscious of the current inflationary cost pressures which it's attempting to manage proactively, without entering individual negotiations with providers. Disclosure could affect any bargaining position during future negotiations and competitive bidding rounds.
33. DfE considers that there's enough information in the public domain via the contract to determine the capped payment rates plus the measures that would be applied where that rate is exceeded ie the 75% threshold. This information supports an understanding of the maximum costs that would be paid under the contract, taking into account the delivery

volumes that are already in the public domain. Therefore, in DfE's view releasing the information would be likely to prejudice the current providers and its own commercial interests directly. DfE considers that there's enough information already in the public domain to evidence that value for money has been secured via the payment model.

34. DfE says it discussed the request with four of the Lead Providers. They all stated that they're concerned that releasing the information would have a negative commercial impact on them. It would allow competitors to know their per-participant costings and provide detail around their delivery model. This would put them at a competitive disadvantage to the rest of the provider market.
35. Regarding Q3, DfE says that its commercial interests would be likely to be prejudiced by disclosing the "actual" performance figures requested. DfE says it's:

"managing complex supply chains with multiple lead providers who are in turn managing delivery networks with c. 200 subcontractors involved. Managing provider performance, and ensuring stability within the market, needs positive professional relationships to enable us to work with the lead providers, which includes the handling of sensitive commercial data, with provider's trusting the department to manage this information sensitively and in confidence. Damaging the trust built with providers, would be likely to create unnecessary obstacles relating to the sharing and consideration of key data."

36. DfE has noted that it currently publishes KPI performance information under the Cabinet Office transparency approach. The contracts, which are in the public domain, set out the specific performance measures for the Good/Approaching Target/Requires Improvement/Inadequate ratings. This performance measure has been agreed within the contracts with providers. It's accepted by all parties that this is the information that will be publicly available, meeting DfE's commitment to transparency. It provides the evidence required to ensure that the department is managing performance and securing value for money for public funds effectively.
37. DfE considers that releasing the actual % (rather than the contractually agreed approach of a % range) would be seen as DfE going against the agreed contractual approach. This would damage its relationships with the providers. It would also be likely to reduce future sharing of commercially sensitive information out of fear that it will be subject to disclosure into the public domain. This in turn would be likely to prejudice DfE's ability to manage its commercial relationships, the associated contracts, and its ability to secure value for money. This is because the ECF programme has been built on a successful relationship management approach of collaboration and mutual sharing of

commercially sensitive data and information on the understanding that such granular data is not for public disclosure.

38. Disclosing this information could, DfE says, also prejudice its commercial interests by adversely affecting the bargaining position during future contractual negotiations with the provider market. This could result in public money being used less effectively. This would be likely to occur due to the granular data relating to provider performance data being available to other providers competing within the market. This would allow other providers to tailor any bids they put forward in light of such information, potentially reducing the value for money achievable.
39. DfE also considers that the providers' commercial interests would be likely to be prejudiced if the information were disclosed. DfE says that the ECF market is built on complex delivery networks. Competition is based on Lead Providers competing to recruit and maintain delivery networks of schools, Multi Academy Trusts (MATs) and Teaching School Hubs who are the direct and relative links to the finite demand of eligible participants. This has created a market whereby Lead Providers' ability to deliver at scale (and opportunities to make increased profit via economies of scale) is dependent on providers successfully retaining their delivery partners. They also look to increase their market share by securing delivery partners transferring over from other providers.
40. To allow schools, MATs, and Teaching School Hubs to make informed decisions on which provider to partner with, they have access to a range of material and information. These include Ofsted inspections and DfE published KPI reports (using the Cabinet Office transparency approach of Good/Approaching Target/Requires Improvement/Inadequate) which are already in the public domain. This allows schools to make a choice based on measures that have been specifically designed to be in the public domain to support schools in their decision making. If DfE were to release the actual KPI % for each provider, it would prejudice the provider's commercial interests because:
 - a) third parties, including schools and the media, could use the actual scores to inappropriately 'rank' providers, or incorrectly interpret this data to determine that specific providers are performing better than others. This would be detrimental to individual providers, the overall market and stability of the supply chains; and
 - b) individual providers could inappropriately use the data as part of their attempts to recruit delivery partners from other providers. They could target those with lower % scored than theirs, using data that was never intended to be in the public domain as a route to destabilise other provider's supply chains and increase their own profitability. There's also a risk that should the supply chain delivery partners have access to this information, it could allow them to potentially seek to

renegotiate their deals with their lead provider. This is because they may use the KPI %s as a reason for them to seek out a new provider to join if the existing lead provider does not renegotiate their deal to their satisfaction. This would be amplified where the supply chain would have access to what could potentially be used to develop an incorrect and unofficial 'league table' of providers.

