

## 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)

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1. The complainant has requested information from the Department for Education (the "DfE") which consists of the product of keyword searches in the email accounts of named individuals.
2. The DfE has relied upon section 8(1)(c) and section 1(3) of the FOIA to refuse the request. It argued that it was not a valid request as it failed to describe the information required, and that attempts to narrow the scope of the request with the complainant to help identify the information had not been successful. Therefore it was not obliged to comply with section 1(1) of the FOIA. The Commissioner's decision is that the complainant failed to provide the clarification reasonably required by the DfE in accordance with section 1(3). He is satisfied that the DfE fulfilled its obligations under the FOIA and therefore he does not require the DfE to take any steps in this case.

### Request and response

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3. On 26 March 2012 the complainant made the following request for information under the FOIA for:

*"Could I have all correspondence between the department and:*

- [Name redacted]
- [Name redacted]

*Please start with [name redacted], including all inboxes - private and departmental - held by:*

- *Michael Gove (inc his private office)*
- *Henry de Zoete*
- *Dominic Cummings*
- *Elena Narozanski*

*Please work through the individuals, in that order, until you hit the cost limit."*

4. On the same date the request was added to as follows:

*"Following on, could I request, under the act, a keyword search of the email accounts - plural - of:*

- *Michael Gove*
- *Dominic Cummings*
- *Henry de Zoete*
- *Elena Narozanski*

*For the words:*

- *"donor"*
- *"donation."*

5. The DfE responded on 13 April 2012 and asked the complainant to clarify the scope of his request to identify whether the search required was for a general search for the words "donor" or "donation" or whether the search was more specific to the email accounts already identified. In addition the DfE sought clarification as to the type of donation the complainant was interested in.
6. The complainant responded to this request for clarification as follows:-

*"Thanks for your guidance. I am mindful of the cost limits, so could I refine the request to seek the two keywords first.*

*Then could I ask you to search their accounts for mentions of, or correspondence with:*

- [name redacted]
- [name redacted]
- [name redacted]
- [name redacted]
- [name redacted]
- [name redacted]
- [name redacted]"

7. On 18 April 2012 the DfE sought further clarification from the complainant to ascertain whether information was being sought about donors or donations rather than the number of times the words came up. Also, given the addition of several names to the required list, the DfE sought clarification as to whether the same email accounts should be checked as previously requested and whether "correspondence" should be included.
8. The complainant did not respond to this request for clarification.
9. On 29 August 2012 the DfE wrote to the complainant outlining the DfE's position in respect of this request. It advised that it was not able to identify the information requested and attempts to seek clarification had not been successful. Advice and assistance was given at this point as to how the original request could be narrowed in scope to be valid, including identification as to subject matter and date range. It also advised that it did not consider a request for a keyword search to be a valid request.
10. The complainant responded on the same date stating that he would not narrow the scope of his request as he wished to see all documents found that had the keywords within the text.
11. On 7 September 2012 a further response was sent by the DfE to the complainant explaining why it believed requests for documents containing keywords are not requests for information within the meaning of the FOIA. It advised that the request should be formulated so as to describe the nature of the information required. On 18 September 2012 the DfE advised that it would be taking no further steps in this case.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 19 September 2012 to complain about the way his request for information had been handled, including his contention that keyword searches for the words "donor" and "donation" are valid ways to phrase a request under the FOIA.
13. The scope of this case has been to consider whether the DfE was entitled to argue (by virtue of section 8) that the complainant's request was not a valid request under the FOIA because it did not adequately describe the nature of the information requested.

## Reasons for decision

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14. Section 1(1) of the 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."*

15. 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. [Commissioner's emphasis]"*

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

### The DfE's view

17. In making his request the complainant has failed to specify the nature of the information he is seeking. He has said that he wishes to have the email accounts of several named individuals searched for two keywords but has failed to define what information he is requesting. Attempts by the DfE to clarify the scope of the request as to date, subject matter, policy, event or even the meaning of the words concerned have failed as the complainant said he did not feel it was necessary under the FOIA to provide this. The DfE submit that the complainant's request is not a valid one as he has simply requested a keyword search rather than describing the information he required. It suggested that such a request could be construed as a fishing expedition, based on vague and non-specific search terms, which they would contend was outside the overall spirit of the FOIA.

18. The DfE also put forward the argument that if a request was made for documents containing specific words without reference to subject matter or some description as to context then such was not a valid request. It

relied on *Glasgow City Council and Dundee City Council v Scottish Information Commissioner (Court of Sessions) ([2009] CSIH 73)*, in which it was confirmed that requests for documents are not valid requests as the request must describe the information requested. However the DfE went on to say that it would not automatically reject invalid requests but would seek to treat it as a request for information contained in letters or emails. In this case a further description of the information was needed to enable identification of the nature of the information. This clarification had been sought on several occasions but had not been forthcoming. The DfE said that a request for documents which contain certain words does not describe the information requested as required by the FOIA.

