

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 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 from the Department for Education ("DfE") copies of the completed application forms for Free Schools submitted between 2010-2012 and copies of the subsequent acceptance or rejection letters. The DfE withheld the requested information under section 36(2)(c) (prejudice to the effective conduct of public affairs).
2. The Commissioner's decision is that section 36(2)(c) does not apply to the information withheld by the DfE as the public interest in withholding the information does not outweigh the public interest in disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose to the complainant:
 - (i) copies of all of the acceptance and rejection letters sent by the DfE between 1 January 2010 and 1 October 2012 in relation to applications to set up Free Schools;
 - (ii) copies of all of the expressions of interest which were successful in Wave One and the successful applications in Wave Two and Wave Three except for the expressions of interest or applications where the school was not open by 1 October 2012; and
 - (iii) copies of all of the unsuccessful expressions of interest for Wave One and the unsuccessful application forms for Wave Two.

The DfE is not required to disclose the names, addresses or other personal data of individuals contained within any of the above documents where it believes that the information is exempt from disclosure under section 40(2).

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 1 October 2012, the complainant wrote to the DfE and requested information in the following terms:

"Please could you:

(1) release the completed application forms of Free School applicants where the school is now either open or if the school did not proceed to the next stage (i.e. it is no longer still in planning); and,

(2) release the letters sent to all Free School applicants 2010-2012 informing them of the decision either to accept or reject their application and the reasons why.

It would be entirely appropriate to redact the name and addresses of applicants, receivers of letters and/or remove other details that could identify individuals.

I would also be happy to accept data where the school name has been removed although I would expect an explanation for why it was felt necessary to complete this step."

6. The DfE responded on 5 November 2012. It withheld the requested information under section 36(2)(c).
7. The complainant requested an internal review on 8 November 2012. The DfE wrote to the complainant on 6 December 2012. It upheld its original decision.

Background to the request

8. The Free Schools programme was introduced by the Government following the general election in 2010. Its purpose is to allow new schools to be set up in areas where there is local demand with the intention of improving standards of education in the area. Free Schools can be set up by a range of potential applicants including parents, teachers, charities, businesses and religious and voluntary groups. They are funded directly by central government and operate independently of local authorities. Free Schools have greater flexibility over areas such as the curriculum and teachers' pay and conditions than local authority run schools.
9. Those wishing to set up a Free School make an application to the DfE. The first applications, described as "Wave One", were received by the DfE from June 2010 – February 2011. Details of Wave One, and subsequent sets of applications, are described below.

Wave One

10. The DfE explained to the Commissioner that applications to establish Free Schools in Wave One were received on an ad hoc basis from June 2010 – February 2011. These were made in the form of expressions of interest. The expressions of interest did not require the level of detail that was required for applications after Wave One. They were shorter documents, from which the DfE asked selected applicants to develop business cases, with funding provided to help them do this.
11. As expressions of interest were received on an ad hoc basis in Wave One, applicants were informed whether they had been successful in securing funding to develop a business case at various points between autumn 2010 and February 2011. A total of 32 Wave One expressions of interest made it through the business case development process and were approved to move to the pre-opening stage. It was intended that these schools would open in September 2011 and September 2012. 282 expressions of interest were unsuccessful.

Wave Two

12. All Wave Two application forms were submitted during June 2011. 65 Wave Two applications were approved to move to the pre-opening stage in October 2011. Wave Two schools were intended to open in September 2012 and September 2013. 50 Wave Two schools were open by the time of the request on 1 October 2012. 218 applications were unsuccessful in Wave Two.
13. Those applicants that submitted successful applications were given interviews. Applicants called for an interview were required to provide

further clarification of aspects of their proposal to government officials, education advisers and finance experts.

14. Wave Two applicants that were not to be given interviews were told in July 2011. Those that were given interviews were informed whether they were successful at the interview stage in October 2011.

Wave Three

15. Wave Three application forms had to be submitted to the DfE by 24 February 2012. 134 applications were unsuccessful in Wave Three.
16. Wave Three applicants that were not given interviews were told in March 2012. Those that were given interviews were informed whether they were successful at the interview stage in June 2012.
17. The DfE confirmed that there were no significant changes to the application process between Wave Three and Wave Four.

Wave Four

18. The deadline for applications for Wave Four was 6 January 2013. Decisions were taken on these applications in spring 2013 and the results were published on 22 May 2013. It was expected that Wave Four schools would mostly open in September 2014, with some due to open in September 2015.

Scope of the case

19. The complainant contacted the Commissioner on 31 December 2012 to complain about the way her request for information had been handled.
20. The complainant subsequently confirmed that her request included the initial expressions of interest submitted by applicants in Wave One of Free School applications in 2010-11. However, she agreed that it did not include the business cases subsequently submitted by those applicants whose initial expressions of interest had been accepted by the DfE. She also subsequently confirmed that it did not include the unsuccessful application forms in respect of applications submitted in Wave Three.
21. In light of the information provided by the DfE about Free School application process, the complainant confirmed that the scope of the Commissioner's decision should be limited to:
 - (i) all of the acceptance and rejection letters sent by the DfE between 1 January 2010 and 1 October 2012 in relation to applications to set up Free Schools. This encompasses all of the

acceptance and rejection letters for Wave One, Wave Two and Wave Three.

(ii) all of the expressions of interest which were successful in Wave One and the successful applications in Wave Two and Wave Three except for the expressions of interest or applications where the school was not open by 1 October 2012.

(iii) all of the unsuccessful expressions of interest for Wave One and the unsuccessful application forms for Wave Two.

22. The complainant also informed the Commissioner that she did not wish to challenge the DfE's redaction of the names and addresses of applicants, receivers of letters and/or the redaction of other details that could identify individuals from any information that was to be disclosed.
23. Finally, the complainant confirmed that she might accept the redaction of a school's name from information that was to be disclosed but would expect an explanation from the DfE as to why this was necessary before agreeing to it.

Reasons for decision

Section 36 – Prejudice the effective conduct of public affairs

24. The DfE applied section 36(2)(c) to the withheld information.

25. Section 36(2)(c) provides that:

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act -

...(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

26. In order to determine whether section 36(2)(c) has been correctly applied the Commissioner has:
 - (i) ascertained who the qualified person was for the public authority;
 - (ii) established that an opinion was given;
 - (iii) ascertained when the opinion was given; and

- (iv) considered whether the opinion given was reasonable.

The engagement of section 36

27. Section 36(5)(a) states that in relation to information held by a government department in the charge of a Minister of the Crown, the qualified person is any Minister of the Crown. In this case the DfE confirmed that the opinion was given by the Parliamentary Under-Secretary of State for Education and Childcare, Elizabeth Truss. The Commissioner is satisfied that she was an appropriate qualified person for these purposes.
28. In support of the application of section 36, the DfE has provided the Commissioner with a copy of the submissions to the qualified person, which identifies the information to which it is suggested that section 36(2)(c) should be applied, and copy of the qualified person's opinion. The Department also confirmed that the qualified person had access to a representative sample of the withheld information and that all of the information was available on request.
29. The Commissioner notes that the qualified person's opinion was sought on 31 October 2012. The Minister provided her opinion that section 36 was engaged on 2 November 2012 as she believed that disclosure of the withheld information would be likely to have the effects set out in section 36(2)(c). It appears that she accepted that section 36(2)(c) was engaged in relation releasing Free School application forms for the reasons set out in the submission. These were that:
- (a) Releasing approved applications would be likely to encourage applicants to put forward similar applications or 'borrow' sections from approved applications. This would potentially stifle innovation (which the policy is designed to encourage) and undermines a fundamental part of the DfE's assessment of a group's capacity and capability – the ability to put together a coherent and original bid.
 - (b) Releasing successful applications might encourage applicants to submit bids that they thought would be successful because of 'ticking the right boxes', rather than submitting a bid that best reflected the needs of the local community.
 - (c) If unsuccessful applications were published, some applicants might be discouraged from reapplying and setting such a precedent might put others off from ever applying in the future. From its work with proposer groups, the New Schools Network believes this to be true. Applicant groups would risk unwanted/hostile attention from the media and others. There is

likely to be intense interest in the applications, which could result in the embarrassment, harassment or even ridicule of applicant groups. Discouraging future applications would be likely to prejudice the effective conduct of public affairs by reducing pupil and parent choice in the future.