41. Therefore, DfE says, it considers that there's a very real likelihood that the individual providers' commercial interests would be likely to be prejudiced by releasing this data. This would have a detrimental impact on the stability of supply chains and providers' ability to continue to return a profit from their provisions. In an extreme scenario this could even lead to a provider no longer being able to deliver a viable provision and withdrawing from the market. This would be to the detriment of those accessing the provision they have been providing.
42. First, for both questions, the Commissioner is satisfied that the interests that would or could be prejudiced are the commercial interests that section 43 of FOIA is designed to protect.
43. Second, regarding Q2 the Commissioner accepts that disclosing how much each ECF provider was paid would or could prejudice the commercial interests of both ECF providers and DfE. This is because providers, and any other interested party, would be able to work out how much each provider is paid per-participant, and its delivery model, if they combined the released information with other information already in the public domain. This would undermine those providers' competitiveness.
44. Disclosure would or could also prejudice DfE's own commercial interests. This is because competition and differentiation – and so value for money – would be reduced (if providers had access to each other's per participant costs and delivery models). It could also lead to individual providers attempting to renegotiate their contracts with DfE, again diminishing the value for money that DfE aims to secure.
45. Regarding Q3, the Commissioner also accepts that disclosing the actual % performance figures (rather than % range figures) would or could prejudice DfE's and the providers' commercial interests. Regarding DfE's commercial interests, this is because it would give the providers' competitors' an insight into other providers' performance, allow them to tailor any bids they put forward in light of this information, and potentially reduce the value for money that DfE is able to achieve. Regarding the providers, their commercial interests would or could be prejudiced as disclosing actual % performance figures could lead to providers being inappropriately 'ranked', to delivery partners being recruited away from providers or to delivery partners attempting to

negotiate more favourable terms to stop them moving to a different provider. These outcomes would generally destabilise the ECF market.

46. Finally, level of likelihood. DfE's position for both Q2 and Q3 is that the envisioned prejudice would be likely to occur, and the Commissioner accepts this assessment; that for both questions the chance of the providers' or DfE's commercial interests, or both, being prejudiced is more than a hypothetical or remote possibility.
47. In respect of Q2 and Q3, the Commissioner has found that the conditions at paragraph 29 are met. He therefore finds that the withheld information engages section 43(2) of FOIA, and he'll go on to consider the associated public interest test.

Public interest test

Public interest in disclosing the information

48. In their request for an internal review the complainant argued that there's a "great public interest in knowing the totals each provider was paid for transparency purposes."
49. DfE has presented the following arguments:
 - Delivering packages of structured training and support for early career teachers involves spending public funds. There's a strong public interest in ensuring transparency in this process and in there being accountability for publicly spent money. This is to ensure that public money is being used effectively and that the department is getting the best value for money possible.
 - It's also important to ensure that, through transparency, procurement processes are conducted in an open, honest, and accountable manner.

Public interest in maintaining the exemption

50. DfE has presented the following arguments:
 - As referenced in this notice, there's considerable information already in the public domain about the allocation of funding, KPIs and the providers who are delivering ECF. This includes the total contracted funding made available to the Lead Providers. Along with other information, this provides significant transparency about ECF funding, delivery, and accountability.
 - It's not in the public interest to disclose detailed costings and modelling as it's not already publicly known. It would be likely to

be used by competitors in this particular market to gain a competitive advantage over both DfE and their competitors.

- Disclosing the information would also be likely to inhibit DfE's ability to successfully participate in a commercial activity for this project and any future "presumptions." This would result in the less effective use of public money and so a reduction in value for money, which is obviously not in the public interest.
- DfE believes that releasing the information would allow any future competitors to 'tap into' commercial information and strategies it and providers use. This would help competitors to mould any applications or bids they put forward which would have an impact on the fairness of the market when assessing future applications. It would weaken the broader application and assessment process, with some organisations being at a commercial advantage based on the commercial information of their competitors being in the public domain.
- DfE considers that it has provided enough data for the purposes of transparency and to allow the public to have adequate confidence that it's securing value for money. The information DfE shared (along with a rationale for any KPI measures which were either 'Requires Improvement' or 'Inadequate') compiled all the KPI data already in the public domain, plus those measures not required to be published. The measures DfE shared are clearly set out ie, a measure of Good is over 95%, Approaching Target is 90% to 95% and so on. DfE considers that would be adequate for the public interest test, as a reasonable assessment of value for money could be made based on the measures provided. It has only provided KPI performance as 'Met/Not Met' for one of the providers as its contract didn't meet the threshold for the Cabinet Office publication. That provider's contract didn't require DfE to measure it as determined by the Cabinet Office transparency process.

Balance of the public interest

51. The complainant hasn't put forward a compelling public interest argument for the information's release. The Commissioner is satisfied that the general public interest in transparency about the ECF providers DfE works with – such as how they're performing and value for money – is met sufficiently through relevant information pro-actively published and which DfE has released in response to this request.

52. The Commissioner finds that there's greater public interest in there being fairness in this marketplace, in there being a wide range of well-performing providers operating in a stable marketplace, and in DfE being able to achieve the best value for money in its contracts as possible. As such, the public interest favours maintaining the section 43(2) exemption.
53. Because the Commissioner has found that the information requested in Q2 and Q3 engages section 43(2) and the public interest favours maintaining that exemption, it's not necessary for him to consider DfE's application of section 36(2)(c) to the same information.

Right of appeal

54. 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

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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