

Freedom of Information Act 2000 (Section 48) Practice Recommendation

Department for Education

21 February 2024

Summary

Section 48 of the Freedom of Information Act (FOIA) empowers the Information Commissioner (the Commissioner) to issue a practice recommendation where it appears to him that a public authority has failed to conform, specifically, to the FOIA Codes of Practice. These failures are addressed in the recommendations section below. Section 47 of FOIA also makes clear that the Commissioner has a duty to promote the following of good practice beyond just the requirements of the Codes of Practice.

Since 2019 and the advent of the COVID 19 pandemic, the Department for Education (DfE) has had a declining level of performance overall in terms of the timeliness of its responses to requests for information. The statistics published on the FOIA performance of central government bodies show that DfE has responded to less than 80% of requests within the statutory timeframe in 2020, 21 and 22. As recently as November 2023, DfE advised the Commissioner that it was responding to just 75% of requests within the required time limit.

DfE is taking action, however, and has reported that senior level interest in FOIA has had a positive impact on its performance recently. Amongst other FOIA support it now offers its staff, DfE has developed and is rolling out relevant training. The age profile of requests where responses are overdue isn't high overall, although one response was reported as being more than 12 months overdue at January 2024. The Commissioner's staff have engaged with DfE about the underlying reasons for its failure to lift its overall response rate to an acceptable and sustained level of compliance. Improvements have been made as outlined above and early data from 2024 has seen performance creep up to 81%. Given the timeliness issues DfE has experienced over what is now a prolonged period, however, it's clear that DfE's request handling practices does not consistently conform to Part 4 of the section 45 Freedom of Information Code of Practice, issued by the Cabinet Office in July 2018 (the Code).

Recommendations

The Commissioner has discussed his concerns about the issues set out above with DfE. He has noted that DfE has drawn up an Action Plan to improve its request handling processes and to bring its request handling back to acceptable levels of

compliance. The Commissioner has therefore designed the following recommendations to support and enhance DfE’s Plan to improve its information rights practices and ensure that the positive direction of travel indicated in early 2024 continues.

In considering these recommendations, we expect DfE to ensure that it meets the requirements of all information rights legislation to which it is subject.

Area of Code	Non-conformity	Recommendation of steps to be taken
<p>Part 4 – time limits for responding to requests</p> <p>Section 4.1 of the Code highlights the “clear” requirement that public authorities respond to requests for information promptly, and within 20 working days of receipt in accordance with section 10(1) of FOIA.</p>	<p>As noted, DfE’s overall compliance rate has dropped since 2019 and hasn’t consistently been over 80% in this period.</p> <p>According to the Government’s published FOIA statistics, in the first three quarters of 2023 DfE received 2,017 requests for information. Over the same period, DfE was only operating at an average of 73% compliance.</p> <p>DfE’s non-response to requests for information is a concern that requesters regularly bring to the Commissioner.</p>	<p>DfE should review its Action Plan and consider using the relevant Action Plan template that the Commissioner has published. DfE’s Action Plan should incorporate any recovery plan already in development and include specific time frames for completing actions.</p> <p>DfE’s Action Plan should be supported by a ‘lessons learned’ exercise which examines the root cause of delays from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the Plan.</p> <p>DfE should publish its Action Plan, and any relevant progress updates not already covered by the government’s existing publications on FOI performance, on its website so that it’s completely transparent about the improvements it’s making.</p> <p>DfE should use the Commissioner's FOI Self-Assessment Toolkit to improve its timeliness compliance.</p>

		<p>DfE should ensure that staff have sufficient FOIA training and are aware of DfE's procedures and practices so that they can provide responses that fully comply with FOIA and the section 45 Code of Practice.</p> <p>DfE must make sure that its information rights training has adequate coverage in place so that request handling times don't fall below a compliant level if a key staff member leaves.</p> <p>DfE's request handling procedures should include provision for when a response is late or is likely to be late at any stage of the internal processes. This should make it clear when to escalate and who to, who's responsible for acting, the action they'll need to take, and by when.</p>
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Reasons for issuing this Practice Recommendation

The Commissioner is issuing a practice recommendation at this time rather than an Enforcement Notice. This is because, despite the issues currently affecting requesters, DfE has engaged openly with his Office about problems it has faced and continues to face, and it is actively implementing the measures in its Action Plan.

Reference: FPR0987675

This practice recommendation formalises the Commissioner's concerns and holds DfE accountable for improving its freedom of information request handling practices. This, in turn, increases public confidence and trust in its information rights practices.

Failure to comply

The Commissioner cannot directly enforce a practice recommendation. However, failure to comply with a practice recommendation may lead to a failure to comply with FOIA, which in turn may result in the issuing of an enforcement notice. Further, a failure to take account of a practice recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner.

DfE should write to the Commissioner by 31 May 2024 to confirm that it has complied with his recommendations and how it has achieved this.

The Commissioner will have regard to this practice recommendation in his handling of subsequent cases involving DfE.