30. In relation to releasing letters containing feedback on applications, it appears that the Minister accepted that section 36(2)(c) was engaged for the reasons set out in the submission. These were that:
- (a) As with the publication of unsuccessful application forms, the release of rejections letters and accompanying feedback would discourage applicants from applying again or from applying in the first place. Releasing negative feedback from the Department would increase this risk still further. The feedback could be used by groups opposed to the proposed Free School to discourage local support for any re-application.
 - (b) Many feedback letters for schools that are now open or currently in the pre-opening phase give feedback on areas that the applicants will need to improve before the school opens. Release may lead to negative attention and scrutiny, leading to parents choosing not to send their children to the school. While it is a good thing for parents to access information about the performance of schools, for example through Ofsted reports, it would not be helpful for them to see feedback on areas of weakness that will have been addressed before the school opened.
 - (c) Some stronger applications did not receive interview feedback and as such these letters do not contain sensitive information. However, release of some but not all letters would make it simple to work out which open schools has received critical feedback in their acceptance letters, running the risk described above.
31. The DfE informed the Commissioner that it believed that there were 412 applications that fell within its initial view of the scope of the request, with many of the application forms being over 150 pages in length. Consequently it provided the Commissioner, by way of a sample, with copies of three expression of interest from Wave One and two application forms from Wave Three. It also provided him with copies of three letters, one in respect of a successful application and two in respect of unsuccessful applications.
32. After reviewing the sample of the withheld information to which the exemption had been applied, the Commissioner concluded that it was reasonable for the qualified person to conclude that section 36(2)(c)

applied to the withheld information. As it is a qualified exemption, he went on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

Public interest test

33. The Commissioner notes that the qualified person's opinion was that disclosure of the withheld information "would be likely" to have the effects set out in section 36(2)(c), as opposed to that it "would" have those effects. In his view this means that there is a real and significant chance of the prejudice occurring, even though the probability may be less than fifty per cent. The Commissioner has taken this into account in assessing the public interest arguments in favour of maintaining the exemption.
34. In *Guardian Newspapers & Brooke v Information Commissioner & BBC* (EA/2006/0011 & EA/2006/0013), the Tribunal noted the distinction between consideration of the public interest under section 36 and under the other qualified exemptions contained within the Act:

'The application of the public interest test to the s 36(2) exemption involves a particular conundrum. Since under s 36(2) the existence of the exemption depends upon the reasonable opinion of the qualified person, it is not for the Commissioner or the Tribunal to form an independent view on the likelihood of inhibition under s 36(2)(b), or indeed of prejudice under s 36(2)(a) or (c). But when it comes to weighing the balance of public interest under s 2(2)(b), it is impossible to make the required judgement without forming a view on the likelihood of inhibition or prejudice.'

35. The Tribunal indicated that the reasonable opinion is limited to the degree of likelihood that inhibition or prejudice may occur and so "...does not necessarily imply any particular view as to the severity or extent of such inhibition (or prejudice) or the frequency with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant." Therefore, in the Commissioner's opinion, this means that while due weight should be given to the reasonable opinion of the qualified person when assessing the public interest, the Commissioner can and should consider the severity, extent and frequency of the likely prejudice to the effective conduct of public affairs.

Public interest arguments in favour of maintaining the exemption

36. In relation to the public interest arguments in favour of withholding the information, the DfE expanded on the potential prejudicial effects which

it believed were likely to arise from the disclosure of the information which were detailed in the submission to the qualified person.

Release of successful application forms from successful groups could reduce the quality of future applications

37. It was the DfE's view that releasing successful application forms might encourage applicants to submit bids that they thought would be successful because of 'ticking the right boxes', rather than submitting a bid that best reflected the needs of the local community. It believed that it was important for applicant groups to understand the application they put forward and in the Department's collective experience, applicants that used "off the shelf" policies were often less impressive than groups which had spent time developing their own. There tended to be far less evidence that they had properly thought through local needs and how the school would be managed. The DfE believed that releasing successful application forms might lead to an increase in the numbers of groups doing this, resulting in fewer strong applications and potentially fewer strong Free Schools.
38. The DfE explained that it did not expect groups to develop their applications in a vacuum and applicants already received support and feedback through the New Schools Network ("NSN"). However, the NSN did not distribute model application forms and there was a substantial difference between receiving feedback on an application and having the opportunity to copy wholesale from someone else's successful application. The DfE informed the Commissioner that the NSN also facilitated links between applicant groups and previously successful groups. This was clearly one way for groups to get access to information that had helped other groups to become successful, but it was a constructive process that led applicant groups to be mentored by others and obtain support from their peers rather than facilitating blind copying.
39. The Commissioner notes that it is clear from the criteria that the DfE has established to judge the suitability of applications to set up Free Schools that they are judged on factors that are mainly specific to each application. In their applications, applicants have to try to show, for example, that there is a need for the school in the local area, that there will be sufficient pupils for the school to be financially viable and that the people involved in the application have the capabilities to successfully set up and run the school. Therefore much of what is contained in the application forms will be determined by factors such as the local geographical area and its population, existing schools within that area, the nature of the applicants and the proposed ethos of the school. This would consequently have a very limiting effect on what could be borrowed from previous successful application forms.

