

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 February 2019

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

### Decision (including any steps ordered)

---

1. The complainant requested information relating to the Condition Improvement Fund. The Education and Skills Funding Agency (the Agency) is an executive agency of the Department for Education. The Agency cited section 22 (intended for future publication) of FOIA to refuse the request.
2. The Commissioner's decision is that the Agency has correctly applied section 22(1) of the FOIA in its response to the request.

### Request and response

---

3. On 28 June 2018 the complainant requested the following information:  
*'I would like to request information relating to the Condition Improvement Fund 2016 – 2017. For each grant awarded I would like to request the following summary information*  
  
*Project reference*  
*LA*  
*URN*  
*School Name*  
*Project Name*  
*Phase of education*  
*Constituency*  
*Total value of grant awarded*  
*Whether the grant was classified as a "Condition" grant or for "Expansion"*

*Please provide this in 'soft copy' (Excel spreadsheet, ODS document or CSV file)'*

4. On 16 July 2018 the Agency responded and provided links to some of the information. It withheld information on the total value of grant awarded under section 22 of the Act - information is exempt from disclosure where the information is held with a view to its publication at some future date.
5. The complainant requested an internal review on 18 July 2018. He stated that section 22 has already been used twice before in 2016 to refuse to release the information. He identified a previous list of successful projects, with the values of each grant removed, that was published on 24 March 2016 and argued that this contradicted the assertion that the Agency would not publish some piecemeal information in advance of the planned publication.
6. The Agency sent the outcome of its internal review on 27 July 2018 and upheld the original decision not to disclose the total value of funding awarded under the Condition Improvement Fund 2016 – 2017. The Agency stated that accurate amounts for grants funded are not known until the work has been done. It expected to publish the final funding amounts by early 2019 when the projects are expected to have been completed.

## **Background**

---

7. The Agency provided the following as background.
8. The Condition Improvement Fund (CIF) is an annual bidding round for eligible academies and sixth-form colleges to apply for capital funding. The priority for the fund is to address significant condition need, keeping buildings safe and in good working order. This includes funding projects to address health and safety issues, building compliance and poor building condition.
9. Just over 3,500 applications were received that particular year. There was funding of over £435 million for 1,276 projects across 1,030 academies and sixth-form colleges.

## Scope of the case

---

10. The complainant contacted the Commissioner on 6 August 2018 to complain about the way his request for information had been handled.
11. During the Commissioner's investigation it became clear that there were 2 outstanding parts from the request - for the '*total value of the grant awarded*' and '*whether the grant was classified as a "Condition" grant or for "Expansion"*' for the CIF. The Agency disclosed the classifications to the complainant.
12. The Commissioner has focussed her investigation on determining if the Agency correctly applied section 22 of the FOIA in its response to the remaining part of the request for information (the total value of the grant awarded).

## Reasons for decision

---

### 13. Section 22 Information intended for future publication

*(1) Information is exempt information if -*

*(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*

*(b) the information was already held with a view to such publication at the time when the request for information was made, and*

*(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).*

14. In order to determine whether section 22 is engaged the Commissioner therefore considered the following questions:
  - When the complainant submitted the request, did the Agency intend to publish the information at some date in the future?
  - If so, had the Agency determined this date when the request was submitted?
  - In all the circumstances of the case, was it 'reasonable' that the Agency should withhold the information from disclosure until some future date (whether determined or not)?

