

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2022

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

Address: 2 Rivergate
Temple Quay
Bristol BS1 6EH

Decision

1. The Commissioner's decision is that Ofsted is entitled to rely on section 12(1) to refuse to comply with the request for information on investigations following complaints about peer-on-peer sexual abuse in schools as to do so would exceed the appropriate limit under section 12(1) of FOIA. There was no breach of section 16(1), which concerns advice and assistance.

Request and response

2. The complainant made the following information request to Ofsted on 14 April 2022:
 - "1. How many reports or complaints of peer-on-peer sexual abuse in a school did Ofsted receive, in calendar years 2016, 2017, 2018, 2019, 2020 and 2021?
 2. Of the reports or complaints of peer-on-peer sexual abuse in schools received in each of the aforementioned years, how many prompted an inspection of the school in question?"
3. With regard to part 1 of the request, Ofsted's final position was to advise it did not hold collated information for 2021-2022. It considered the relevant information it does hold was exempt under 36(4) of FOIA

(prejudice to effective conduct of public affairs) but found that the public information favoured disclosing the relevant information held, so long as it is published with contextual information. Ofsted disclosed relevant information with that contextual information. It refused part 2 of the request under section 12(1) of FOIA.

Reasons for decision

4. This reasoning covers Ofsted's refusal of part 2 of the request under section 12(1) of FOIA.
5. Ofsted said at internal review that although it may hold some information, it was unable to clarify whether an inspection was prompted by each allegation, within FOIA's cost limit.
6. Under section 12(1) 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. This is £600 (24 hours work) for government departments, including Ofsted.
7. Ofsted advised that to determine the number of schools that were specifically inspected because of complaints of peer-on-peer abuse would require a manual review of all those cases. It said that there are a variety of ways in which it could deal with a complaint about peer-on-peer abuse. In order to respond to part two of the request, Ofsted said it would have to closely examine the file for each complaint which mentions peer-on-peer sexual abuse. It would then need to cross-reference it against inspections which took place after the complaint was received to establish whether the allegation of peer-on-peer sexual abuse prompted the inspection. Ofsted said that in doing so it would expect to find common situations where it proves that an inspection was not prompted by an allegation.
8. For example:
 - It could be that this is the third qualifying complaint in a short space of time across a range of areas of concern, leading to a 'section 8' inspection to consider leadership and management; the reason for the visit would be the volume and frequency of complaints, not specifically the peer-on-peer abuse allegation.
 - It could be that the complaint assessment demonstrates that the peer-on-peer abuse allegation is unsubstantiated and/or has been appropriately managed by the school, but the assessment identifies other areas of concern leading to inspection; such as excessive exclusion rates, deteriorating pupil attainment records, resignation of the governing body or other safeguarding concerns.

9. Another factor for consideration, Ofsted said, is that if a school had already been scheduled for inspection, then the response to the complaint would be to retain it for inspectors to consider during that inspection, rather than to schedule an inspection.
10. Ofsted advised the complainant that examining complaint and inspection records in order to answer this part of the request would take significantly longer than the 24 hours permitted under FOIA, and so would exceed the cost limit.
11. In their complaint to the Commissioner, the complainant said that there is public interest in the requested information and Ofsted should therefore routinely collate this information. Section 12 is not subject to the public interest test and FOIA is not concerned with information it is considered a public authority **should** collate or maintain.
12. For the reasons Ofsted explained to the complainant, it is not straightforward identifying instances where a complaint of peer-on-peer sexual abuse resulted in an inspection of a school.
13. The information Ofsted disclosed within scope of part 1 of the request show that 1,582 complaints about peer-on-peer sexual abuse had been received for the five academic years 2016/2017 – 2020/2021. Clearly, it would take longer than 24 hours to manually review the records associated with this number of complaints. In order to complete this work within the appropriate time limit, only just over one minute would be available to review each file. That is not credible and the Commissioner has therefore decided that Ofsted is entitled to rely on section 12(1) of FOIA to refuse to comply with part 2 of the request.
14. Section 16(1) places an obligation on a public authority relying on section 12 to consider whether it is possible to advise and assist the applicant to refine their request so that the authority can comply with it within the cost limit.
15. In its internal review, Ofsted said “removing part 2 of the request would enable Ofsted to respond to your request, as it did in its original response.” By this the Commissioner understands Ofsted to mean that, because it considered it would exceed the cost limit to comply with part 2 of the request, it was not obliged to comply with either part 1 or part 2. However, it had chosen to comply with part 1. If so, Ofsted is correct about the former point and the Commissioner has noted the second.
16. Ofsted also said that there may be ways that the complainant could use its explanation (at paragraphs 7 to 9 of this notice) to submit a revised request in relation to part 2, whilst noting that bringing the request within the appropriate limit did not necessarily mean Ofsted could disclose the requested information.

17. Given the number of complaints received in the period of the request, and the complicating factors that Ofsted has detailed, Commissioner does not consider that it would be possible to refine the request to bring complying with it within the cost limit, and still have a meaningful request. If it took 30 minutes to identify instances where a complaint of peer-on-peer sexual abuse had led directly to an investigation of a school, Ofsted would only be able to review 48 files out of a potential 1,582. At 15 minutes per file, still only 96 files. And if Ofsted reviewed the files for 2019/2020 only (the year with the fewest number of complaints), at half an hour per file, it would still take 95 hours and at only 15 minutes per file, it would still take 47.5 hours. Ofsted had also chosen to comply with part 1 of the request. The Commissioner therefore finds that there was no breach of section 16(1) of FOIA.

Right of appeal

18. 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

19. 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.
20. 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

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