40. As part of the application process, the DfE also places emphasis on the need for applicants to provide evidence to support their applications. Any supporting evidence would clearly also generally need to be specific to the circumstances related to the particular application in question. This would further limit the opportunity for applicants, who were so inclined, to use information contained in previous successful applications.
41. The Commissioner also notes that there was a significant change in the application process between Wave One and Waves Two and Three. The expressions of interest submitted in Wave One were much shorter and less detailed documents than the application forms submitted for Waves Two and Three. This would suggest that the scope for using information to complete application forms for Wave Four, the next set of applications which were to be made after the request, from Wave One expressions of interest is even more limited than it would be for using information from the application forms for Waves Two and Three.
42. Finally, the Commissioner believes that, whilst good quality and suitably motivated applicants wishing to set up Free Schools might find it helpful to look at previous application forms to give them some general guidance as to what may be required to make a successful application, they would be aware that it would not be appropriate to copy information from those application forms and would not be likely to do so.
43. Having regard to the above, the Commissioner is not satisfied that the disclosure of successful application forms would be likely have prejudicial effects that could be regarded as severe, frequent or extensive, on the quality of application forms submitted by appropriate applicants in future.

Release of successful application forms from successful groups could reduce the Department's ability to judge applications quality

44. The DfE explained that written applications are a key method of the Department assessing applications and an increase in identikit applications would make it more difficult for the Department to judge applications with confidence.
45. As the Commissioner has noted above, the application forms that are now submitted are very lengthy and detailed documents. Each application would have to be based very much on the specific factors relevant to that particular application, including local educational need, the nature of the applicants, and others involved in the setting up of the school, the case for the school's financial viability and the ethos of the

school. The Commissioner therefore finds it difficult to accept that application forms are likely to be submitted that are identikit in nature.

46. In addition, the Commissioner expects that the DfE will have in place sufficiently robust processes to allow it to carry out a thorough assessment of the merits of applications, particularly given the level of detail and evidence that needs to be provided by applicants. This would quickly identify any applications which were very similar in nature. He also notes that, even if such an application somehow managed to proceed through from the initial stage, applicants are then required to attend an interview with government officials, education advisers and finance experts. At this point, the deficiencies in the application would presumably become readily apparent.
47. The Commissioner is consequently not satisfied that the disclosure of successful application forms would be likely have any significant prejudicial effect, in terms of severity, frequency or extent, on the Department's ability to judge the quality of applications submitted by applicants in future.

Release of successful application forms and letters with conditions for opening are not the appropriate method for parents to scrutinise Free Schools

48. The DfE informed the Commissioner that Free Schools that are now open were given feedback on areas for improvement before the schools opened. It did not believe that it was in the public interest to release either these condition letters or their associated application forms. Release might lead to undue and unfair negative attention. It would not be helpful for parents to see feedback on areas of weakness that must have been addressed in order for the school to open. The DfE was of the view that it could ultimately lead to parents choosing not to send their children to the school, reducing the school's viability and therefore reducing the positive impact that it could have on local educational provision.
49. The DfE accepted that there is a legitimate public interest in knowing about school policies and the school's performance. It pointed out that final school policies can be obtained from the school itself. It believed that Ofsted inspections are the appropriate means of scrutiny for open Free Schools, and indeed other schools in the system.
50. The DfE also informed the Commissioner that some applications were not given conditions of opening by the Department and as such could be released without prejudicing parents, but doing so would make it very clear which schools did receive conditions, marking them out as 'weaker' Free Schools and potentially exacerbating the negative impact.

