

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2022

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

Decision (including any steps ordered)

1. The Commissioner is satisfied that DfE does not hold some of the requested information about a previous request the complainant submitted and complied with section 1(1) of FOIA. DfE is entitled to rely on section 14(1) to refuse to comply with the remainder of the request because it is vexatious.
2. The Commissioner does not require DfE to take any corrective steps.

Request and response

3. On 4 March 2022 the complainant wrote to DfE and requested information in the following terms:

"...It is not the outcome of the internal review that I am unhappy with, but the process. I submitted a detailed complaint, drawing attention to the relevant aspects of the law and the Information Commissioner's guidance that had been overlooked in the Department's original response. The Department did not respond to the points I raised, but instead simply repeated its previous decision. By any measure, that is not an appropriate or adequate way to respond.

In addition to the name of the Deputy Director responsible for this document, I would be grateful if you could tell me how long was spent

on the review, and disclose any other records that the Department holds about the review of my request.”

4. DfE’s final position was to confirm it does not hold information on how long was spent on the internal review in question and to rely on section 14(1) with regard to the remainder of the request.

Reasons for decision

5. On the basis of their complaint to the Commissioner, this reasoning covers whether DfE holds information on how long it took it to carry out an internal review, and whether the remainder of the request can be categorised as vexatious.

Section 1 – general right of access to information held by public authorities

6. Under section 1(1)(a) of FOIA any person who makes a request for information to a public authority is entitled to be told whether the authority holds the information requested.
7. DfE has advised the complainant that it does not hold information on how long it spent on a particular internal review (IR).
8. In its submission to the Commissioner, DfE has confirmed it does not hold this information. It says that although slots for internal reviews will be in the diaries of the panel member, these alone do not cover the “...length of time spent on the internal review” given that there will be work undertaken ahead of, and after, review meetings taking place. This will involve the request being logged on DfE’s correspondence system, allocating it to the appropriate team to respond, the relevant papers and information being collated and distributed ahead of the meeting, any follow-on questions being addressed after the meeting, occasionally meetings having to be reconvened to consider further elements, and the final drafting and clearance of the outcomes of the review. DfE has stated that it does not record the time taken when undertaking these elements of an IR and, therefore, it does not hold this information.
9. The Commissioner considers that recording how long DfE spent carrying out an internal review would be a very niche piece of information to record and can see no business need for recording such information. He accepts DfE’s reasoning and is satisfied, on the balance of probabilities, that DfE does not hold this information and complied with section 1(1)(a) of FOIA.

Section 14(1) – vexatious requests

10. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
11. Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. To analyse vexatiousness, the Commissioner considers four broad themes that the Upper Tribunal (UT) developed in **Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC)**:
 - Value or serious purpose
 - Motive
 - Burden; and
 - Harassment to staff
13. The Commissioner will first look at the value of the request as this is main point in favour of the request not being vexatious. He will then look at the negative impacts of the request ie the three remaining themes of burden, motive and harassment, before balancing the value of the request against those negative impacts.
14. In a submission to the Commissioner DfE has said that the complaint forms part of a pattern of correspondence and complaints the complainant has brought about DfE's policy on qualifications, its working relationship with Ofqual and its FOI and FOI IR processes.
15. DfE says it is clear that the complainant has exhausted all formal channels in relation to this specific chain of requests, linked to requesting detail of DfE's FOI and IR processes/'mechanisms'. This is particularly as it has previously provided the complainant with all information outlining such processes – DfE has provided the Commissioner with copies of this correspondence.
16. Furthermore, DfE refutes both of the complainant's allegations; that its internal review process is not a genuine mechanism for resolving complaints, and that DfE responds to complaints without reading them. The complainant has previously been provided with full internal guidance on conducting internal reviews which sets out the scrutiny process in detail and the obligations on internal review panels. The complainant has also stated that they are not questioning the outcome of this particular review. DfE therefore considers that such allegations have no basis in fact, and that, given their previous access to internal review guidance, the complainant could not reasonably consider that they have any basis in fact. DfE therefore considers that such allegations could

only be made to prolong correspondence and vexatiously attack the department.

