

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2016

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the GCSE's results from the summer of 2014. The DfE released the majority of requested information but refused to disclose the information for non-accredited IGCSE's, citing section 36(2)(c) of the FOIA.
2. The Commissioner's decision is that the DfE was incorrect to rely on section 36(2)(c) of the FOIA, as it does not in fact hold the outstanding information.
3. As the DfE does not hold the outstanding information, the Commissioner does not require any further action to be taken in this case.

Request and response

4. On 2 July 2015, the complainant wrote to the DfE and requested information in the following terms:

"I am interested to know the details of pupils that achieve multiple A* grades in GCSEs - the subjects and the details of the schools they attend.

Please supply a number of excel tables as follows. In each table I would like each row to relate to one pupil and to detail the exam subjects passed (at GCSE). Please put each subject in a separate cell so that the data can be sorted. Please include as much information as you have about the school attended by each pupil, including but not limited to the

school name, location (address, borough, region etc), school type, single sex/mixed etc

I would like tables for:

pupils passing all nine GCSEs at A*

pupils passing all ten GCSEs at A*

pupils passing all eleven GCSEs at A*

pupils passing all twelve or more GCSEs at A*

In addition:

pupils passing nine GCSEs at A*, and other GCSEs at lower grades

pupils passing ten GCSEs at A*, and other GCSEs at lower grades

pupils passing eleven GCSEs at A*, and other GCSEs at lower grades

pupils passing twelve or more GCSEs at A*, and other GCSEs at lower grades

I would like the data for the exams taken in the summer of 2014."

5. The DfE responded on 24 July 2015. It stated that it does not hold the information in the format requested. It advised the complainant that he may be able to request pupil level data from the National Pupil Database (NPD), which may enable him to undertake the analysis that he requires.
6. The complainant wrote to the DfE on 5 August 2015 after discussing its response of 24 July 2015 with it over the telephone. He asked the DfE to reconsider his request and what information could be made available.
7. The DfE responded on 12 August 2015. It stated that it would be unable to comply with the complainant's request within the cost limit prescribed by the FOIA but it would be able to provide the following information within the cost limit, if this was acceptable:

"The number of pupils passing:

nine GCSEs at A*

ten GCSEs at A*

eleven GCSEs at A*

twelve or more GCSEs at A*

and also pupils passing:

nine GCSEs at A*, and other GCSEs at lower grades

ten GCSEs at A*, and other GCSEs at lower grades

eleven GCSEs at A*, and other GCSEs at lower grades

twelve or more GCSEs at A*, and other GCSEs at lower grades"

8. The complainant contacted the DfE on 12 August 2015 and confirmed that he would be happy to receive this information.
9. The DfE responded on 21 August 2015 disclosing this information.
10. The complainant and the DfE continued to correspond between 21 August and 29 September 2015 in relation to potential discrepancies in the disclosed information. The DfE response of 29 September 2015 and, amongst other things, confirmed that the disclosed information did not include non-accredited IGCSE's.
11. The complainant wrote to the DfE on 29 September 2015 to confirm that his original request incorporated non-accredited IGCSE's. He asked the DfE to provide the information again including this data as well.
12. The DfE replied on 13 November 2015. It stated that it holds the outstanding information but considers it is exempt from disclosure under section 36(2)(c) of the FOIA.
13. The complainant requested an internal review on 24 November 2015.
14. The DfE carried out an internal review and notified the complainant of its findings on 8 January 2016. It stated that it remained of the opinion that section 36(2)(c) of the FOIA applied to the outstanding information.

Scope of the case

15. The complainant contacted the Commissioner on 18 January 2016 to complain about the way his request for information had been handled. Specifically, the complainant disagrees that the remaining information is exempt from disclosure under section 36(2)(c) of the FOIA.

Reasons for decision

Is the remaining information held?

16. The Commissioner made detailed enquiries to the DfE in relation to its application of section 36(2)(c) of the FOIA. During his investigation it came to the Commissioner's attention that the outstanding information is not in fact held and so this should have been the response given to the complainant on 13 November 2015 rather than a further refusal notice quoting section 36(2)(c) of the FOIA. The Commissioner will now explain in more detail why.

17. The DfE explained to the Commissioner how it receives the requested information, in what format and how it is processed to produce the performance tables it publishes, the information already disclosed in response to this request and other information it requires from it. The DfE confirmed that it receives the raw data from the awarding bodies and the raw data is not separated out into any categories – for example the results for GCSE's, the results for accredited IGCSE's and the results for non-accredited IGCSE's. The raw data will also include information which will not form part of the performance tables it creates and publishes – data which it eliminates during a process it refers to as 'discounting'.
18. The DfE explained that 'discounting' is an official term used by the DfE and is described as follows:

"Discounting ensures that, where a pupil has taken two or more qualifications with an overlap in curriculum, the performance tables only give credit once for teaching a single course of study. The discounting system affects the calculation of performance measures for a school in the performance tables and on RAISEonline i.e. discounting ensures that qualifications are not doubled-counted, so enabling the Department to publish accurate performance data. It does not, however, alter the awards an individual pupil has achieved or limit the qualifications they can take".
19. It explained further that discounting may be required in a number of situations, for example:
 - a) A pupil resits a qualification before the end of key stage 4, possibly with a different awarding organisation. Discounting ensures that only one result is counted in the secondary school performance tables.
 - b) The school provides a single course of study but then enters the pupil for two or more very similar qualifications. Discounting ensures that the achievement from this single set of teaching hours is counted only once.
20. The raw data is sent to the DfE's contractor, RM education, from the exam awarding bodies. Because non-accredited IGCSE's are not counted in the performance tables they are excluded from many of the processes and steps that are undertaken to prepare and process the data that is counted for publication. One of the processes being discounting. The DfE confirmed that non-accredited IGCSE's are therefore not uploaded on to the DfE's database. Before the data is passed to the DfE's database RM education include filters to allow the DfE to identify pupils and results that are to be included in the performance tables and it is only this filtered version that is uploaded on to the DfE's database. These filters

exclude non-accredited IGCSE's as well as other pupils and results, such as pupils who are not yet at the end of key stage 4.

21. During his investigation the Commissioner put it to the DfE that in order to produce the performance tables it publishes and provide the information it has already disclosed in response to this request, it appears the DfE has already been through a process of separation and has in fact already separated out the results on non-accredited IGCSE's from others from the raw data it receives.
22. The DfE responded stating that this is incorrect. It has not already separated out the GCSE's, accredited IGCSE's and non-accredited IGCSE's, as would be required in order to comply with the complainant's request in full. The DfE advised that it simply does not process the raw data for these examinations and, the steps it does take to produce the performance tables it publishes from the raw data it receives, not only leave the non-accredited IGCSE's but also those results that have been eliminated during the discounting process.
23. In addition, the DfE confirmed that compliance would also involve the DfE having to develop further discounting rules to include non-accredited IGCSE's in line with the current performance tables' methodologies (deciding which result should count and which should not for a range of different situations).
24. For the above reasons, the Commissioner is satisfied that the DfE does not hold the outstanding information. In order to comply, the DfE would have to develop further discounting rules and create a brand new data set and the FOIA does not require a public authority to take such steps.

Right of appeal

25. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF