

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2023

Public Authority: The Office for Standards in Education, Children Services and Skills (Ofsted)

Address: 2 Rivergate
Temple Quay
Bristol
BS1 6EH

Decision (including any steps ordered)

1. The complainant made a request for evidence, forms and relevant notes completed during a particular Ofsted inspection. Ofsted refused to disclose the requested information under section 33(2) FOIA.
2. The Commissioner considers that Ofsted was correct to rely upon section 33(2) FOIA in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made the following information request on 22 December 2022:
"Evidence Forms and relevant notes completed during the OFSTED inspection".
5. Ofsted responded on 9 January 2023, it refused to disclose the requested information under section 33(2) FOIA.
6. The complainant requested an internal review on the same date asking Ofsted to review their decision to withhold the requested information. He explained his view that the public interest lies in disclosure of the evidence, and that there should be transparency about the evidence, particularly when there is a "suspicion of wrongdoing".

7. Ofsted provided the result of the internal review on 6 February 2023. It upheld its application of section 33(2) FOIA.

Scope

8. On 6 February 2022 the complainant submitted a complaint to the Commissioner as he considers that Ofsted was incorrect to withhold the requested information.
9. The Commissioner has considered whether Ofsted was correct to refuse to disclose the requested information under section 33(2) FOIA.

Reasons for decision

10. Section 33 states that:

(1) This section applies to any public authority which has functions in relation to—

[...]

(b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

11. Ofsted confirmed that its inspection work in relation to schools falls within the definition of an audit function. As Ofsted's primary role in relation to maintained schools and academies is inspection, the majority of the information Ofsted holds about schools directly relates to this function. It went on that all of the information requested in this case derives from Ofsted's audit function, because it has been created as a result of an inspection.
12. The Commissioner is satisfied that Ofsted is a public body which has audit functions and has received and gathered information from and about the college which was the subject of the inspection relevant to this FOIA request during the exercise of its functions falling within section 33(1)(b) FOIA.
13. Ofsted went on to explain that in this case the requester had asked it to disclose inspection evidence to the public under FOIA, before the

publication of the related inspection report and before the outcome of the inspection has been confirmed.

14. At the time of the request, the inspection report had not yet been published on Ofsted's website. At the internal review this remained the position, and means that the inspection report or its findings were not yet available to the public.
15. At the time of the request, members of the school and wider community would be aware that an inspection has taken place and would be awaiting the publication of the inspection report so they could find out Ofsted's view of the school. As such, it is certain that making public the underlying evidence from the inspection would be perceived to indicate Ofsted's view of the school, and the information would be scrutinised on that basis.
16. Ofsted considers that disclosing the requested information to the public prior to Ofsted's publication of the finalised report would result in the public forming their own conclusions from the evidence, attributing meaning to that information which may not have been intended by the inspectors recording it.
17. The published inspection report is the final and authoritative statement of Ofsted's findings from the inspection. Releasing the underlying evidence in advance of the report's publication would undoubtedly drive speculation about the outcome of the inspection. This would completely disrupt Ofsted's audit function, which operates using a process of published reporting.
18. In addition, Ofsted has highlighted that the Education Act 2005, at section 11, sets out the publication of the inspection report as an integral aspect of Ofsted's audit function.
19. Ofsted therefore considers that harm to its functions would have arisen through the disclosure of information to the public at the time of the request.
20. The Commissioner accepts that disclosure would be likely to harm and disrupt Ofsted's ability to carry out its inspection functions if the underlying evidence of this inspection were disclosed prior to publication of the final inspection report.

Public interest test

Public interest in favour of disclosure

21. Ofsted recognises that there is a general public interest in disclosure of inspection evidence, and associated material, as this can establish the thoroughness of the inspection process. The public interest also supports ensuring that schools are effectively appraised through inspection and that the published results of this activity are authoritative and accurate.
22. Ofsted acknowledged the complainant had argued that there was "a suspicion of wrongdoing" in relation to the inspection which may strengthen the public interest in disclosure. Ofsted however confirmed that it has a complaints process which schools should follow if they have concerns in relation to their inspection. Ofsted said that it is important that any such concerns can be considered without the public disclosure of potentially related material. It therefore disputes that this strengthens the public interest in favour of disclosure at the time of the request as there is a complaints process which is the correct route by which these concerns should be raised.

Public interest in favour of maintaining the exemption

23. Ofsted said that there is a very strong public interest in ensuring that any inspection report must be published before detailed underlying information regarding the inspectors' findings can be disclosed. Any disclosure of information which is likely to undermine Ofsted's inspection function, ultimately by pre-empting the official, published, outcomes of Ofsted's inspections, would therefore be contrary to the public interest.

Balance of the public interest

24. Balancing these arguments, Ofsted said that the public interest in favour of withholding the information significantly outweighs that in favour of disclosing it at the time of the request.
25. In terms of the public interest, the timing of the request is key to the Commissioner's decision. At the time of the request the inspection report had not yet been published. Given publication of the inspection report is integral to Ofsted's functions, on balance the public interest of disclosure at the time of the request is outweighed by the public interest in maintaining the exemption in this case.

Right of appeal

26. 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: 0870 739 5836

Email: grc@Justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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.....

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF