

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)

1. The complainant has requested emails, held solely in private email accounts, relating to the Building Schools for the Future programme following the successful judicial review. The Department for Education (DfE) stated that it did not hold the requested information in accordance with section 1(1)(a) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the DfE does not hold the requested information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 21 September 2011, the complainant wrote to the DfE and requested information in the following terms:

"Please **confirm by return:**

1. Whether you have already established if any personal email accounts of the Secretary of State and/or any of his aides, officials and advisors ("the Relevant Email Accounts") were used, formally or informally, in the decision-making process around the cancellation of the BSF programme and/or the reconsideration of that decision following the judicial review judgment.

2. Unless already done so, that you will carry out a search of the Relevant Email Accounts using the following keywords:

- 2.1 "Sandwell";
- 2.2 "SMBC";
- 2.3 "BSF"; and
- 2.4 "building schools";

and that you will confirm to us the results of this search within 14 days (i.e. by 5 October 2011) and that you will disclose the results of this search to us within a further 14 days (i.e. by 19 October 2011)."

- 5. On 1 August 2012 the Department for Education (DfE) responded. It denied holding the requested information.
- 6. The complainant requested an internal review on 30 September 2012. The DfE sent the outcome of its internal review on 7 November 2012. It upheld its original position.

Scope of the case

- 7. The complainant contacted the Commissioner on 3 December 2012 to complain about the way this request for information had been handled.
- 8. The Commissioner has considered whether the DfE was correct when it stated that it did not hold the information requested.

Reasons for decision

- 9. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request". In this case the DfE has stated that it does not hold the requested information.
- 10. The DfE explained that it determined the scope of the request to include information relating to the cancellation of the Building Schools for the Future programme and the reconsideration of that decision following a successful judicial review action, where that information is contained solely in private email accounts of the Secretary of State, his aides, officials or advisers. It said that it was therefore limited to information contained in non-departmental systems.
- 11. The Commissioner considers that the DfE has interpreted the scope of this request correctly.

12. The DfE explained that once it had determined the scope of the request it went on to consider what reasonable searches it should carry out. It said that it was confident that departmental officials would only have used departmental systems to conduct departmental business on this issue. It did go on however to explain that if private email accounts are used for government business, those emails are copied or forwarded onto departmental accounts. It confirmed that the information would then be held on departmental systems and could be located as necessary.
13. It therefore concluded that the information requested would not have been held solely in private email accounts. It said that in compliance with ICO guidance and in compliance with its obligation to carry out reasonable searches, it did not need to ask relevant individuals to carry out searches for information within the scope of this request.
14. The Commissioner's guidance on this issue clearly states that it is for a public authority to determine, taking into account all of the circumstances relevant to a particular case, whether it is necessary to ask someone to search their private email account for information which might fall within the scope of an FOI request. This guidance can be accessed using the following link:

http://www.ico.gov.uk/for_organisations/guidance_index/~//media/documents/library/Freedom_of_Information/Detailed_specialist_guides/official_information_held_in_private_email_accounts.ashx
15. The complainant has argued that, "Given that it is clear that personal email accounts have been used to conduct departmental business, then we consider that the Department's duty to carry out a reasonable search extends to searching the personal email accounts of the individuals identified in our original letter of 21 September 2011...While it is possible that relevant information held in private email accounts *could* be copied or forwarded to departmental email accounts, the Department has provided no evidence that such emails will on every occasion be copied or forwarded. Without carrying out a search of private email accounts, the Department cannot confirm, as it has done, that it does not hold information within the scope of our request."
16. The Commissioner would take this opportunity to clarify that a requester cannot require a public authority to search a private email account. The Commissioner must consider whether the DfE has carried out all reasonable searches for the information requested. In this case the DfE has explained that it does not consider that private email accounts were used to discuss the issue to which the request relates. However it has said that if private accounts had been used, these emails would have been forwarded onto departmental systems and would not therefore be solely held in private emails accounts. It therefore concluded that it

would not be reasonable to ask relevant officials to search private email accounts.

17. The DfE said it did consider if information had been forwarded from private emails onto departmental systems relating to this issue, whether this would fall within the scope of the request. However because the request was specifically for information contained solely in private email accounts, it concluded that this would not be covered. While the requester asserts "it is clear personal email accounts have been used to conduct departmental business", there is nothing to suggest that the relevant information was held at the time of the request only on private email accounts.
18. The Commissioner's view is that by limiting its request to information held on private email accounts, the requester has significantly reduced the scope of the request. FOIA gives a right of access, subject to certain exclusions and exemptions, to information held by public authorities. It does not give a right of access to information held privately by individual employees or office-holders within the public authority unless such information is held on behalf of the public authority. The Commissioner further notes that a public authority's powers to search private email accounts of individual employees or office-holders are likely to be very limited.
19. The Commissioner considers that, based upon the submissions provided by the DfE and the complainant and given the clear scope of this request, on the balance of probabilities the information requested is not held by or on behalf of the public authority. Furthermore the Commissioner considers that taking into account all of the circumstances of this case it was reasonable for the DfE to conclude that it was not required to ask relevant officials to search their private email accounts for the requested information.

Right of appeal

20. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. 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