

Ms M Stafford
c/o Whatdotheyknow.com

Email: andrew.partridge@dcsf.gsi.gov.uk

13 November 2009

Dear Ms Stafford,

Your FOI and other communications with the Department

I am writing in response to your requests for information under the Freedom of Information Act 2000 (the Act) and related communications dated 28 July, 27 August (2 emails), 28 August, 9 September, 10 September, 19 September (2 emails), 25 September, 26 September, and 26 October (2 emails) 2009.

2. I write to advise you that, other than in relation to any outstanding internal reviews of freedom of information responses which have already been sent to you, the Department will not be complying with your current requests relating to home education, nor further responding to your communications on the matter. It will deal with freedom of information requests relating to any other matter in accordance with its obligations.

3. The 'exemption' which applies to your requests is section 14 of the Act which provides for information to be exempt from disclosure where the request for information is vexatious, or where the request is substantially similar to earlier requests and a reasonable interval has not elapsed.

4. The Department has reviewed the volume, timing and content of the requests you have made to us under the Act and other related communications, including postings on the website Whatdotheyknow.com through which you have made your requests. It has considered your requests both cumulatively and on their individual merits under the Act. This process has meant further delay in your receiving a response to your requests, but that is inevitable in the circumstances.

5. In reviewing the general pattern of your freedom of information requests and related correspondence I note that:

- since June 2009 you have submitted 15 requests on the subject of elective home education to the Department;

- you have apparently submitted some 15 requests to other public authorities about elective home education via Whatdotheyknow.com; and
- you have apparently added some 65 annotations to the requests submitted by others via Whatdotheyknow.com, in several cases encouraging the requesters to apply for internal reviews and complain to the Information Commissioner. It is open to you to do so, but the Department is also entitled to take this into account in considering the pattern of your requests.

6. The Department has not applied the section 12 cost threshold to any of your requests, as it has not been appropriate to do so, but it has calculated that the cost of handling the 10 of your requests it has already answered was not less than £3,300. It estimates that the cost of responding to your five current requests would be not less than £1375 (excluding the cost of this response).

7. This is a factor that the Department is entitled to take into account in assessing whether section 14 (1) is engaged. Section 14 (1) will be engaged where complying with the requests would impose a significant burden on a public authority in terms of expense and distraction.

8. Your outstanding requests and other communications are set out in Annex A to this letter.

Section 14(1)

9. The Department considers your requests vexatious for the reasons set out below.

10. The Information Commissioner's guidance indicates that deciding whether a request is vexatious under section 14(1) of the Act is a flexible balancing exercise taking into account all the circumstances of the case. The Commissioner's guidance indicates that there is no rigid test or definition of the term, but it does provide a number of questions which guide public authorities in what they should consider:

- Can the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

11. Taking the Commissioner's questions individually, the Department does not consider that your outstanding requests, or indeed the pattern of your requests as a whole, can definitively be described as obsessive. The Department recognises that elective home education is an issue which is of considerable concern to you, and it respects those who wish to clarify issues of public interest via freedom of information requests.

12. Nor does the Department consider that your requests lack any serious purpose or value.

13. The Department does not take a view about whether your requests are designed to cause disruption or annoyance – while that might appear to be the case from some of your communications and annotations to requests on to Whatdotheyknow.com, the Department recognises that some of these interventions may result from frustration at delays in receiving a response from the Department.

14. The Department does consider that your requests are imposing a significant burden in terms of expense to a publicly-funded authority, and in terms of the distraction of its officials away from other pressing business and non-vexatious requests. It considers that it is not reasonable, and therefore not in the wider public interest, for the Department to continue to devote substantial public resources to answering your requests. In particular the Department has noted that the pattern of your requests and communications in Annex A is such that the requests, when answered, have led to further requests and complaints. Like other public authorities the Department has only finite resources at its disposal, and there are increasing pressures on those resources. It is therefore not a straightforward matter to redeploy staff to deal with your requests.

15. The Department also considers that your requests are - in the sense of the term as used by the Information Commissioner - 'harassing' the Department and causing distress to staff. The Commissioner's guidance makes clear that the requester's intention is not the issue – it is an objective test in which a reasonable person must be likely to regard the request as harassing or distressing. Examples of this are provided in Annex B to this letter:

16. The Department has also noted:

- the availability of ample other opportunities and means to communicate views or concerns to the Government and to the Children, Schools and Families Select Committee: for example by contributing to the Review of Elective Home Education, by responding to the subsequent consultation on changes to the existing statutory arrangements, and lastly through the open invitation to make a submission to the select committee itself;
- the fact that of ten responses sent to you by the Department six provided the information you requested in full and one in part, in two cases the information was not held, and in one it was reasonably accessible by other means and drawn to your attention;
- the fact that of some 107 FOI requests received by the Department between 11 June and 27 October 2009 about elective home education, 74 (69%) were from a small group of nine FOI requesters, including yourself, in several instances apparently acting in concert via the website Whatdotheyknow.com, as evidenced at Annex C. This is in the context of an estimated 20,000 home educated children in England;

