

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2013

Public Authority: Office for Standards in Education
Address: 5th, 6th and 7th Floors
Piccadilly Gate
Store Street
Manchester
M1 2WD

Decision (including any steps ordered)

1. The complainant has requested information about a named inspector including a list of the schools that he inspected. The Office for Standards in Education (Ofsted) denied holding much of the requested information and refused to provide the list of schools inspected by the named individual under section 40, the exemption for personal information. Following an internal review the public authority also applied section 21, information accessible to applicant by other means, to some of the information that would form the list of schools inspected by the named individual. This was on the basis that a simple internet search would identify some of the schools that the named individual had inspected.
2. The Commissioner's decision is that Ofsted were correct to withhold the information. The Commissioner finds that the full list of schools inspected, together with the dates inspected, is exempt from disclosure under section 40(2) as it would be unfair to the named individual to release the information. Since the information is exempt under section 40(2) the Commissioner has not gone onto consider the application of section 21.
3. It is not necessary for the public authority to take any steps in order to ensure compliance with the legislation.

Request and response

4. On 13 November 2012, the complainant wrote to Ofsted and requested information in the following terms:
 - “1. Does Ofsted employ an inspector called [name redacted]? When was he first employed? On what terms is he employed – i.e. is he on the full-time staff or on a call-off contract for individual inspections or some other arrangement?
 2. If he is employed, when did Ofsted become aware that he was a passionate advocate of Advanced Christian Education, that he was author of the book “[title redacted]” and other ACE works? Was this before or after he was first employed?
 3. What schools has [name redacted] inspected, when, and which of them used the ACE system?
 4. Who decided in each case that the inspection should be assigned to [name redacted]?”
5. Ofsted responded on 6 December 2012. It explained that the named individual was not directly employed by Ofsted. Ofsted contracts out the inspection of some schools to Inspection Service Providers and the named individual was employed by one such provider as an Additional Inspector. Since Ofsted did not employ the individual directly they did not hold the majority of the information requested. However it did hold a list of the schools inspected by him together with the dates of those inspections. It did not hold information on which of those schools used the ACE system.
6. Ofsted refused to provide the list of schools inspected, and when, under section 40(2). This section provides that a public authority is not obliged to provide personal information if to do so would breach the principles of the Data Protection Act 1998 (DPA).
7. The complainant accepted that the majority of the information was not held but requested an internal review of Ofsted’s refusal to provide the list of schools and the dates they were inspected. Following this review, Ofsted wrote to the complainant on 18 January 2013. It upheld its application of section 40(2) to some of the information. However some of the Ofsted reports named the individual as either the Lead Inspector or a member of the inspection team. A number of these reports were available on the internet. Ofsted applied section 21 - information accessible to the applicant by other means, to the reports available from the internet.

Scope of the case

8. The complainant contacted the Commissioner on 30 January 2013 to complain about the way his request for information had been handled. The complainant explained that he still wished to be provided with a list of the schools inspected by the named individual together with the dates when those inspections were carried out.
9. Therefore the Commissioner has concentrated his investigation on whether Ofsted was entitled to refuse to provide this list.
10. During the course of the Commissioner's investigation Ofsted clarified that it was applying section 21 to any of the information that was available from reports published on the internet and that it was only applying section 40 to any information that was not easily accessible from the internet. However as it is not immediately obvious which of the schools and dates are available from the internet, the Commissioner considers that the correct approach in this case is to look at the list in its entirety and decide whether its disclosure would breach any of the data protection principles. The Commissioner considers that in his dual role as regulator of both the FOIA and the DPA, such an approach is appropriate where there is a risk that the data protection principles could be breached.

Reasons for decision

Section 40(2) – Personal Information

11. Section 40(2) of FOIA states that information is exempt if it constitutes personal data, as defined by the Data Protection Act 1998 (DPA), and its disclosure would breach any of the data protection principles.
12. The first and most straightforward issue is whether a list identifying the schools inspected by the named individual, together with the dates he inspected them, is his personal data. The Commissioner is satisfied that it is.

First data protection principle

13. The first data protection principle states:

Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –

- (a) At least one of the conditions in Schedule 2 is met, and

(b) In the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

14. The Commissioner's approach is to first consider whether the processing is fair. The issue being considered is whether providing the full list of schools inspected by the named individual, or the additional information that would allow a full list to be compiled, would be fair.
15. There are a number of factors to consider when weighing up fairness in this case. It is understood (from the complainant and information available from the internet) that the named individual is the author of a book promoting the use of Accelerated Christian Education (ACE) techniques. ACE is controversial and some are concerned that it fails to properly teach pupils to reason for themselves. Some of those who campaign against it label it as Christian Fundamentalism. There are websites which campaign against ACE and some name the individual who is the focus of this request. At least one makes it clear that it does not consider it appropriate that the individual should inspect schools which adopt ACE methods. Ofsted considers that the named inspector has been the focus of hostility and that his professional competence has been challenged through these campaigns.

