

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 July 2012

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

#### Decision (including any steps ordered)

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1. The complainant has requested information as to whether the DfE carried out searches for emails containing certain keywords contained in certain email accounts. If it had not, the complainant requested that the DfE carry out these searches and provide him with this information. Although the DfE has acknowledged these requests, the complainant has not received a substantive response.
2. The Commissioner's decision is that the DfE has breached section 10(1) of the FOIA by failing to respond to the complainant's request promptly or at all within 20 working days. The Commissioner requires the DfE 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 the parts of the information it intends to withhold in accordance with section 17 of the FOIA.
3. The DfE 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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4. The complainant contacted the DfE on 21 September 2011 in relation to the Building Schools for the Future ("BSF") programme, and made the following request:

*"We noted with concern the media coverage yesterday and today of the alleged use of private email accounts by the Secretary of State and his advisers and particularly the fact that certain of these emails allegedly concerned the BSF judicial review.*

***Please confirm by return:***

- 1 *Whether you have already established if any personal email accounts of the Secretary of State and/or any of his aides, officials and advisors (the "Relevant Email Accounts") were used, formally or informally, in the decision-making process around the cancellation of the BSF programme and/or the reconsideration of that decision following the judicial review judgement.*
- 2 *Unless already done so, that you will carry out a search of the Relevant Email Accounts using the following keywords:*
  - 2.1 *"Sandwell"*
  - 2.2 *"SMBC"*
  - 2.3 *"BSF"; and*
  - 2.4 *"building schools"..."*
5. In response to this letter the DfE wrote to the complainant on 6 October 2011 and stated that it considered *"...that the media coverage which you mention provides no basis for your request."*
6. On 18 October 2011 the complainant wrote to the DfE and asked that the letter of 21 September 2011 be treated as a request for information under the FOIA. She also noted that that was how it should have originally been dealt with.
7. On 29 December 2011 the DfE wrote to the complainant about a number of issues. In relation to this request it noted that the Information Commissioner had recently issued guidance on private email accounts, that it was currently considering this guidance and that it would respond to her request as soon as possible.

8. Further to this, on 27 January 2012 the DfE wrote to the complainant again. In relation to this request it stated that it was now awaiting guidance from the Cabinet Office on this matter. It stated that it was unable to proceed any further with her request until this advice had been made available.
9. The DfE did not provide any further response in relation to this request.

### **Scope of the case**

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10. The complainant contacted the Commissioner to complain about the way her request for information had been handled. Specifically she complained about the lack of any substantive response to this request.

### **Reasons for decision**

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11. Section 1(1) of the FOIA provides that any person making a request for information to a public authority is entitled –
  - to be informed in writing by the public authority whether it holds the information of the description specified in the request, and
  - if that is the case, to have that information communicated to him.
12. 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 twenty working days following the date of receipt.
13. In this case, the complainant submitted her information request to the DfE on 21 September 2011. However, other than the initial response of 5 October 2011, and the letters of 29 December 2011 and 27 January 2012, the DfE has not provided a response to this 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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14. 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)

15. 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.
16. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**