**Was the information held with a view to its publication at a future date?**

15. Section 22 applies only when the requested information is held by a public authority with a view to publication, by that public authority or another body, at the time the request was received.
16. The date of publication does not need to be definite for the exemption to apply. There will be some information that is compiled as part of a scheduled procedure which includes a planned publication date. The date of publication of other material may be less certain, for example:
  - a deadline may be provided, but publication could be at any time before then;
  - publication will take place once an information gathering exercise has been completed; or
  - by reference to other related events.
17. The Agency stated that at the time of the request, it already had a settled intention to publish the requested information at a future date. It did not hold a recorded version of this commitment but it had published the same information for the previous year of CIF awards (2015-2016). The Agency provided a link to this:  
<https://www.gov.uk/government/publications/condition-improvement-fund-2015-to-2016-outcome>
18. The complainant has commented that his request was for the amounts of the grants awarded rather than the final amounts paid should that differ and his understanding was that all 2016/17 funding would have been fully paid out by January 2017.
19. The Agency stated that it has not yet published the final funding amounts for CIF 2016-2017 projects, as there are still some outstanding projects to complete. Once this has been completed, the amounts of the grants awarded will be confirmed and can be published. The Agency is aiming to complete this in early 2019.
20. The Commissioner appreciates that the complainant considers that there may be a difference between 'grants awarded' and 'final amounts paid' but the Agency has not made this distinction: *'It is often the case that recipients do not use all of their funding initially earmarked for their projects. This results in the department awarding less than was initially allocated.'*

21. Therefore the Commissioner accepts that the actual amount of the grants awarded (rather than an amount of money allocated or earmarked to a project) will effectively be the same figure that the Agency finally pays out to each project under the CIF grant.
22. The Commissioner has considered the above and accepts that at the time of the request (28 June 2018), there was a settled intention to publish the final figure of the grants awarded, even though that date was not specified and would take place after a number of steps.

### **Was it 'reasonable' to withhold the information?**

23. However, for this exemption to be relied on section 22(1)(c) requires that the application is 'reasonable in all the circumstances' of the request.
24. The Agency has stated that it is not reasonable for it to be expected to release piecemeal information in advance of its planned timetable: *'If it were to release this information as requested on varying occasions this could result in partial information being released over a protracted period leading to confusion and inaccuracy.'*
25. The complainant stated that some information had already been released. (See paragraph 5 above) The Commissioner notes that a list of the successful applicants to the fund had been published and that the Agency had disclosed information on the classification of the awards to the complainant. However, there had been no disclosure on the value of grant awarded (or allocated) to each project.
26. The Commissioner accepts that at the time of the request the Agency did not hold a final and confirmed figure for the total amounts of the grants awarded but had a planned programme to publish this. Therefore, the Commissioner considers that it was reasonable in all the circumstances to withhold the information as requested.

### **The public interest test**

27. Section 22 is subject to the public interest test as set out in section 2 of the Act. This means that although the exemption is engaged, the information can only be withheld if in all the circumstances of the case the harm that disclosing the information would cause is greater than the public interest in its disclosure.

### **What public interest arguments in favour of disclosing the information were taken into account?**

28. The Commissioner is aware from the Agency's submissions that it acknowledges the importance of openness in the implementation of

government policy and the need for government to demonstrate that it has acted fairly and transparently in its dealings with every school that applied for CIF funding.

### **What public interest arguments in favour of maintaining the exemption were taken into account?**

29. The Agency considers that there is a strong public interest that the disclosure of the information into the public domain is properly managed and to allow everyone to view the final format at the same time. Once published *'this information will enable the public to scrutinise the allocations made against these projects and ensure DfE is fulfilling its statutory duty.'*
30. The Agency argued that it is not reasonable for it to be expected to release piecemeal information in advance of its planned timetable. To release the initially agreed amounts would present an inaccurate picture of actual spending on projects and *'could lead to the department, and/or schools and sixth-form colleges being scrutinised and questioned about project spend based on inaccurate figures, figures which do not represent the reality of the project.'*

### **The balance of the public interest arguments**

31. The Commissioner has considered the detailed context to the request provided by the complainant and the arguments provided by the Agency in order to assess whether the public interest is weighed more heavily for or against disclosure. The Commissioner considers that, on balance, it remains reasonable to withhold the information in the circumstances so that the Agency can disclose the final and confirmed amounts of the grants awarded to be published as a whole.

### **Conclusion**

32. On the basis of the above factors, the Commissioner has concluded that at the time of the request the authority was correct to withhold the information under the exemption provided by section 22.

## 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**