

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 7 September 2022

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

Section 51

Under section 51 of the Freedom of Information Act 2000 (FOIA), which is set out below, the Information Commissioner (the Commissioner) has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of FOIA.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in FOIA referred to as “an information notice”) requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference, IC-134878-Q7J6, for a decision whether a request for information made by the complainant to the Department for Education ('DfE') on 14 May 2021 has been dealt with in accordance with the requirements of Part I of FOIA.

Nature of complaint

2. On 14 May 2021 the complainant made the following request for information:

"As you know, the Secretary of State's direction to Ofqual was not "to provide for an exam series": it was that "there needs to be a full series of GCSE, AS and A level examinations". Could you please pass on the records of the DfE's and Secretary of State's support for Ofqual's decision?

As I expect you're aware, the government's chaotic approach to autumn exams has caused yet another crisis for home-educated students. It's difficult to understand why the DfE was willing to funnel vast sums into the largely pointless private candidate support grant, but wouldn't spend the relatively tiny amount needed to run the full autumn exam series that the Secretary of State had announced, and that children were depending on."

3. On 26 July 2021 the DfE responded refused to provide the requested information. It cited the following exemptions: section 35(1)(a), section 35(1)(b) (formulation of government policy) and section 21 (information reasonably accessible via other means).
4. The complainant requested an internal review on 26 July 2021, raising concerns about the DfE's application of section 35.
5. The DfE sent the outcome of its internal review on 14 October 2021. It upheld its original position.
6. On 15 June 2022 the Commissioner wrote to the DfE and requested a copy of the withheld information and the DfE's submissions as to why section 35 applies. The Commissioner asked that this information was provided by 13 July 2022.
7. On 14 July 2022 the Commissioner had not received the information required so chased this matter with the DfE. He asked that the information was provided by 28 July 2022.
8. On 1 August 2022 the Commissioner had not received the information required so chased this matter again. He asked that this information was provided by 15 August 2022.
9. On 2 August 2022 the DfE and advised the Commissioner that it had not received any of the previous correspondence relating to the case. The DfE asked that these be forwarded to it and the deadline be amended to

31 August 2022. The Commissioner forwarded the relevant information, with proof of delivery, and approved the new deadline.

10. On 15 August 2022 the DfE requested another extension which the Commissioner declined.
11. At the date of this notice, the Commissioner had still not received the information requested.

Information required

12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of FOIA he requires that the DfE shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:
 - An answer to all of the Commissioner's questions in his original scoping letter of 15 June 2022.
 - A copy of the withheld information.

Failure to comply

13. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of FOIA, and may be dealt with as a contempt of court.

Right of appeal

14. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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

15. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF