

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 June 2023

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

Address: Piccadilly Gate
Store Street
Manchester
M1 2WD

Decision (including any steps ordered)

1. The complainant has requested information about the registration of specific foster and adoption agencies. Ofsted refused to provide the information as it either isn't held, or fell outside the scope of FOIA.
2. The Commissioner's decision is that:
 - On the balance of probabilities Ofsted doesn't hold the information in relation to local authority services.
 - Where information in relation to independent services is held by Ofsted, it's held for the purposes of functions exercisable by His Majesty's Chief Inspector of Education, Children's Services and Skills. As such, the information is derogated and section 1(1) of FOIA does not require Ofsted to disclose it.
3. The Commissioner does not require further steps.

Request and response

4. On 8 April 2023 the complainant wrote to Ofsted and requested:

"I would be grateful for the provision of evidence of registration and deregistration of adoption and fostering services, including the registration and deregistration of managers and local authority/agency responsible person for the following:

Richmond Upon Thames

Kingston

Windsor and Maidenhead

Southwark

Adopt London South

Coram Adopt First.

Achieving for children

Bromley

Merton

Currently, the published register does not include the names of the individuals. It is a statutory requirement the region syer (sic) to be open to inspection and responsible individuals names can only be withheld if under investigation.

Please provide this data as an attachment, details ailing registration including the name and hcpc/swe registration numbers of the individuals.

Please provision devthos data chronology by local authority from 2010 to date."

5. Ofsted responded on 12 April 2023. It explained that, in so far as the request relates to local authority fostering and adoption services, Ofsted doesn't register these services. Therefore, no information is held.
6. It also explained that, in so far as the request relates to independent fostering and adoption services, information held by Ofsted for the purpose of its role as the 'registration authority' for independent fostering and adoption services is not subject to FOIA.

7. The complainant requested an internal review on 13 April 2023, disputing both of Ofsted's positions. They also added Somerset to the list of regions with which they were concerned.
8. Ofsted provided its internal review outcome on 19 April 2023. It upheld its previous positions.
9. When they contacted the Commissioner, the complainant didn't specify if they disagreed with Ofsted's position in relation to local authorities or private fostering and adoption services. Therefore, the Commissioner will assume the complainant is dissatisfied with both.

Reasons for decision

Section 1 – information held/not held

10. Section 1 outlines the obligations of public authorities to communicate information to requestors if held for the purposes of FOIA, unless an appropriate exemption applies.
11. The complainant believes that Ofsted does hold, for the purposes of FOIA, information relating to specific local authorities fostering and adoption services. Ofsted says it doesn't hold this information.
12. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request at the time that the request was received.
13. In its internal review outcome, Ofsted explained to the complainant:

“These services are inspected by Ofsted during the wider inspection of the local authority, however they, and their associated individuals, are not registered or regulated by Ofsted.”

It also provided the complainant with information about the inspection process.¹
14. The Commissioner understands that there are broadly two types of children's social care – local authority fostering and adoption agencies

¹ [Inspecting local authority children's services - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/inspecting-local-authority-childrens-services)

and independent fostering and adoption agencies. Whilst Ofsted inspects both, according to its website², it only acts as the registration authority for the the following independent agencies:

- children's homes, including secure children's homes and secure schools
 - residential family centres
 - residential holiday schemes for disabled children
 - voluntary adoption agencies
 - independent fostering agencies
 - adoption support agencies.
15. Since Ofsted isn't the registration authority for local fostering and adoption agencies, logically it follows that Ofsted wouldn't hold the requested information for local authority fostering and adoption agencies.
16. In the absence of any arguments from the complainant, the Commissioner is satisfied that, on the balance of probabilities, the registration information in relation to listed local authority fostering and adoption services is not held by Ofsted for the purposes of FOIA. This is because there is no business or statutory reason for this information to be held – since such agencies would be registered with another body.
17. The complainant believes that Ofsted does hold, for the purposes of FOIA, information relating to specific independent fostering and adoption services. Ofsted has confirmed that this information is held but does not believe it is held for the purposes of FOIA.
18. In the case of most public authorities, all official recorded information will be held for the purposes of FOIA. However, there are some organisations (such as Ofsted and the BBC) who are only partially covered by FOIA. These organisations are only obliged to consider for disclosure information which is either: held in connection with specific functions of the organisations or held for purposes other than specific functions of the organisation.

² [Registration guide for children's social care services - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/registration-guide-for-childrens-social-care-services)

19. In this case, schedule 1 of FOIA clarifies that Ofsted is covered by FOIA:

“in respect of information held for purposes other than those of the functions exercisable by His Majesty's Chief Inspector of Education, Children's Services and Skills by virtue of section 5(1)(a)(i) of the Care Standards Act 2000.’ (as amended).”

20. What this means is any information Ofsted holds in connection with its function as a registration authority will not be covered by FOIA.

21. The Commissioner previously mentioned the fact that the BBC is subject to FOIA, except for information held for the purposes of journalism, art or literature. In order to ascertain whether information held by the BBC is derogated – the Commissioner considers whether there's a direct link between the requested information and journalism, art or literature. He'll do the same test for Ofsted.

22. In order to establish whether the information was held for a derogated purpose, the Supreme Court indicated that there should be a sufficiently direct link between at least one of the purposes for which the BBC held the information and the fulfilment of one of the derogated purposes.

23. This Commissioner will apply the same test to Ofsted; if there is a direct link between the purposes for which Ofsted holds the requested information and its function as a registration authority – the information will not be subject to FOIA.

24. The request asks for “evidence of registration/deregistration” for specific agencies. This clearly relates to Ofsted's function as a registration authority according to the care standards act. The request also asks for the name and reference number assigned to each registered agency and asks for this information back to 2010.

25. It may well be that Ofsted also holds this information for other purposes as well – such as its obligation to inspect the agencies in question – but this doesn't negate the fact that it's held as the registration authority.

26. The Commissioner is therefore satisfied that Ofsted holds any information relating to the registration of independent adoption and fostering services for the purposes of the functions it exercises on behalf of His Majesty's Chief Inspector of Education, Children's Services and Skills as the registration authority. As such this information is subject to a specific derogation from FOIA and thus Ofsted is not obliged to disclose it.

27. Since Ofsted is not obliged to disclose this information under FOIA, the Commissioner has no powers to instruct it to disclose it in response to a request received under FOIA.

Right of appeal

28. 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

29. 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.

30. 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