Expectations of the named inspector

16. By writing the book the named individual did, at the time he wrote it, place himself in the public arena as an advocate for ACE. It would therefore be reasonable for him to expect to be associated with the controversy around that subject.
17. Furthermore in his role as Lead Inspector he would know that his name would be published in the reports he was responsible for and that these were easily available from the internet. It is reasonable to assume that he would have realised that it was possible to obtain a good number of the reports that he was involved in by entering his name and 'Ofsted' in any search engine. Ofsted has advised that since 2012 the entire inspection team, and not just the Lead Inspector, is named in reports. Therefore since that time, even more information about his work as an inspector would have been readily available.
18. A good argument can be made that disclosing the requested list would be fair. However before reaching a conclusion it is necessary to take account of any factors that do not support such a finding.
19. In respect of the data subject's expectations Ofsted has explained that over 2012 it took steps to increase the transparency of the work of inspectors. To this end all inspectors, including those employed by Inspection Service Providers, now provide a pen portrait which

includes some basic information about their experience and skills. This move was motivated, in part, by Ofsted's recognition that the public needed to be satisfied in the ability of inspectors, but that on occasions that interest could become intrusive. Ofsted carefully considered the level of information to be provided in the pen portraits to ensure the correct balance between the transparency needed to ensure the public had confidence in the inspection process, and the privacy of inspectors. These developments would have shaped the named individual's expectations as to what information would be released about his career. The requested list, which would provide a full history of the inspections he had carried out, goes beyond his expectation of what would be proactively released through a pen portrait.

Impact of disclosure on the named individual

20. As a general rule the name of the Lead Inspector, or any member of the inspection team, is incidental to the contents of the report which they produced. The nature of the request, targeting the work of a specific individual, changes the character of the information. The very fact the requested list has the individual as its focus makes the information more intrusive and therefore its disclosure potentially unfair. This is so even if by championing ACE the individual has already placed himself in the spotlight.
21. Although a good number of reports involving the named individual can be found through simple internet searches the Commissioner doubts they all can. Although the first five pages of an internet search produced 24 of his reports, by page five the number of returns was diminishing. There was a noticeable cluster of returns around the more recent inspections. Even using the information provided by Ofsted which identified the schools inspected and when the named individual inspected them, simple searches did not locate all the older reports. It may be that some of the older reports are no longer available by searching under the individual's name, and it is even possible that some of the schools no longer exist.
22. For this reason the Commissioner considers that the information requested is of a different quality in terms of its accuracy compared with that which could be compiled from the internet. So although individual entries on the list may be accessible, the list in its entirety is only available from Ofsted. This has two effects.
23. Firstly the full list would reveal the individual's deployment during his career as an inspector. This raises the potential for it to reveal absences or at least periods when he was not carrying out inspections. Therefore the Commissioner considers that there is some, if only limited, potential for the list to allow inferences to be

drawn about the individual's employment history. This is not the sort of information that any employee would normally expect to be made available.

24. Secondly, it is argued by Ofsted that providing a full, authoritative, list of the schools inspected would encourage those campaigning against ACE to increase their focus on the named individual. Ofsted has suggested that if it was to disclose the list any analysis of the information would be presented as being based on official figures, giving credence to its conclusions, regardless of the actual quality of that analysis.
25. The Commissioner stresses that there is no suggestion that the complainant in this case would be party to such conduct, but as the Commissioner views any disclosure under FOIA to be a disclosure to the public at large, it is correct to consider how others could use the list.
26. The Commissioner does not consider that it would be necessary for the whole list to be disclosed for campaigners to focus on the named individual. However he does accept that a reliable list may increase the incentive to target the individual. Importantly, the Commissioner considers that any official disclosure of information about the named individual by Ofsted could draw attention to him. Such attention may encourage adverse comments regarding the named individual's integrity as an inspector and, more generally, as a professional in education.
27. Ofsted believes that providing the requested information would feed a campaign against the named individual and that this could ultimately impact on his employability as an inspector. The Commissioner considers that employers in the inspection field would recognise that any inspector can attract adverse comments simply because of the role they fulfil and so, generally, such comments would not affect an individual's employability. It is conceivable that a particularly sustained or virulent campaign may have some impact. However the Commissioner considers that it would only be if the controversial views which triggered the campaign gave rise to genuine concerns over an individual's competence that someone's association with those views would impact on their employability.

Balancing the different factors

28. In this case whether the disclosure of the personal data is fair is finely balanced. The Commissioner recognises that there is a genuine public debate about ACE and that it is legitimate to challenge the robustness of Ofsted's role to ensure high standards in education.

However it is possible to challenge the findings of individual reports and Ofsted's complaint procedures seem capable of addressing broader complaints. There is already information available from simple on line searches that would provide a representative sample of any inspector's work if it was believed this would reveal bias. In light of this the Commissioner does not consider that it is necessary to disclose the requested list to challenge any perceived bias in favour of schools adopting ACE methods.

29. Ofsted has also explained that the pattern of inspections is monitored through observing them during inspections. There is therefore some safeguard in place to ensure the soundness and impartiality of inspections.
30. In light of this the Commissioner finds that the disclosure of the list would not be fair and that therefore its disclosure would breach the first data protection principle. In light of this he has not gone onto consider whether the disclosure would be lawful or whether any of the Schedule 2 conditions could be satisfied.
31. Since the Commissioner finds that the entire list is exempt from disclosure under section 40(2) he has not gone on to consider the application of section 21.

Right of appeal

32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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