19. In addition the DfE contended that if complete copies of all the documents in which keywords were mentioned were deemed to be within the scope of a request this could involve a significant amount of documentation. The time spent looking at the documents to see whether any exemptions under the FOIA applied could be considerable. This would be the case especially if the search words were not related to the rest of the information in the document.
20. It submitted that to consider such a broad request as a valid request would be to place an unreasonable burden on a public authority. It regarded the practice of allowing such vague searches without any reference points to be an attempt to circumnavigate the costs threshold under section 12 of the FOIA, as the costs threshold does not include the consideration of exemptions. It considers that to allow such a broad request without describing the nature of the information required would place an unreasonable burden on the public purse.

#### The Commissioner's view

21. The Commissioner considers that requests for information made under section 1 of the FOIA have to fulfil the requirements of section 8, which includes a description of the information requested.
22. He considers that the purpose of section 8(1)(c) is to enable the public authority to narrow down what the requester wants. However the FOIA does not prescribe how the information sought must be described.
23. In the Commissioner's view a request will meet the requirements of section 8(1)(c) as long as it contains a sufficient description of the information required. Details as to date, author, purpose or type of document, physical location, subject matter or area concerned with, may all help to identify the nature of the information sought. Each request has to be judged on its individual merits as to whether there were sufficient indicators provided to enable the information requested

to be adequately described for the purposes of section 8. As long as a request attempts to describe the information it is likely to meet the requirements of section 8(1)(c) as it is always open to the public authority to seek further clarification to identify the information. Section 1(3) makes specific provision for this.

24. The Commissioner considers that, in this case, the complainant has been inconsistent and unclear in his request. He sent a series of emails which have been collectively viewed as a request for information by the DfE. On each attempt by the DfE to get clarification about the request he has failed to provide information which might have enabled the department to be clear as to the scope of his request and to enable the identification of the information required.
25. The complainant asked the DfE to do a search of a number of email accounts based on a word search of two keywords and to provide all documents identified. Those words are capable of different meanings according to context. That might have an impact on the nature of the searches the DfE considered appropriate. Despite being asked, the complainant did not clarify his request by explaining the meaning of the words to be attributed for the purpose of the request. He has not provided context or identified the subject matter to which the words were intended to relate. The request is also silent as to date and time so the precise extent and nature of the information sought is not clear.
26. Several attempts by the DfE to clarify the request were made, but these were not fruitful. The complainant maintained that he regards a simple word search of specified email accounts, including private email accounts, as sufficient and has not provided any additional information by way of clarification as to the information requested.
27. The Commissioner's view, in these circumstances, is that there was an adequate description of the requested information for the purposes of section 8(1)(c), but the DfE were justified in requiring further information from the complainant in accordance with section 1(3) in order to identify and locate the information requested. The complainant did not supply such information. The Commissioner is therefore satisfied that the DfE was not obliged to comply with section 1(1) in this case, by virtue of section 1(3). The DfE is therefore not in default of its obligations under the FOIA.

## Other Matters

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28. The Commissioner notes the concerns of the DfE in respect of the consequences of dealing with a very broad request. However, such concerns are not directly relevant to the question of the validity of a

request for the purposes of section 1 and section 8. They may, however, be relevant in considering whether an exclusion under section 12(1) (cost limit) or 14(1) (vexatious requests) applies.

29. In this matter the complainant stated to the DfE:

*"If I give you more clarity, it will be more likely to engage section 12 of the Act. This is a case where a broader sweep is less likely to engage the cost limit (even if it takes you more time to redact) than a narrower one."*

30. The complainant in this case purported to make his request by directing the DfE to search the email accounts, official and private, of named individuals, in a particular order up to the cost limit. A number of decisions by the First Tier Tribunal (Information Rights) - or its predecessor, the Information Tribunal - and by the Commissioner have made clear that there is no entitlement under the FOIA to a search up to the cost limit. The Commissioner further notes that the complainant was advised by the DfE to that effect.

31. Bearing this in mind, the Commissioner considers that the DfE took reasonable steps in attempting to assist the complainant, who is a professional journalist and regular user of the FOIA, in making his request. The Commissioner is satisfied that, in the circumstances, the DfE's efforts represented a reasonable attempt to engage with the complainant in order to fulfil the duty to provide appropriate advice and assistance under section 16 of the FOIA.

## Right of appeal

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32. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

33. 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.
34. 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**