

[REDACTED]  
Department for Education  
Sanctuary Buildings  
London  
SW1P 3BT

Tuesday 14 July 2020

[REDACTED]

Thank you for your letter dated 6 July 2020, in response to our freedom of information request dated 8 June 2020. Unfortunately, we are not satisfied with this response and are requesting an independent review of the decision.

### **Background**

The National Secular Society is a not-for-profit non-governmental organisation which works for the separation of religion and state and equal respect for everyone's human rights so that no one is either advantaged or disadvantaged on account of their beliefs. Like many NGOs our work involves engaging with policymakers and communities at all levels. One of our projects is the No More Faith Schools campaign, which works with local supporters and decision makers to oppose faith schools and advocate for inclusive community-ethos alternatives.

### **Our request**

We requested copies of the applications/proposals for 19 faith schools which were submitted as part of Wave 14 of the free school programme. The Department confirmed that it holds the information requested for those applications still under decision and for an unidentified number which have been rejected, however asserts that the qualified exemption under Sections 36(2) applies and that the public interest does not outweigh arguments against disclosure.

### **Prejudice**

The letter of 6 July does not set out the reasoning for believing that transparency over the applications presents a significant or weighty risk of prejudicing the effective conduct of public affairs. The purpose of Section 36 of the Freedom of Information Act 2000 is not intended to shield decision making from criticism or debate.

Transparency over the application/proposals does not reduce the scope for full and frank exchange of views or impinge on the privacy of the final decision maker. These applications are written documents, while the application process encompasses formal interviews, informal discussions and correspondence and formal written feedback. The applications themselves do not fall under the category of "advice" as defined by the ICO.

## Public interest

In weighing the public interest in favour of disclosure of applications currently under consideration the Department has considered two sets of factors.

- *There is a public interest in releasing approved applications for wave 14 of the free schools programme, and the successful proposals will be published once the final outcomes have been decided.*

While accurate, this analysis is incomplete. The compelling public interest in seeing successful proposals is indeed served by these being published. However, this does nothing to address the public interest in seeing proposals during the assessment stage where such information can contribute to informed debate.

As it stands free schools can and do move to the preopening stage with almost no information being made available to the general public and without any detailed proposal being subject to public consultation or debate.

- *However, it is in the public's interest that officials have the opportunity to assess applications based on the established criteria for the current wave, before the Secretary of State makes a final decision on the outcome of each proposal. This process should be free from speculation and lobbying until the final decision is made.*

The approval or disapproval of proposed schools have major implications on the lives of local communities and are a matter of significant public interest. Officials' opportunities to assess applications are enhanced by open and informed public debate and feedback. Unaccountable and opaque decision making shielded from public debate or 'lobbying' does not tend to encourage good policy making.

With respect to unnamed applications which have been rejected, the Department has also considered a third set of factors.

- *Releasing the application form of these bids is not in the public interest as some groups may subsequently be discouraged from applying due to any negative interest and attention received. Groups may also feel under pressure to produce future applications that avoid prejudice from any interest and attention.*

This analysis fails to fully capture the public interest in disclosure. Public scrutiny is not an ill to be avoided, but essential in a democratic society. If any group is deterred from applying to the free school programme by public scrutiny it raises serious questions about their suitability. There is a significant public interest in seeing failed applications improved in response to feedback, it is perplexing to see this framed as a negative.

Transparency over both failed and successful applications provides insight into the Department's otherwise secretive and unaccountable assessment process, which is essential for interested members of the public to engage in informed debate over these and any possible future proposals.

## Conclusion

In refusing this legitimate request the Department has gone far beyond preserving a space for full and frank deliberation. By refusing to publish these applications, the Department attempts to shield

controversial decisions from scrutiny and to exclude the public from debating them. The asserted exemption does not provide grounds to override the compelling public interest. The decision should be reversed on appeal.

We look forward to your response.

Kind regards,

Alastair Lichten  
Head of education  
National Secular Society