

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2013

Public Authority: Department for Education

Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant requested from the Department for Education ("DfE") the release of all documents in which corporal punishment was discussed in relation to part-time education providers catering for children of compulsory school age between 3 August 2007 and 26 November 2008. He emphasised that he was requesting the release of the whole of any documents which contained any relevant discussions, not just the parts that specifically addressed corporal punishment in relation to part-time education providers. The DfE argued that this did not constitute a valid request under section 8 of FOIA as it did not adequately describe the information requested.
2. The Commissioner's decision is that the complainant's request is a valid request which meets the requirements of section 8.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response under FOIA, treating the request as a valid request for the whole of any documents which contain any discussion of corporal punishment in relation to part-time education providers between 3 August 2007 and 26 November 2008.
4. 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

5. On 21 June 2012, the complainant wrote to the DfE and requested information in the following terms:

"..the release of all documents, correspondence, notes of meetings etc in which corporal punishment was discussed in relation to part-time education providers catering for children of compulsory school age between 3 August 2007 and 26 November 2008. In making this request, we are requesting the release of the documents in their entirety and not merely isolated sentences and paragraphs that specifically address corporal punishment in relation to part-time education providers."

6. The DfE responded on 19 July 2012. In relation to a narrow reading of the request, as just for information that it held in relation to discussions of corporal punishment in relation to part-time education providers, it referred to a previous decision notice issued by the Commissioner on 22 February 2012 (FS50358750) in which the same request by the complainant had been considered. It informed the complainant that it was continuing to withhold the information the Commissioner had ordered withheld in that decision notice on the same basis, that is sections 36, 40 and 42, as it did not believe there had been any change in the engagement of the exemptions or the balance of the public interest since that original request had been made.
7. The response also dealt with the broader reading of the request suggested by the complainant, for the whole of any documents which contained any discussions of corporal punishment in relation to part-time education providers. The DfE informed the complainant that, under section 8 of the Act, he was not entitled to ask for information unrelated to the description of the information that he had provided. In its view, the Department had already extracted and considered all information relevant to the terms that he had specified, in its narrower reading of the request. The remaining documents, therefore, contained nothing relating to his description of the information. It informed the complainant that it did not therefore intend to provide a response to his suggested broader interpretation of the request.
8. Following an internal review the DfE wrote to the complainant on 13 August 2012. It informed him that it had upheld its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 14 August 2012 to complain about the way his request for information had been handled, including that his contention that his request should be interpreted as being for the entirety of any documents in which corporal punishment was discussed in relation to part-time education providers.
10. The Commissioner considered whether the DfE was entitled to argue that, by virtue of section 8 of the Act, this request was not a valid request under the Act.

Reasons for decision

Sections 1 and 8 of FOIA – valid requests for information

11. Section 1(1)(a) of FOIA states 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."

12. Section 8(1) of FOIA details what constitutes a valid request for information. It provides that:

"In this Act any reference to a "request for information" is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested."

13. Therefore, a request for information has to include a description of the information requested for it to be a valid request under the Act.

The DfE's view

14. In making his request, the complainant emphasised that he was not just seeking the disclosure of any references to discussions of corporal punishment in relation to part-time education providers catering for children of compulsory school age between 3 August 2007 and 26 November 2008 but the disclosure of the whole of any correspondence, notes of meetings or other documents in which such references were contained.
15. The DfE acknowledged that in making this request the complainant had specified that he wanted not only the references to the information that he has described but the documents in which that information was embedded, in their entirety.
16. The DfE explained that the Act allows requesters to request "information", and specifies that this means "information recorded in any form" (section 84). The Act also specifies that a valid request for information must "describe" the information requested (section 8(1)).
17. The DfE argued that in the *Glasgow City Council case (Glasgow City Council and Dundee City Council v Scottish Information Commissioner (Court of Sessions) ([2009] CSIH 73))*, the court confirmed requests for documents are not valid. However, in accordance with its general duty under section 16, the DfE stated that it would always look hard at requests to construe them as valid requests if possible. So, if people asked for "letters" or "emails" it would not automatically reject this as an invalid request for documents. Rather, it would treat it as a request for information contained in letters or emails (and not in any other recorded form), thus limiting the description of information being requested in a helpful way. However, it would need a further description of the information to enable it to identify the nature of the requested information within those letters or emails, which the complainant in this case, had not provided.
18. The DfE pointed out that the complainant was asking for complete copies of all documents in which corporal punishment is mentioned, even when the rest of those documents/correspondence/notes etc did not make any reference to corporal punishment in relation to part-time education. The Department believed that his request for "all embedding documents", which contain no reference to the terms that he had specified, was therefore outside the provisions and spirit of FOIA.
19. It was recognised by the DfE that the Act enables any person to request specific information, but it believed that this did not amount to allowing a fishing expedition which could be launched on the vaguest of search terms. Section 8(c) says that a valid request is one which 'describes the

information requested'. The DfE believed that the terms that the complainant used ("*corporal punishment was discussed in relation to part-time education providers catering for children of compulsory school age between 3 August 2007 and 26 November 2008*") were the descriptors for the purposes of section 8, and that a catch-all term such as "*all documents containing*" cannot be said to be included when the remaining information in those documents, by definition, did not include information about the above terms.

