

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 08 November 2018

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

Decision (including any steps ordered)

1. The complainant has requested correspondence with a named trust and named schools. The Department for Education (DfE) says it is not obliged to comply with the request under section 12(1) of the FOIA, as it would exceed the appropriate cost and time limit to do so.
2. The Commissioner's decision is that the DfE is not obliged to comply with the request under section 12(1) and is satisfied that the DfE met its obligation under section 16 to offer advice and assistance. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 21 and 29 May 2018 the complainant made the following 3 requests for information:

'copies of all correspondence between the DFE and the Silver Birch Academy Trust from the last two years, and copies of all complaints received by DFE regarding the same Trust;

copies of minutes of all meetings with the RSC and Waltham Forest Education for the last three years;

copies of all correspondence regarding the Silver Birch Trust, Chingford Hall Primary and Longshaw with the RSC and Waltham Forest Education for the last three years.'

4. On 15 June 2018 the DfE responded. It refused to provide the information for the combined requests citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £600. The DfE suggested it may be able to comply with a new request for a narrower category of information and provided a number of examples:

'Due to the high volume of communications between the trust and the Department (including agencies such as the ESFA), this would likely need to include several of:

- *requesting correspondence over a significantly shorter time frame, reducing the scope from several years to a smaller number of months;*
 - *narrowing the scope of your request for correspondence to a particular subject;*
 - *narrowing the scope of your request by asking for material between particular respondents (such as between the trust and the Regional Schools Commissioner), rather than material between those respondents and the entire Department;*
 - *limiting the number of separate requests made'*
5. On 26 June 2018 the complainant requested an internal review. The DfE sent the outcome of its internal review on 18 July 2018 upholding its original position.

Scope of the case

6. On 15 June 2018, the complainant contacted the Information Commissioner and after completing the internal review process, the complaint was accepted on 24 July 2018. The complainant argued that these were 3 separate FOIA requests and believed that they should be treated as 3 separate requests. She also stated: *'Both schools mentioned are part of the Trust and therefore whilst looking for one it would be virtually impossible to not find correspondence that would fir the other FOI. I do not believe that it would take more than the 600 hours to locate this information. A simple search on the Trust would bring up all the information.'*
7. The Commissioner's investigation has focussed on whether the DfE correctly applied section 12 to the request. She has also considered whether the DfE met its obligation to offer advice and assistance, under section 16.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

8. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
9. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 24 hours work in accordance with the appropriate limit of £600 set out above, which is the limit applicable to the DfE.
10. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
11. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

Would the cost of compliance exceed the appropriate limit?

12. As is the practice in a case such as this, the Commissioner asked the DfE to confirm if the information is held, and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
13. In its submission to the Commissioner the DfE provided the following as a background:
 - The Silver Birch Academy Trust (SBAT) is a small, four primary school trust in the London boroughs of Waltham Forest and Redbridge.

- Following an Education and Skills Funding Agency (ESFA) Financial Management and Governance review, and confirmation of a number of a number of irregularities, a Financial Notice to Improve (FNtI) was issued to the trust on 15 June 2018.
 - A parallel review completed by Waltham Forest local authority (LA) also substantiated concerns....An Ofsted inspection (published 5 June 2018) of Longshaw Primary school confirmed an overall rating of 'Requires Improvement' and Chingford Hall received an 'Inadequate' assessment.
 - New trustees appointed to the SBAT board as required by the FNtI, have been co-operating closely with the associated action planning to stabilise governance, finance and education standards. The reconstituted board formally approached the Regional Schools Commissioner (RSC) on 11 July 2018 to rebroker the four schools within the Trust...
 - Media interest in SBAT has been significant...
 - Parents have been very vocal in their criticism of SBAT, particularly in Longshaw, and led a campaign to ask the RSC to return the school to LA control.
14. In reviewing this background and the 3 requests made by the complainant, the Commissioner considers that the 3 requests are closely related and can be reasonably combined by the DfE.
15. In response to the Commissioner's questions the DfE explained that there were 11 officials working on the SBAT projects, with 3 officials who worked directly with SBAT over the past two years. One official made a search using the term 'Silver Birch' on their online email, their email archives and their project filing system and found that 784 emails had been received.
16. It was estimated that the other 2 officials who worked directly with SBAT would have a similar number of emails (784 emails x3 = 2352)
17. However, as the other 8 officials had less direct contact with SBAT (but were involved extensively in internal exchanges for the review of complaints) it was estimated that each would have received a quarter as many emails (196 emails x 8 =1568)
18. This provided an estimated total of 3920 emails received. It does not include the number of emails sent by the 11 officials or emails from other people within the DfE and does not include hard copy correspondence.

19. The DfE then estimated that it would take 5 minutes per email to locate, retrieve and extract the information. (approx. 330 hours) The DfE stated that each item returned from the search would have to be read manually to establish if it was within the scope of the request. However, as the request was for '*all correspondence between the DfE and the Silver Birch Academy Trust*' then it is the Commissioner's view that everything will be in scope if the emails were between the parties named and within the timeframe specified in the request.
20. Given the number of items returned by just one search term for 1 official (784 emails) the Commissioner is satisfied that there has been considerable correspondence on this subject area. The Commissioner also notes that there may be more than the 11 officials considered in the estimate and that the DfE has only counted the received emails and has not included the sent emails. Therefore the estimated number of items is likely to be conservative.
21. The Commissioner considers that the DfE may have been generous in its estimate of 5 minutes per email but even if this estimate is halved or quartered then the estimated costs (approx. 160 or 80 hours) would still exceed the threshold.
22. In conclusion, the Commissioner accepts that the DfE would take more than the 24 hour limit to respond to the requests and she is satisfied that the DfE is correct to apply section 12(1) to the requests.

Section 16(1) – The duty to provide advice and assistance

23. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")¹ in providing advice and assistance, it will have complied with section 16(1).
24. The Commissioner notes that the DfE provided detailed guidance to the complainant on refining her request. Therefore, the Commissioner is satisfied that the DfE complied with section 16.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

25. If 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@hmcts.gsi.gov.uk

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

26. 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.
27. 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

Pamela Clements
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