

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2023

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

Address: Clive House
70 Petty France
London
SW1H 9EX

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific visit to their local authority that occurred in 2018. Ofsted disclosed some information but refused to disclose the rest, citing section 33 (audit functions) of FOIA.
2. The Commissioner's decision is that Ofsted is correct to withhold the outstanding information under section 33.
3. The Commissioner does not require further steps.

Request and response

4. On 29 November 2022, the complainant made a subject access request (SAR) to Ofsted and also requested:

" ...all of the information you have regarding the monitoring visit with Kirklees Local Authority on 13 and 14 March 2018, including all communication with the Local Authority regarding this visit."

5. Ofsted responded on 23 January 2023; it explained that 'The letter sent to the authority, with the outcome of the monitoring visit of Kirklees Local Authority on 13 and 14 March 2018, is readily accessible to you from our website¹' and so was exempt under section 21 (information reasonably accessible to the applicant via other means) of FOIA. It disclosed a letter sent to the local authority prior to the inspection, with redactions made under section 40(2).
6. It also explained 'finally, we hold the handwritten evidence notebooks which were completed during the monitoring visit. We consider that this evidence is exempt from disclosure under sections 33 and 40(2) of the FOI Act.'
7. When requesting their internal review, the complainant clarified that they hoped to receive 'details of all correspondence you had with the Local Authority regarding the inspection of 13/14 March 2018 and all details regarding the visit, including the notes made by the inspectors.' The complainant also raised concerns about the way in which Ofsted had carried out the investigation.
8. Ofsted provided its internal review outcome on 23 February 2023 and clarified that it 'had not located any correspondence other than that which it shared' with the complainant. It clarified that the only information it continued to withhold, under sections 33 and section 40(2), was the evidence from the inspection in question which 'is made up mainly of the handwritten notes of the inspection team.'

Scope of the case

9. The complainant hasn't raised any concerns about Ofsted's application of section 21 or Ofsted's application of section 40(2) as outlined in paragraph 6. Therefore, the Commissioner won't consider these matters any further.
10. The complainant has expressed concerns, to both Ofsted and the Commissioner, that the visit to the local authority was only conducted following complaints received from children, rather than complaints received from children and their families.
11. Ofsted has confirmed to the complainant that the publicly available information, and the information it disclosed in response to the request, relates to complaints 'made by children'.

¹ [Kirklees Metropolitan Council - Open - Find an Inspection Report - Ofsted](#)

12. The complainant has asked the Commissioner to consider this matter further; they are concerned that they made a complaint to the local authority back in 2018 and this should have been acted upon, and included within the investigation in question, but wasn't.
13. It isn't in the Commissioner's remit to consider what Ofsted does with each complaint it receives and what type of complaints it should take into account when deciding to conduct an investigation. This is a service complaint and if the complainant remains concerned about this, they should escalate it via Ofsted's complaints procedure.
14. Furthermore, this notice won't consider Ofsted's handling of the complainant's SAR. If the complainant has any concerns about this matter, they should raise a fresh complaint with the Commissioner via his Public Advice and Data Protection Complaints and Concerns Department² if they have not already done so.
15. This investigation will consider whether Ofsted is correct to withhold the inspection evidence as it has done. The Commissioner will first consider Ofsted's application of section 33 and, depending on his findings, may go on to consider Ofsted's application of section 40(2).

Reasons for decision

Section 33 – audit functions

16. Section 33 of FOIA states:

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

(a) the audit of the accounts of other public authorities, or

(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).”

² [Data protection and personal information complaints tool | ICO](#)

17. In its internal review outcome, Ofsted explained 'Through its published inspection reports, Ofsted holds local authorities to account for how effectively they use the resources at their disposal. This means that Ofsted's inspection work in relation to local authorities falls within the definition of an 'audit function'.'
18. Section 33(2) can only apply if disclosure of the requested information "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)". In order to appropriately engage the exemption, Ofsted must draw a causal link between disclosure and its ability to hold the local authority, or any other public authority, to account.
19. In its internal review outcome, Ofsted explained that, at the time that the request was made, 'the local authority will have been aware that Ofsted would be returning to carry out an inspection from around summer 2022 onwards. That inspection has not yet taken place.'
20. The Commissioner understands that the local authority was judged inadequate in services for children in October 2016. In line with Ofsted's processes, multiple monitoring visits, inspections and engagement visits are required to support the local authority in improving its performance.
21. In its internal review outcome, Ofsted explained to the complainant that:

'disclosure of the evidence from a previous inspection to the public, at a time when further inspection activity is imminent, will harm Ofsted's upcoming inspection activity. This is because disclosure would likely result in Ofsted and the local authority diverting attention and resources towards answering queries about the earlier inspection, rather than focusing on the input and engagement required as part of the forthcoming inspection. This would harm the inspection processes in place to evaluate the authority as they make the improvements necessary to get the authority to good or better.'
22. In line with his previous decisions in similar cases such as IC-196631-R4G5³, IC-228068-S1D52⁴ and IC-235429-B5T6⁵, the Commissioner is satisfied that Ofsted was entitled to apply section 33 of FOIA to the requested information.

³ [IC-196631-R4G5](#)

⁴ [IC-228068-S1D52](#)

⁵ [IC-235429-B5T6](#)

23. This is because, at the time of the request, disclosure of the requested information would be likely to frustrate ongoing monitoring by shifting focus backwards to the inspection rather than forward to monitoring and improvement. Furthermore, disclosure would be likely to harm and disrupt Ofsted's ability to carry out its inspection functions if the underlying evidence were disclosed prior to concluding its monitoring of the local authority.
24. Since section 33 is engaged, the Commissioner will go onto consider where the balance of the public interest lies.

Public interest test

25. In this instance, the Commissioner concurs with Ofsted when it says that the public interest lies in maintaining the exemption.
26. In its internal review outcome, Ofsted explained 'any disclosure of information which would harm the process of effectively evaluating the authority cannot be seen to be in the public interest. It is vital that they secure the required improvements for young people in Kirklees.'
27. It also explained to the complainant that:

"It may be helpful if I explain that the evidence recorded during the March 2018 monitoring visit to Kirklees Metropolitan Council is made up mainly of the handwritten notes of the inspection team. The evidence is not written in such a way that specific themes can be easily identified. Ofsted's official findings are set out in the published inspection report. I understand that you may remain dissatisfied with Kirklees Metropolitan Council's handling of your complaint(s), however it is unlikely that disclosure of the inspection evidence would contribute to your, or the wider public's, understanding of what Ofsted found during the inspection. You have said you want to understand "what made [Ofsted] decide to review the topics investigated" during the visit. It is unlikely this will be apparent from the inspectors' notes."
28. The Commissioner recognises that there is always a public interest in transparency and public authorities being held accountable for their actions.
29. There will also be a specific public interest in the monitoring visit in question and disclosure would allow young people, and their families, to scrutinise whether the local authority is being monitored appropriately.
30. FOIA is purpose blind. However, the Commissioner is aware that the complainant appears dissatisfied with the way that Ofsted has dealt with their own complaint about the local authority. Given that this complaint would be better dealt with via Ofsted's complaints procedure and keeping in mind Ofsted's explanation as outlined in paragraph 27, the

Commissioner doesn't consider the public interest in disclosure weighty enough to outweigh Ofsted's ability to continue to monitor the local authority, to the benefit of young people, as robustly as possible.

31. Since the Commissioner has determined that Ofsted was correct to withhold the requested information under section 33, he hasn't gone on to consider Ofsted's application of section 40(2).

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

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

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