

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 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 made a request for all written evidence from a particular Ofsted inspection. Ofsted refused to disclose the requested information under section 33(2) of FOIA.
2. The Commissioner considers that Ofsted was entitled to rely upon section 33(2) of FOIA to refuse the request in this case.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. The complainant made the following information request on 17 June 2022 which they followed up on 21 September 2022:

"I hereby request under the Freedom of Information Act all written evidence 'the evidence base' taken at the last Section 5 inspection of Thistle Hill Academy, ME12 3UD to the fullest extent possible." And "As the report has been published, please can I reopen this request dated 17th June 2022."

5. Ofsted responded on 7 October 2022, it refused to disclose the requested information under section 33(2) of FOIA.

6. The complainant requested an internal review on the 15 October 2022 asking Ofsted to review their decision to withhold the requested information.
7. Ofsted provided the result of the internal review on 9 November 2022. It upheld its application of section 33(2) of FOIA.

Scope

8. The complainant initially submitted their complaint to the Commissioner on 12 October 2022 but was advised they needed to exhaust Ofsted's complaints process before their complaint could be considered. They resubmitted their complaint on 22 March 2023.
9. The Commissioner has considered whether Ofsted was entitled to refuse to disclose the requested information under section 33(2) of 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 to say 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 academy 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, during the process of ongoing monitoring of the academy which is a direct result of the inspection, and they said: "Ofsted's inspection activity with the school is still ongoing. Our belief is that such future inspections are likely to be harmed by the disclosure of the information you have requested at this time."
14. At the time of the request, and the internal review, the academy was still under ongoing monitoring. Ofsted said: "it is vital that the school direct their efforts towards improving outcomes for children, and be in a position to demonstrate such improvement to Ofsted during the monitoring process, rather than spending the same time analysing large volumes of previous inspection material."
15. At the time of the request, members of the school and wider community would be aware that an inspection had taken place. As such, it is certain that making public the underlying evidence from the inspection and ongoing monitoring 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 completion of its ongoing monitoring 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. They went on to say: "If a large volume of 'prior' evidence is introduced to the school community shortly before a new set of inspectors arrive, this would inevitably disrupt any planned inspection, as it creates a means to overwhelm those inspectors and deflect them from their primary inspection task, if the previous inspection judgement is disputed in any way. As you have suggested, the information is intended to be used to challenge aspects of the previous inspection findings, so this is a likely scenario." This would disrupt Ofsted's audit function, which operates using a process of published reporting.
18. Ofsted therefore considers that harm to its functions would have arisen through the disclosure of the 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 were disclosed prior to the conclusion of the monitoring of the academy.

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.

Public interest in favour of maintaining the exemption

22. Ofsted acknowledged the complainant had argued that the evidence would provide further details to "allow [the school] to improve further." However, it was also stated that the notes are the only way to prove or disprove aspects of the school's complaint about the inspection, and it was implied that withholding the notes looks "like a cover up" by Ofsted. Ofsted 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 the complaints process is the correct route by which these concerns should be raised.
23. 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 and ongoing monitoring, 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 Ofsted's monitoring of the academy was a live and ongoing part of the audit process. Given the outcome of the monitoring process is integral to Ofsted's functions, on balance the public interest in disclosure 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

Joanna Marshall
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SK9 5AF