- that the apparent campaign to inundate the Department with FOI requests about elective home education has been contemporary with the vilification and harassment on the Internet of the author of the review of elective home education and others by unknown persons. Indeed the level of the requests generally on this matter and the nature of the postings on the Internet were such that it was felt necessary to write to the Information Commissioner's Office earlier this year:

http://www.dcsf.gov.uk/foischeme/subPage.cfm?action=disclosures.display&i_subcategoryID=32&i_collectionID=345

The Department is not suggesting that you have participated in any vilification or harassment of the author of the report, but those activities are pertinent to the climate surrounding the review – with which the FOI requests were concerned.

17. The Department notes the Commissioner's advice that if a request forms part of a wider campaign or pattern of requests, the serious or proper purpose must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken. As I have said, the Department does not question your serious and proper purpose in making the requests. But the Department does not consider that this justifies the pattern of behaviour described above. Nor, given the several opportunities to contribute constructively to the public debate on this issue, does the Department consider that the requests are necessarily justified in themselves.

18. The Department is not suggesting that each of your requests is necessarily vexatious in itself, but having taken careful account of the pattern of your correspondence with the Department, interventions on the website Whatdotheyknow.com, and the guidance provided by the Information Commissioner on the matter, I have concluded that your requests are vexatious in the sense of the Act.

Section 14 (2)

19. Section 14(2) of the Act provides that, where a public authority has previously complied with a request from a person, it is not obliged to comply with a subsequent substantially similar one from that person unless a reasonable interval has elapsed between the two. The Department has looked at the pattern of your correspondence and your latest requests which in broad terms are all about the same or a substantially similar issue, and takes the view based on the evidence before it that this part of the exemption at section 14 is also engaged.

Conclusion

20. In all the circumstances, and given the analysis above, the Department does not consider that it is reasonable or in the wider public interest for it to devote any further

public resources to answering the requests, or other correspondence, which are the subject of this letter.

21. The Department will always seek to meet the legitimate rights of requesters to information, but in all the circumstances of the case it must also take into account the need for public servants and other individuals to be able to conduct legitimate business in the public interest without harassment or harm.

22. While the Department will consider any future request under the Freedom of Information Act on its individual merits, if it concerns elective home education you are advised that it will be considered against the background of this letter

23. If you are unhappy with the service you have received in relation to your requests and wish to make a complaint or request a review of our decision, you should write to, or email, me within two calendar months of the date of this letter. Please remember to quote the reference numbers (at the foot of this letter) in any future communications.

24. If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner's Office for a decision. Generally, the Commissioner will not make a decision unless you have exhausted the Department's own internal review procedure.

25. Finally, I apologise for the length of this letter. As well as complying with its statutory duties, the Department wishes to ensure that you have a comprehensive explanation for the action it is taking.

Yours sincerely

Andrew Partridge
Information Rights Manager, DCSF

Ref: 2009/0067849; 2009/0074942; 2009/0074943; 2009/0090673; 2009/0090678

Summary of outstanding requests and other communications

- **2009/0067849** – 28 July 2009 – **FOI request** for a frequency distribution of the answers to two questions in a questionnaire sent to local authorities (LA) as part of the review of EHE, and numbers of serious case reviews.
- **2009/0074942** – 27 August 2009 – **FOI request** for identification of various LA in which there were reported a high proportion of EHE children in social care, and a low proportion of, or no, EHE children receiving suitable education.
- **2009/0074943** – 27 August 2009 – **FOI request** for further statistics relating to released information about safeguarding intervention.
- **2009/0075134** – 28 August 2009 - an amendment of the previous request.
- **2009/0077597** – 9 September 2009 - a question as to whether the Department was refusing to hold an internal review, and request for a review.
- **2009/0077887** – 10 September 2009 - complaint and allegation of intent to delay on the part of the Department.
- **2009/0079990** - 19 September 2009 - complaint about an earlier response - taken into account in an internal review on 3 November.
- **2009/0080057** – 19 September 2009 - further complaint about the earlier response, including the suggestion that the Department should redeploy staff to avoid being seen as obstructive or stonewalling, the allegation that the Department had intentionally misunderstood, and provided misinformation.
- **2009/0081535** – 25 September 2009 - an allegation that the Department has lied in its answer that information was not held.
- **2009/0081887** – 26 September 2009 - request for an internal review.
- **2009/0090673** – 26 October 2009 – **FOI request** for clarification about an Annex released earlier.
- **2009/0090678** – 26 October 2009 – **FOI request** for copies of analysis and documents relating to DCSF verification of a submission submitted to the Select Committee by Graham Badman.

