

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 April 2023

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

Address: 2 Rivergate
Temple Quay
Bristol
BS1 6EH

Decision (including any steps ordered)

1. The complainant has requested information relating to Ofsted's policies.
2. The Commissioner's decision is that Ofsted was entitled to refuse to comply with the request, citing section 12 (cost of compliance exceeds appropriate limit) of FOIA. The Commissioner is also satisfied that there has been no breach under section 16 (advice and assistance) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 25 January 2023 the complainant requested the following information:

"As applied to South Yorkshire:

A) Please provide the documents that demonstrate that Ofsted is not subject to actual, perceived or potential conflicts of interest that could present as external influence, interest or even control over Ofsted inspections, reports and decisions.

External interferences include but are not limited to: influence over Ofsted inspectors, local political influence, local authority influence.

- B) Please provide the documents that demonstrate that Ofsted has in place the measures needed to report and prevent the situation(s) described in A) above.
- C) Please provide the documents showing that Ofsted condones pre-informing a local authority that a child care facility being targeted by that local authority that an 'aggressive' inspection of that child care facility is 'imminent'. Should it be the case that Ofsted does not condone such action, please provide the documents showing communication policies."
5. Ofsted responded on 17 February 2023. It refused to comply with the request under section 12. It upheld this position at internal review.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

6. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
7. When considering whether section 12(1) applies, the public authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are set out at Regulation 4(3) and are:
- (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it."
8. If the public authority estimates that compliance with the request would exceed the appropriate limit, it is not obliged to comply with the request. There is no public interest to consider. The limit for a public authority such as Ofsted is 18 hours
9. The complainant's request is broken down into themes including external interferences, conflicts of interest and safeguarding. The Commissioner agrees with Ofsted when it describes the request as 'very wide-ranging and non-specific.'

10. In relation to the first theme, Ofsted has explained to the complainant:

"you have asked for disclosure of any documentation that demonstrates that Ofsted is not subject to conflicts of interest, external influence or control. This could incorporate a range of areas from documentation about Ofsted's governance and oversight by parliament, to records of how we work with central government departments, local authorities, and other organisations such as His Majesty's Inspectorate of Prisons or the Care Quality Commission. It could also include information about our processes for recording and managing conflicts of interest for our staff, and how we respond to complaints about perceived conflicts of interest."

11. Even though the request relates to South Yorkshire specifically, in reality the requested information relates to how Ofqual operates generally. The Commissioner also notes that the request does not focus on a specific timeframe and Ofsted has existed for thirty years and the complainant has made no attempts to narrow the timeframe of the request

12. Ofsted has also explained to the complainant 'Our processes and procedures, such as inspection frameworks, and how we work with contracted inspection staff, has changed significantly over this period. For these reasons it would be incredibly difficult to search for and locate all potentially relevant information.'

13. In its handling of this request Ofsted did point the complainant to eight publicly available documents, including guidance on its governance, its codes of conduct and conflict of interest policies and its publication scheme which also includes information relevant to the themes of the request. However, the complainant wasn't satisfied with this disclosure and refused to narrow the terms of their request but (in the Commissioner's view) actually broadened it by stating that they not only wished to receive internal documents but also its compliance records for an undefined period of time.

14. When citing section 12, the Commissioner expects a public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on cogent evidence, on the quickest method of gathering the requested information and usually will involve the public authority conducting a sampling exercise.

15. Ofsted hasn't provided any quantifiable estimate as to how long compliance with the request would take. The Commissioner recognises that there will be occasions (such as this one) where a request is so broad that it would be impossible to quantify the total cost of compliance – but that doesn't mean that the public authority should simply dispense with this part of the process. In such circumstances Ofsted could simply have picked one part of the request (or one business area) and tried to estimate the cost of searching for that

information. If a public authority can demonstrate that even a relatively focussed search both would incur a significant cost and would not come close to locating all relevant information (because the public authority would need to carry out similar searches of multiple areas), that will usually be sufficient to demonstrate that the overall cost will exceed the limit. It will not usually be sufficient to simply assert that the limit will be exceeded.

16. However, looking at the scope of the request, the volume of records that might potentially need searching for relevant information and the complainant's refusal to provide clarity about the information they hope to receive, the Commissioner doesn't believe it would be possible to distil search terms from the request, which could be used to narrow the searches that would enable Ofsted to answer the request in the way specified.
17. Given that Ofsted has already directed the complainant to where the most obviously relevant information can be found – and that the complainant clearly believes that more information is held, the Commissioner accepts that this request, though superficially narrow, is in fact exceptionally broad.
18. The Commissioner accepts that due to the broad nature of this request and the volume of potentially relevant information that that Ofsted holds, the quickest method of retrieval appears to be a manual search of records held across all of Ofsted's systems and this is just focusing on the first part of the request.
19. Whilst Ofsted has not put forward a figure, the Commissioner is under no doubt that compliance with the request would exceed 18 hours. In reaching this decision, he has taken into account the complainant's refusal to narrow their request in any meaningful way. Therefore section 12 is engaged and Ofsted was entitled to refuse to comply with the request.

Section 16 – advice and assistance

20. When refusing a request under section 12, a public authority needs to offer meaningful advice and assistance to the complainant where reasonable. The aim of this advice and assistance is to help the complainant refine their request to one that might be able to be dealt with within the appropriate limit.
21. Within its refusal notice of 17 February 2023, Ofsted explained to the complainant that, in the current format the request could not be refined in a way that would bring it within the appropriate limit. However, it invited the complainant to engage with it further on this matter, which they did not do in a meaningful way.

22. The Commissioner agrees with Ofsted that the request can't be meaningfully refined. Therefore, the Commissioner is satisfied that there's no section 16(1) breach in this instance.

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

24. 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.
25. 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

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