51. The Commissioner is of the view that it seems unlikely that conditions imposed prior to the opening of a school would raise sufficiently major issues that they would undermine the confidence of potential parents in terms of their decision as to whether to send their children to the school. If such major issues existed in relation to a school, it would seem improbable that its application would be successful and that it would be granted permission to open.
52. In addition, the Commissioner would expect that parents who are considering sending children to a particular school are more likely to be influenced by current Ofsted reports than any conditions imposed on the school prior to its opening.
53. As a result, the Commissioner does not believe that the disclosure of successful application forms and letters with conditions for opening would be likely have the significant prejudicial effect, in terms of severity, frequency or extent, feared by the Department.
54. However, the Commissioner believes that there is a public interest in the public, particularly those considering sending their children to a Free School, knowing about any conditions that have been imposed on a school prior to opening and being able to ascertain for themselves that the school has complied with those conditions. In addition, he recognises that there is a legitimate argument that, where conditions have been imposed on a school prior to opening and it has complied with those conditions, this may lead to some increase in public confidence in the way that the school is being run as a result of its ability to meet the necessary conditions within the required timeframe.
55. In relation to the issues of transparency and openness, the Commissioner accepts that Ofsted reports would provide the public with an indication of the quality of education since the opening of a Free School. However, they would not provide transparency and openness with regard to the Free School application and approval process administered by the DfE in relation to that school.

Release of unsuccessful applications and feedback letters may make it more difficult for groups to successfully reapply and reduce the number of high quality applications received

56. The DfE argued that the release of unsuccessful application forms and the feedback given to unsuccessful applicants ran the risk of decreasing the number of strong applicants that came forward in future. It explained that many applicant groups apply multiple times, obtain feedback on their application, improve their plans and are successful in a subsequent round.

57. The DfE explained to the Commissioner that applicant groups needed to attract local support and build community interest in order to make their application successful. To do this they needed to engage with the community, but they need to be able to do this on their own terms.
58. The Commissioner was informed by the DfE that applicant groups often faced concentrated and vociferous local opposition. Release of feedback letters would intensify local scrutiny on applicant groups and make it harder for groups to build demand.
59. The DfE accepted that challenge and scrutiny is needed, and applicants need to prove to local parents that their application is worthy of support, but it believed that they also needed the time and space to review and reconsider their application without having to face immediate challenge on the weakness identified by the Department. Release of the unsuccessful application could lead to pressure on applicants to respond to criticisms of the minutiae of their application rather than making the significant changes needed to have a good chance of success in the next application round.
60. The Commissioner acknowledges that whenever an application to set up a Free School is made it inevitably becomes a public issue and it is highly likely that there will be a substantial amount of public discussion and debate, as well as canvassing of views, opinions and support. He is of the view, as the DfE accepts, that the public is entitled to challenge and scrutinise proposals that have been made to set up Free Schools, given the potential importance of any such plans. He believes that reasonable questioning is part of the process of accountability. Clearly those putting forward proposals to set up Free Schools may sometimes find the questioning challenging. They may also find engagement with the public, at times, to be demanding.
61. The Commissioner accepts that the release of unsuccessful application forms and rejection letters may result in increased questions and challenges for those groups that still wished to reapply to the DfE, as more information becomes available to the public about their previous applications. This may lead to increased demands on unsuccessful applicants as a result of questioning by members of the public about the detail of their proposals. Whilst he accepts, therefore, that there may be some prejudicial effect from disclosure, he does not believe that this would be likely to be particularly severe. Certainly not sufficient to deter well motivated applicants from submitting new applications.
62. In addition, the Commissioner notes that, in relation to unsuccessful application forms, the scope of his decision only relates to those for Waves One and Two. It does not therefore encompass the unsuccessful application forms for Wave Three, the most recent wave on which

decisions had been taken at the time of the request in October 2012. Consequently the Commissioner is of the view that if the Wave One and Two applications were to have been released at the time of the request the pressure on applicants to respond to details contained in applications, submitted between June 2010 and June 2011, would have been limited.