Annex B

Examples of communications and other factors which have harassed or distressed

- an allegation (mentioned above in Annex A) that the Department has lied in its response to the effect that information was not held.
- an allegation of intent to delay on the part of the Department – made on 10 September despite the fact that you were aware of the problems the Department was experiencing. For example, in its response of 29 July, providing all the information you had requested on 13 June the Department offered the following apology for the delay:

Before answering your request I should like to apologise for the delay in replying. The Department is aware that it has missed the statutory deadline for reply and is in breach of its obligations under the Act. I very much regret this - the Department should meet its obligations under the Act. While I appreciate that it is in no way a justification I should like to explain that the Department makes every effort to meet deadlines, but the delay in responding in this case has been due to the unusual volume of requests the Department has received in recent months. The Information Commissioner has been informed of the situation.

- the frequency of your requests and interventions, sometimes twice in the same day.
- your apparent reluctance to quote the Departmental reference numbers in correspondence, and your derogatory remarks about what you perceive to be the inability of Departmental staff to click on links e.g: 'Please accept my heartiest commiserations for your inability to click on a link like the rest of the population, it must be most disabling.' (30 September 2009)

http://www.whatdotheyknow.com/request/more_clarification_of_the_data_i#comment-5423

http://www.whatdotheyknow.com/request/a_summary_of_the_answers_to_ques#outgoing-33668

http://www.whatdotheyknow.com/request/evidence_in_support_of_badmans_r#incoming-44785

http://www.whatdotheyknow.com/request/local_authority_responses_to_the#comment-4956

- your apparent annotations on requests on Whatdotheyknow.com which include:
 - 'Four months to say no, such respect for it's masters the DCSF have, not!' http://www.whatdotheyknow.com/request/home_education_review_recommendation#comment-6310
 - 'My suspicion is that it is that awkward word evidence that is giving them the problem.'

http://www.whatdotheyknow.com/request/home_education_review_recommendation#comment-5439

- 'They are doing this regularly now, still not realised we are not stupid.'
http://www.whatdotheyknow.com/request/more_clarification_of_the_data_i#comment-5423
- 'They have had more than enough time to conduct an internal review on this, I would refer it to the information commissioner.'
http://www.whatdotheyknow.com/request/communications_with_nektus#comment-5300
- 'Not even an acknowledgement, how rude.'
http://www.whatdotheyknow.com/request/number_of_foi_requests_made_conc#comment-5254
- 'you should ask for an internal review and if they don't do that refer to the information commissioner. There is a lot of stonewalling going on.'
http://www.whatdotheyknow.com/request/home_education_evidence_of_curre#comment-5181
- 'For goodness sake, Graham Badman has accused us of being abusers and knowingly allowed the press to slur us with false twice as likely claims. I also suspect allowed is a misnomer. The DCSF repeatedly refuse to release the evidence probably because they have none and you are getting upset because somebody called him a liar!' http://www.whatdotheyknow.com/request/communications_with_information#comment-5114
- 'Evil man'
http://www.whatdotheyknow.com/request/comparative_statistics_requested#comment-3363

Instances of apparently acting in concert via the website Whatdotheyknow.com

- 'I would take your complaint higher asap and also refer this to the information commissioner'

http://www.whatdotheyknow.com/request/elective_home_education_and_conc_4#comment-5802

- 'I would refer this straight to the information commissioner. I do not see how they can say the data would harm people when SCRs are put in the public domain.'

http://www.whatdotheyknow.com/request/serious_case_review_figures_pr#comment-5301

- '[name] could you follow this up.'

http://www.whatdotheyknow.com/request/concerns_about_suitability_of_e#comment-5216

- 'I have just sent out a general request for people to include the refusal to answer this question in their submission to the Select Committee.'

Please anyone reading this who hasn't already done their submission, could you consider including this, and any others like it.'

http://www.whatdotheyknow.com/request/evidence_in_support_of_badmans_r#comment-5037

- 'It is unclear whether this is referring to your initial request or your request for an internal review, whichever it is I would request another internal review immediately to prevent them giving themselves another 40 days and put the number in because in spite of the fact that they can as easily find the number as anyone else they will ask for it as another delaying tactic.'

http://www.whatdotheyknow.com/request/badman_report_conduct_of_the_rev#comment-5035

- 'This can't be right, this is just part of your original request. I would refer to internal review, they must be trying it on.'

http://www.whatdotheyknow.com/request/communications_between_dcsf_and#comment-5025