

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 March 2020

**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 requested information about Langdale Free School to the Education and Skills Funding Agency (ESFA). The Department for Education (DfE) says it is not obliged to comply with the request under section 12(1) of the FOIA, as it would exceed the appropriate cost and time limit to do so. The Commissioner's decision is that the DfE is not obliged to comply with the request under section 12(1) and is satisfied that the DfE met its obligation under section 16 to offer advice and assistance. The Commissioner does not require the public authority to take any steps.

### Request and response

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2. On 19 June 2019 the complainant requested information which  
*'explains the change of position by ESFA regarding the outcome of the visit by ESFA to Langdale Free School (the School) in January 2019, and the subsequent draft report dated February 2019 which has been shared with the School.*

*I am asking specifically for information that falls within the following categories, but if there is any additional information that relates to the above that is available, please consider that as being included in my request.*

*The categories of information are:*

- *The notes taken by the ESFA at the meeting of 9th January 2019. We understand that it is not ESFA policy to take notes at such meetings, but on this occasion, notes were taken, and you have requested sight of the notes, or the information contained therein.*
  - *Any minutes of the meeting of 9th January 2019 which are held by the ESFA, whether in draft or approved form.*
  - *Information contained in draft versions of the report dated February 2019 where the information differs from that in the version supplied.*
  - *Any communications/comments/discussions between individuals within the ESFA regarding the visit between September 2018 and the date of the request.*
  - *Any communications/comments/discussions between individuals within the ESFA and any external person or party regarding the visit between September 2018 and the date of the request.*
  - *Any communications/comments/discussions between individuals within the ESFA regarding the letter received from the School dated 4 March 2019.*
  - *Any communications/comments/discussions between individuals within the ESFA regarding the letter received from the School dated 30 April 2019.*
  - *I would also like to see any information regarding the rationale behind the list of attendees provided in the ESFA email from [name redacted] to the School of 10 June 2019.'*
3. ESFA is an executive agency of the government that is sponsored by the Department for Education (DfE). ESFA went on to correspond with the complainant but, in the circumstances, the Commissioner is satisfied that the complainant's correspondence was, in effect, with the DfE.
  4. On 12 July 2019 the DfE responded. It refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £600. The DfE outlined some possible ways to narrow the request and suggested it may be able to comply with a new request for a narrower category of information.
  5. On 18 July 2019 the complainant requested an internal review and made a second narrower request. DfE sent the outcome of its internal review of the first request on 9 August 2019 upholding its original position.

## Scope of the case

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6. On 25 October 2019, the complainant contacted the Information Commissioner to complain about the way this request for information had been handled. He also made further narrower requests to the DfE and these are being considered separately.
7. The Commissioner's investigation has focussed on whether the DfE correctly applied section 12 to the request of 19 June 2019. She has also considered whether the DfE met its obligation to offer advice and assistance, under section 16.

## Reasons for decision

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### Section 12 – cost exceeds the appropriate limit

8. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
  - either comply with the request in its entirety, or
  - confirm or deny whether the requested information is held.
9. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 24 hours work in accordance with the appropriate limit of £600 set out above, which is the limit applicable to the DfE.
10. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
  - determining whether it holds the information;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
11. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

**Would the cost of compliance exceed the appropriate limit?**

12. As is the practice in a case such as this, the Commissioner asked the DfE to confirm if the information is held, and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
13. In its submission to the Commissioner the DfE stated that searches had produced numerous pieces of information potentially within the scope of this request.
14. The DfE provided a sample of information recovered from the searches that fell within the scope of the request. The Commissioner noted that the name of the School was included in the document but there was other information that did not relate to the School. The DfE also provided a sample of information recovered that is not within the scope of the request. It was clear to the Commissioner that the information did not concern the visit by ESFA to the School in January 2019.
15. In response to the Commissioner's questions the DfE stated that 16 colleagues had worked on the School. They undertook searches of their emails and electronic files using 'Langdale' as a search term for the period. The lead official noted that one colleague took 3.2 hours to undertake the work. (3.2 x £25 = £80.)
16. DfE explained that the searches relating to the School returned 2389 emails, 680 attachments and 64 documents. Each of these items would need to be physically read through to ascertain whether it was information in scope of the request and to also decide whether certain information returned needed to be redacted if deemed to be out of scope, or where appropriate exemptions were to be applied.
17. DfE estimated that it would take 1 minute to review each email, thus costing an estimated £995. (2389 / 60 = 39.8 hours x £25 = £995)
18. DfE estimated that each attachment would take 1 minute to review to confirm if it related to Langdale, thus costing an estimated £282.50. (680 / 60 = 11.3 hours x £25 = £282.50)
19. With the 64 documents recovered during the searches DfE reduced the number by focusing only on the 'information held in draft versions of the report dated February 2019 where the information differs from that in the version supplied' and the minutes already held by one DfE official. This produced 15 documents and DfE calculated a review time of 10 minutes for each document. (15 x 10 = 150, 150 / 60 = 2.5 hours x £25 = £62.50)
20. The DfE stated that a conservative estimated total cost to comply with the request is £1420.

21. It is clear that there has been considerable correspondence about the School and that given the specific information requested, the Commissioner is satisfied that although some information may be held the cost of establishing this and therefore the cost of compliance with the request would far exceed the appropriate limit. The DfE was therefore correct to apply section 12(1) of the FOIA to the complainant's request.

**Section 16(1) – The duty to provide advice and assistance**

22. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
23. The Commissioner notes that the DfE outlined some possible ways of narrowing the request. Therefore, the Commissioner is satisfied that the DfE complied with section 16.

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<sup>1</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

## Right of appeal

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24. If 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@justice.gov.uk](mailto:grc@justice.gov.uk).

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

25. 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.
26. 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**