

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 October 2012

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

### Decision

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1. The complainant made a freedom of information request to the Department for Education (DfE) for communications with the Daily Telegraph newspaper. The complainant specified that he expected to be provided with any information held on private email accounts where this related to official business. The DfE failed to respond to the complainant's request.
2. The Commissioner's decision is that the DfE has breached section 10(1) of FOIA by failing to respond to the complainant's request within 20 working days. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - State which information it holds within the scope of the complainant's request, and
  - Communicate the information it holds to the complainant and/or issue a refusal notice in respect of all or parts of the information it intends to withhold in accordance with section 17 of the FOIA.
3. 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

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4. On 21 December 2011 the complainant made a freedom of information request to the DfE for copies of communications between the Education Secretary and named Special Advisers, and the Daily Telegraph newspaper. The request read as follows:

*"Under the terms of the Freedom of Information Act I would like to request copies of all communications sent to or by:*

*- Michael Gove*

*- Henry de Zoete*

*- Dominic Cummings*

*- James Frayne*

*to or from The Daily Telegraph since the beginning of September 2011."*

5. In making his request the complainant said that he expected that any official business conducted via private email accounts would be included within the scope of his request. Since previous requests he had made had been refused on grounds of costs, the complainant asked the DfE to begin searching the email accounts of each individual in the order he had outlined from the beginning of September and that it should stop when the cost limit was reached.
6. The DfE acknowledged the request on 9 January 2012 and identified 23 January 2012 as the deadline for its response.
7. No response was received within the 20 working day deadline and despite the complainant contacting the DfE again, no substantive response was ever issued.

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the DfE's failure to respond to his request.
9. Following the complaint the Commissioner contacted the DfE to remind it of its obligation under FOIA and to ask that it respond to the complainant's request. To date, the DfE has failed to respond.

## Reasons for decision

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10. Section 1(1) of the 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.
11. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working following the date of receipt.
12. In this case the complainant made his request to the DfE on 21 December 2011. However, other than an acknowledgment email, the DfE has not provided a response to the request. Consequently the Commissioner finds that the DfE has breached section 10(1) of the FOIA by failing to comply with its obligations under section 1(1).

## Right of appeal

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13. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

14. 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.
15. 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**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**