



department for
children, schools and families

Sanctuary Buildings
Great Smith Street
Westminster
London, SW1P 3BT

Tel: 0870 0012345
Fax: 020 7925 6000
info@dcsf.gsi.gov.uk
www.dcsf.gov.uk

Ms T Berlow
c/o Whatdotheyknow.com

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

21 December 2009

Dear Ms Berlow,

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 17 and 28 August; 8, and 29 September; 7, 23, and 26 October; 7, 8, 20 and 24 November; and 4 and 8 December 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 provision of the Act which applies to your requests is section 14, 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 which have been complied with and a reasonable interval has not elapsed.

4. The Department has reviewed the volume, timing and content of the requests you have made 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:

- you have apparently submitted over 150 requests or follow-up requests to public authorities, including this Department, about elective home education via Whatdotheyknow.com; and
- you have apparently added over 100 annotations to the requests submitted by others via Whatdotheyknow.com, in several cases encouraging the requesters to make other requests and to apply for internal reviews. It is open to you to do so, but the Department is 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 under the provisions of the Act, but it has calculated that the cost of handling the 10 of your requests it has already answered was not less than £2,750. It estimates that the cost of responding to your five current requests would be not less than £1,375 (excluding the cost of this response). On the same basis the Department has also estimated that the cost of your 150 FOI requests or follow-up requests regarding EHE to public authorities generally, including this Department, would be in excess of £41,000 if they were all processed. The Department has noted that most have been processed.

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 be said to be 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 however consider that your requests are designed to cause disruption or annoyance as is clear from some of your communications and annotations to requests on to Whatdotheyknow.com, for example (verbatim):

- 23 June 2009: *'i hope there will be many who thoroughly exhaust your complaints procedure and also those who will make a public interest test against this use of section 36'*
- 24 June 2009: *'AND HOW LONG DOES AN INTERNAL REVIEW TAKE?'*
- 24 June 2009: *'i hope there will be many who exhaust your complaints procedure'*
- 24 September 2009: *'Blast em with a FOI internal review and try calling them?'*

14. In the Department's view the references above to exhausting the complaints procedure constitute support for the disruption of, or intention to disrupt, the work of a public authority. The Department notes that the same sentiment was expressed on two consecutive days. While the Department recognises that some of your interventions may result from frustration at delays in receiving a response, it is clear from the following examples, that you have been encouraging and possibly co-ordinating a series of requests to public authorities:

- 1 September 2009: *'could you please go over your requests and update those that are merely an acknowledgement otherwise the site does not update them'*
- 5 September 2009: *'please – Yet another follow up!'*
- 5 September 2009: *'M could you please follow up?'*

15. In relation to internal reviews it is clear both from the example of 24 September above, and from similar instances on 5 September, 15 September (twice), and 16 September that you are encouraging other requesters to request an internal review. I note that in these cases your suggestion was generally followed by a request for an internal review.

16. With regard to your intervention on 24 June in capitals (above) about the length of time internal reviews take, the Department has indeed had some difficulty, because of pressure of demand, in arranging and following up after internal reviews. In that particular instance however the Department indicated on 20 May that a review had been arranged for 29 May and that it would write about the outcome within 20 working days of the review. It did so on 26 June.

17. 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 current 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.

18. 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. The examples of your interventions above, along with the pattern and volume of your requests illustrate this. It is hard to see how references to exhausting the complaints procedure and exhortations to others to invoke that procedure could be seen as other than distressing or harassing to hard-pressed servants of public authorities, including colleagues in this Department.

19. 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 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 referred to above. 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:

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.

20. 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.

21. 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)

22. 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 limb of section 14 is also engaged.

Conclusion

23. 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. Nor will the Department answer further non-FOI correspondence from you on the subject of elective home education.

24. 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. It must also take account of the interests of taxpayers and the appropriate use of scarce resources in the public interest.

25. While the Department will consider any future request under the 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.

26. 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 the decision, you should write to, or email, me within two calendar months of the date of this letter. Please remember to quote the relevant reference numbers (in Annex A) in any future communications.

27. 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.

28. 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

Summary of outstanding requests and other communications

2009/0072923 – 17 August 2009 – request for an internal review, received before a substantive response from the Department.

2009/0075157 – 28 August 2009 – query about the calculation of the number of children known to social services, a supplementary to an earlier answered FOI request.

2009/0076945 – 8 September 2009 - request for an internal review about the same FOI request.

2009/0082921 – 29 September 2009 – FOI request for frequency responses of the 90 local authorities (LAs) who responded to Graham Badman's review, and other information.

2009/0085420 – 7 October 2009 – query about why Essex was not on the list of 90 LEAs provided in answer to an earlier FOI request.

2009/0089843 - 23 October 2009 – FOI request for a questionnaire from Bexley, a supplementary to an earlier answered FOI request.

2009/0090667 – 26 October 2009 – FOI request regarding the additional data requested of LAs by Graham Badman on 17 September 2009.

2009/0094763 – 7 November 2009 – FOI request regarding the list of LAs responding to the request for additional data.

2009/0094768 – 8 November 2009 - FOI request for data in respect of which a response to a Parliamentary question indicated was already published.

2009/0098666 – 20 November 2009 – request for an internal review in respect of the 23 October request, received before a substantive response from the Department.

2009/0099249 – 24 November 2009 – request for an internal review in respect of the 26 October request, received before a substantive response from the Department

2009/0102830 – 4 December 2009 – comment: 'still no response...' about an outstanding response to the request of 8 November, and a supplementary question.

2009/0103053 – 8 December 2009 – comment: 'overdue as usual' in relation to an earlier acknowledgement.