17. DfE says it is in no doubt that any further requests would continue to impose significant burdens on it in terms of financial costs and human resources. The nature of the most recent request, following previous similar requests for detailed information regarding FOI and IR processes, suggested the probability of further future requests if these were satisfied.
18. DfE has gone on to discuss the four themes above, summarised below:
19. **Burden (on the public authority and its staff)** – since 2018 DfE has received over 50 requests from the complainant in relation to, but not exclusively, areas such as qualifications policy, the relationship with Ofqual and the FOI process. This has taken up a considerable amount of resource over this period. As the issue the complainant initially raised in this particular request has now been concluded, the effort required to meet this request will be unnecessarily oppressive in terms of the strain on time and resources. As such DfE cannot reasonably be expected to comply with it. The ongoing correspondence, and the fact that the complainant is now moving significantly away from the original request that this case relates to, is aimed to do little more than place a further burden on DfE and its staff, without a serious purpose.
20. **Motive (of the requester)** – in this specific case the motive appears to be to unnecessarily impact on DfE's resources by prolonging and revisiting this case. There is no obvious relevance to their previously stated aims, as the complainant has stated in their correspondence that they are happy with the outcome of the IR relating to the initial request; they want further detail on the IR processes/mechanisms. Given that DfE has previously supplied all of the information it holds on its FOI and IR processes, DfE considers the motive to be simply to prolong the correspondence.
21. **The value or serious purpose (of the request)** – DfE does not see that there is a serious purpose in requesting the time taken to undertake an IR, particularly as this is not information it holds or records. Each IR is assessed on a case-by-case basis, taking whatever time is necessary for DfE to thoroughly investigate and come to an outcome/conclusion. As above, the fact that the complainant has already been provided with all the information it holds on its FOI and IR processes and 'mechanisms' cements DfE's view that this specific request is without value of serious process.
22. In addition to the above, DfE also considers that the complainant's correspondence with it displays the following characteristics:

23. **Unreasonable persistence** – it is clear from their ongoing requests and persistence, that the complainant is attempting to reopen an issue, which DfE has already comprehensively addressed. DfE considers it is fair to state that this behaviour is intended to cause annoyance and unnecessary work, as the complainant is not challenging the outcome of the IR about which they have requested information. They have previously received and thanked DfE for responses providing the internal guidance setting out the FOI and IR processes/mechanisms, where it has also stated that it does not record the time taken for an IR.
24. **Intransigence** – DfE considers that the complainant has taken an unreasonably entrenched position. They have ignored the outcome of the IR that this case relates to whilst pursuing a path of requests. DfE has already provided them with the information it holds whilst explaining that it does not hold other elements requested.
25. **Frequent or overlapping requests** – the complainant has submitted a number of requests about the same issue. DfE says it has, in good faith, previously responded to these requests providing the complainant with the information requested, wherever appropriate. However, as noted, the investigations into their complaint regarding this particular case have concluded and the complainant has not challenged the outcome. DfE says it is therefore clear that the complainant is looking to continue to make requests where no new information can be provided, simply to prolong their correspondence with the department. To allocate ongoing resources to answer their questions cannot be in the public interest nor the interest of the taxpayer.
26. In a submission to the Commissioner, the complainant disputes the complying with this request would be a burden to DfE and argues that names of officials should be disclosed and that their request has a serious purpose.

The Commissioner's conclusion

27. The Commissioner is satisfied that, irrespective of the level of burden that complying with the request would cause to DfE, at this point the complainant's request can be categorised as a vexatious. Considering the value of the request first, the Commissioner consider that it has minimal value to the complainant and no value to the wider public. As they themselves have stated to DfE, they were content with the outcome of the review about which they are now seeking information. In addition, the complainant's original requests about qualifications may have had a serious purpose but they are now evidencing 'vexatiousness by drift' ie they are drifting away from their original serious purpose to more inconsequential matters.

28. The Commissioner accepts DfE's description of the themes the complainant's correspondence evidence. He has weighed the request's minimal value against the cumulative burden of complying with the complainant's requests over a four year period; the motive behind the request which is known only to the complainant but appears at this point to be simply to bother DfE and waste its resources; and the fact that the complainant has continued to correspond with DfE about a matter which a reasonable person would consider to have concluded. The Commissioner is satisfied that the value of this meta-request, ie a request about a request, is outweighed by the negative impacts caused by complying with the remainder of the request. DfE was correct to draw a line in the sand at this point in their long correspondence with the complainant and to rely on section 14(1) of FOIA.

Right of appeal

29. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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
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