

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2021

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 associated with the awarding of a contract. Department for Education (DfE) has released some information and advised it holds no further relevant information
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, DfE holds no further information within scope of the complainant's request and has complied with section 1(1) of the FOIA.
3. The Commissioner does not require DfE to take any remedial steps.

Request and response

On 29 July 2020 the complainant wrote to DfE and requested information in the following terms:

"This is a request under the Freedom of Information Act 2000. I would be obliged if you would provide me with copies of the following:

1. Submissions from the shortlisted and winning bidders for the Request for Proposal to Develop a Digital Management Information System for Careers Leaders in Schools and Colleges. (Release date 30th May 2018).

2. The completed scoring table and any relevant accompanying notes for the above
3. The contract awarded to Aircury Ltd and any subsequent variations to the contract.
4. Details of the expenditure to date and an estimate of the remaining expenditure required to deliver the entirety of the tender.
 - a) Spent with Aircury Ltd
 - b) Spend within the CEC"
4. DfE responded on 26 August 2020. It released information within the scope of part 4a) of the request and advised that it does not hold information within scope of the remaining parts.
5. The complainant requested an internal review on 28 August 2020. He said he had been advised that, as the Careers and Enterprise Company (CEC) is fully funded by the DfE and is wholly accountable to the DfE it is, in effect, an extension of the DfE even though it operates as a separate limited company. Consequently, he considered that DfE should be able to request the outstanding information directly from the CEC even if it did not hold copies itself.
6. DfE provided an internal review on 23 November 2020. DfE advised that it had sought legal advice to determine whether it has the right to request information from the CEC under the FOIA. It had been concluded that the information requested is not information that DfE can obtain under its Grant Funding Agreement with the CEC. The original response provided to the complainant's request therefore still applied; that was to say that DfE does not hold the requested information about CEC.

Scope of the case

7. The complainant contacted the Commissioner on 1 December 2020 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on whether, on the balance of probabilities, DfE holds further information within scope of the request.

Reasons for decision

9. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the

authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.

10. Under section 3(2)(b), for the purposes of the FOIA information is held by a public authority if it is held by another person on behalf of the authority.
11. In its submission to the Commissioner, DfE provided the following background and context. The requested information relates to the CEC. Government established the CEC in 2014 and the CEC began its operations in 2015. The CEC is a private company which is employer-led, funded by Government through a Grant Funding Agreement.
12. In its first two years, the CEC concentrated on offering young people meaningful encounters with employers and the workplace. Following publication of the 2017 careers strategy, DfE asked the CEC to take on an expanded role: delivering training for Careers Leaders; extending the reach of the Enterprise Adviser Network (EAN); setting up Careers Hubs; and delivering investment funds to pilot activity in primary schools and for disadvantaged young people.
13. In the Skills for Jobs white paper, DfE accepted the Post-18 Review Panel recommendation to complete the national rollout of Careers Hubs, digital support, Careers Leader training and the EAN to all secondary schools and colleges. This includes extending access to all special schools and alternative provision, and funding for a trained Careers Leader in every secondary school and college.
14. DfE's submission then goes on to detail the searches it undertook for information within the scope of the request. It says that, at the time of the request, officials within the relevant policy and commercial teams managing the relationship with the CEC searched all their electronic files, folders and email accounts. Searches included their own personal laptops and the centralised DfE files and folders. No information was identified (other than the information released in response to part 4a of the request). DfE considers these searches were sufficient as no information would be held in hard copy and only the officials and team involved would hold any information in relation to the CEC.
15. The search terms used were as follows: "Careers Leaders" and "Careers Leaders System", "Procurement" and "Contract" and "Variation", "Compass" and "Compass+", "Winning bidder", "bidders" and "submissions", "Digital management information system" and "MIS", "Scoring table", "Aircury" and "Aircury Ltd", and "Proposal".

16. Finally, DfE confirmed that no relevant information had been destroyed – it had not been held as DfE had no business purpose for the information to be held.
17. The Commissioner notes that in correspondence to the complainant on 25 November 2020, which the complainant had provided to her, CEC had advised him that it is not a public authority and is not directly subject to FOIA requests. It also said the terms of its Grant Funding Agreement with the Department for Education set out clearly that:

'In no event shall the Company respond directly to a Freedom of Information request unless expressly authorised to do so by the Department.'
18. DfE's submission did not address the question the Commissioner had put to it about whether, if held, the CEC could be said to hold relevant information on behalf of DfE. In which case, under section 3(2)(b) of the FOIA, DfE would hold that information. Although having noted its explanation in its internal review response, the Commissioner raised this matter with DfE.
19. In correspondence dated 6 September 2021, DfE told the Commissioner that, having sought advice from the relevant policy team, it could confirm that the requested information is not held by CEC on behalf of DfE. This is due to the funding arrangement in place between CEC and the department. The arrangement in place is that of a general grant and not a contracted service. To make sure the arrangement remains in line with grant requirements and does not adopt the tighter controls of a service contract, the DfE ensures that: "The funding is to be used in a manner that furthers the implementation of government and/or departmental policy or obligation, but does not otherwise provide a direct economic benefit to the funder." DfE says that this is in line with Grant Functional Standards Guidance as defined by Cabinet Office.
20. With this in mind, DfE says, CEC is required to meet its obligations under the Grant Funding Agreement and Terms and Conditions and, as part of that, CEC may need to provide information such as information on subcontractors, regular reporting of progress against the objectives of the grant, regular reporting of expenditure and, in some cases, supply agreements, regardless of whether there has been a breach or maladministration.
21. However, the requested information is not information which CEC is required to provide [to DfE] to meet its monitoring and reporting obligations under its Grant Funding Agreement. Paragraph 8 of the Grant Funding Agreement does not create a contractual obligation for CEC to hold information on the department's behalf. Paragraph 8 sets

out how FOI requests received by CEC will be handled: FOI requests made to CEC are to be passed to DfE and then CEC, working with the department, is to provide information required so that DfE can respond to FOI requests. Paragraph 8 does not say that CEC holds information on the DfE's behalf.

Conclusion

22. The Commissioner has considered both the complainant's and DfE's submission, the searches that DfE has carried out and the nature of its relationship with CEC. On the balance of probabilities, she is satisfied that DfE has released to the complainant all the information it holds that is relevant to his request and that, if held, CEC does not hold any relevant information on DfE's behalf. The Commissioner's decision is that DfE's response to the request complied with section 1(1) of the FOIA.

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Cheshire
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