20. The DfE was of the view that the complainant was wrong to assume that 'documents' should be a valid search term because this was not sufficiently specific for the purposes of the Act. This could, for example, mean that a 600-page document containing a one-line reference to a specified search term would be in scope, even if the rest of that document contained nothing of relevance to that search term.
21. The DfE argued that such an interpretation would also be outside the spirit of the Act because of the burden it would place on all public authorities, the Information Commissioner as regulator, and the Tribunal and High Court, a burden which the Act actively attempts to limit by the use of the cost threshold, as defined in Fees Regulations. That provision made plain the intentions of Parliament in passing the Act. If the complainant's approach, seeking the release of all documents in their entirety, were to be followed, searches could return enormous amounts of material, the vast majority of which would be likely to fall outside the specific trigger term/s but be contained within the wider document.
22. It went on to explain that, for example, if a central government department were to be asked for all documents in which 'funding' was discussed, it is likely that a word search would return thousands of documents and emails. Some of these might be policy submissions in which funding made a single paragraph, but it is likely that the submission would contain information relating to the formulation of government policy. Similarly many email chains making a fleeting reference to funding would contain references to many other issues which would be considered sensitive. Local authorities would face similar issues when open-ended requests asking for all documents containing a reference to health services, housing or roads.
23. As a consequence, the DfE was of the view that public authorities would need to consider and apply exemptions to large amounts of information outside the trigger search term specified, and the burden on the qualified person for all public authorities would increase hugely, as large number of section 36 exemptions would be routinely invoked. The Commissioner would also need to consider the validity of any exemptions applied in such a way, as would any appeal court. If documents containing fleeting references to search terms would need to

be considered in their entirety, cases would regularly run to hundreds of pages of documents.

24. The DfE believed that the cost threshold would be circumvented because all such documents would be considered in scope without the need to identify or extract information contained within them, and the cost threshold does not currently extend to the consideration of exemptions.
25. Such an interpretation of scope would add millions to the annual cost to public authorities from administering FOIA. The DfE argued that, from the inclusion of cost threshold provisions in the Act, it is plain that the intention of Parliament was that the right of access should be balanced against reasonable burdens for public authorities and the public purse, and it was never envisaged that such access should be open-ended and unlimited.

The Commissioner's view

26. The Commissioner considers that requests for information made under section 1 of FOIA have to fulfil the requirements of section 8, which includes a description of the information requested.
27. The purpose of section 8(1)(c) is to assist a public authority in identifying the requested information. However, FOIA does not prescribe how the information sought must be described. It is inevitable that a requester will not be able to describe precisely the information sought, as a key purpose of the legislation is to reveal to the public what information is held by a public authority.
28. In the Commissioner's view, a request will be valid as long as it contains a sufficient description of the information required. This may include details such as the date, author, purpose or type of document. As long as a request attempts to describe the information, it is likely to be valid for the purposes of section 8(1)(c), even if a public authority may need further clarification in order to identify the information within the scope of the request. Section 1(3) of FOIA makes specific provision for this.
29. The Commissioner considers that, in this case, the complainant specified both the date and the subject matter of relevant documents, namely the references to corporal punishment in the context of part-time education providers between particular dates. He has also made clear the precise extent of information he is seeking: all information contained in such documents. This allows the DfE to discriminate between different information and identify the documents that fall within the scope of the request. It describes exactly what information is requested from those documents. The Commissioner has therefore determined that the request is a valid request which meets the requirements of section 8.

30. The DfE's concerns about the consequences of dealing with a potentially broad request are understandable, but properly fall to be considered under the procedural provisions, such as section 12 or 14, and exemptions contained in FOIA. The Commissioner's decision in this notice leaves it open to the DfE to consider whether any of these provisions apply in this case.
31. In addition, the complainant has made clear when making his request exactly what he believed the scope of his request to be. The Commissioner does not consider this to be a fishing expedition. The requester is clearly seeking information about the context in which a specified topic appears, not just information on the topic itself.
32. The Commissioner is satisfied that this request includes a clear and explicit description of the information requested for the purposes of section 8. He therefore requires the DfE to issue a fresh response to the complainant under FOIA, treating the request as a request which meets the requirements of section 8, for all the information contained in any documents which include discussion of corporal punishment in relation to part-time education providers between 3 August 2007 and 26 November 2008.

Right of appeal

33. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. 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

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**