



Education & Skills
Funding Agency

Education and Skills Funding Agency
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

Reference: IR 2018-0024975

04 July 2018

Sent via email – request-464973-901106fe@whatdotheyknow.com

Dear Mr Jolley,

I refer to your request for an internal review, which was received on 06 June 2018. You requested:

I am writing to request an internal review of Department for Education's handling of my FOI request 'EFSA concessionary loaning'.

I would like to request an internal review on two counts; first, the unacceptable delays culminating in excuse that you considered I was actually making a second request. This is clearly not the case as evidenced by the correspondence.

Secondly, in making the case that disclosing the names of trusts receiving a loan has the potential to cause damage, the ESFA offered no evidence or examples of where a trust had been damaged, this is nothing but unsubstantiated speculation. Simply being in receipt of a loan is not in itself any indicator that the trust is in jeopardy, as indicated by the ESFA request that I exclude many types of the loans they offer to trusts.

The receipt of a loan must be disclosed within the trust accounts, which Dfe require to be published as part of the trusts funding agreements and articles of association. The information is already in the public realm and it is only the fact there are thousands of individual trusts that make the request for a list necessary.

It is stretching credulity to argue that a contractor finding out a trust has a loan (which is already public information) would have a detrimental effect on bargaining power, moreover to argue this occurs to the point it overrides the public interest in accountability for the way public money is being spent on these interest free loans cannot be in any way justifiable.

Finally, the argument naming a trust "could harm the trust's recovery and compromise the education of their children" seems at complete odds with the departments own policy of issuing and publishing the list of trusts in receipt of a Financial Notice to improve.

It is well worth noting that despite being listed publically many of the trust have subsequently had the notice lifted and secured their financial positions, which would seem to amply demonstrate that the publicity isn't having the compromising effect suggested.

There is no evidence listing the recipients will do any damage to the Individual Trusts and I would like you to provide the full list as requested at the earliest opportunity.

The Department has now completed its internal review process and has carried out a thorough review of the case, chaired by a senior official who was not involved with the

original request. The Department has decided to uphold the original decision not to disclose the information concerned.

The reviewers noted that you felt that your request was unacceptably delayed. The [ICO guidance on clarifications](#) (48-49) sets out that a clarified request should be treated as a new request, giving the authority a new 20 working day limit to respond, which is why the deadline to your request was extended.

The review concluded that the information requested should also be exempted under S36(2)(c) of the Act. This information has been judged, in the reasonable view of a qualified person, to be exempt under Section 36(2)(c) as its release would likely prejudice the effective conduct of public affairs.

This exemption is subject to a public interest test, which we have considered. The review agreed with the requester that there is a public interest in the accountability of public finances and ensuring that they represent value for money; and this is reflected in the requirement that trusts publish annual audited accounts. As the regulator, the ESFA needs to be able to engage on complex financial issues. As noted in our previous letter, dated 29 March 2018, as part of this engagement, the ESFA may provide additional funding to enable trusts to recover their financial position, and preserve the effective education of children. Disclosure of such a list has the potential to prejudice this work.

If you are unhappy with this decision, you have the right to appeal directly to the Information Commissioner. The Information Commissioner can be contacted at:

The Case Reception Unit
Customer Service Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Further information about the Information Commissioner's complaints procedure can be found on the Information Commissioner's Office website: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/complaints/>

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Emily Simons', with a large, stylized initial 'E' and a long, sweeping underline.

Emily Simons
Deputy Director – Academies National Operations
Education and Skills Funding Agency