63. The DfE also argued that releasing feedback intended for the eyes of the applicants only would mean that in future officials would need to be more guarded when providing feedback. They would need to be careful not to create public misunderstanding or alarm about the scale of an issue. However, this more guarded approach to feedback might mean that any problems were not candidly described or addressed, particularly where the capability of the applicant groups was an issue, and that the proposers would not have a full understanding of the real situation when seeking to resolve such issues in any future application.
64. The Commissioner does not accept the DfE's concerns in relation to its officials. He believes that officials can be relied upon to carry out their duties in a professional manner. This includes providing accurate and objective feedback, which is consistent with the evidence that has been presented, as part of the Free School application process. Officials would clearly be aware of the importance of giving sufficiently detailed feedback to allow unsuccessful applicants the opportunity to address any deficiencies there had been in their previous applications when making future applications.
65. During the course of the Commissioner's investigation, the DfE informed him that, following the First Tier Tribunal's decision in *Department for Education v Information Commissioner and British Humanist Association (EA/2012/0136, 0166 and 0167)*, it no longer wished to rely on evidence provided by the NSN, referred to in the submission to the qualified person, suggesting that the release of details of applications would result in fewer applications.

Public interest arguments in favour of disclosing the requested information

66. The Commissioner believes that there is a strong public interest in openness, transparency and accountability and in increasing the understanding of how government works and in how decisions affecting people's lives are taken. He notes that the introduction of the Free School policy is an area on which there has been considerable public debate. It represents a significant change in national educational policy and also entails the expenditure of large amounts of public money. There is therefore a significant public interest in ensuring, as far as possible, transparency in relation to the programme.

67. The First Tier Tribunal in the case referred to above, which concerned requests for particular details in relation to Free School applications, stated that:

"The Free School programme involves substantial public funds and significant changes to the way the education service is controlled, managed and delivered. It is a matter of considerable public importance and the transparency of the process and its openness to public debate and consideration are of concern to communities across England." (para 35)

68. The Commissioner recognises that the public interests arguments in favour of disclosure are likely to be stronger where, as in this case, the request relates to an issue on which people hold strong and opposing views.
69. The Commissioner believes that disclosure of the withheld information would enable greater and more informed public debate about the Free School programme and allow greater public oversight in relation to education spending. It would enhance public scrutiny of how effectively the Free School programme is being implemented, including whether decisions are being made consistently against published criteria.
70. Any successful Free School application would have the potential to impact on the provision of education in the area in which the school is to be based. Clearly in these circumstances, there is a considerable public interest in allowing members of the public, who may potentially be affected by the setting up of a school, to participate in an informed debate on the merits of any relevant applications and to be able to make representations to their representatives on local councils and in Parliament. The disclosure of the withheld information would be of benefit in relation to this process.
71. The Commissioner also recognises that the release of the withheld information may be of assistance to groups that are considering making applications to set up Free Schools in future as it would enable them to see the content of previous applications and feedback from the DfE on those applications.
72. The Commissioner reminds himself that the complainant was not seeking to obtain information on applications on which the DfE had still to make a decision. He is aware that he has previously issued a decision notice in relation to a request for a copy of an application form for a Free School (FS50412840) and determined that it was exempt from disclosure under section 36(2)(c). However, in particular, he notes that the decision in question related to a request which was made when no

final decision had been taken by the DfE as to whether to approve or refuse the relevant application and so differs significantly from this case.

Balance of the public interest arguments

73. The Commissioner considers that the public interest factors in favour of the disclosure of the withheld information are very strong. The withheld information would provide considerable information about the implementation of a relatively new and very important educational policy and also provide information about the basis for decisions involving the expenditure of large amounts of public money. Disclosure of the information would help to increase the transparency of the programme, help with public understanding and enable greater public participation in the decision making processes.
74. The Commissioner accepts that there are public interest arguments for maintaining the exemption but, in light of the strong public interest arguments in favour of disclosure, particularly with regard to the scale and importance of the Free School programme and its impact on national education policy, he considers that the public interest in maintaining the exemption does not outweigh the public interest in disclosure. Consequently he has determined that the requested information should be disclosed.

Section 10 – Time for compliance with the request

75. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and, if so, to have that information communicated to him. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request.
76. The Commissioner notes that the complainant made her request on 1 October 2012 and that the DfE provided a response on 5 November 2012. It did not therefore respond to the complainant's request within the statutory time frame and so it breached section 10(1) of FOIA.

Right of appeal

77. 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

78. 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.

79. 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

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF