

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 4 July 2023

Public Authority: Estyn

Address: Anchor Court
Keen Road
Cardiff
CF24 5JW

Decision (including any steps ordered)

1. The complainant has requested Estyn to disclose information relating to the inspection of a specified school. Estyn refused to disclose the requested information, citing section 33(1)(b) of FOIA.
2. The Commissioner's decision is that Estyn is entitled to rely on section 33(1)(b) of FOIA for part of the requested information in this case. However, during the Commissioner's investigation it transpired that the remaining requested information was not held by Estyn at the time of the request. Therefore the Commissioner's decision is that Estyn has breached the requirements of section 1(1)(a) of FOIA by not stating this in its initial response.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 13 June 2022 the complainant requested information in the following terms:-

"I would also like to request that [named inspectors] both provide a Teams call log (with dates and times) and their respective record of information forms (RIF) for the joint work scrutiny of Welsh books that happened.....through a hybrid inspection arrangement. If this requires an FOI request, please inform me as soon as possible."

5. Estyn responded to the complainant on 11 July 2022, stating that it was applying section 33 of FOIA (prejudice to audit functions) as a basis for refusing to disclose the requested information.
6. In its internal review response to the complainant on 8 August 2023 Estyn provided some detail regarding the Teams calls mentioned and upheld the original decision to apply section 33 of FOIA to the request.

Scope of the case

7. The complainant contacted the Commissioner on 13 September 2022 to complain about the way their request for information had been handled. The Commissioner has considered Estyn's handling of the complainant's request, in particular its application of section 33(1)(b).

Background

8. Estyn conducts a core inspection for all schools in Wales during a prescribed period, currently eight years. During an inspection, it considers whether the school needs any further support, known as 'follow-up' activity. For example, a school may be placed in a statutory category such as requiring 'significant improvement' or 'special measures'. The reporting inspectors (HMI or contracted additional inspectors) are responsible for the conduct and management of the inspection, and for the inspection report; they are assisted by team inspectors (HMI or contracted additional inspectors, and lay inspectors). Each team will also have a peer inspector (a staff member from another school).
9. Estyn's core inspection reports are routinely published on its website. Reports of subsequent 'follow-up' activity are published where a school is downgraded into/placed in a statutory category or comes out of category. A report is not published if a school remains in the same category but is available on request. When a school is identified to be in a statutory category and in need of 'follow-up' activity Estyn will continue to monitor the school and arranges follow up inspections to determine whether the school has improved to the extent required to enable it to come out of the category. Estyn works closely with the school to monitor its performance and there is an on-going relationship between Estyn and the school. It will provide feedback to the school during all activity.
10. Estyn uses an electronic system for managing many aspects of an inspection (be that a core inspection of a follow-up inspection). This

system is called the 'Virtual Inspection Room' (VIR). It is a web-based system that allows schools to upload information to the inspectorate and to download guidance from the inspectorate about the inspection process. It is also Estyn's electronic system for collecting, collating and recording inspection findings. Inspectors use team input forms (TIFs), to record their findings and judgements. These are collated to create a reporting input form (RIF). These forms contain information on their observation of learning activities, discussions with pupils, interviews with staff, interviews with leaders and managers, scrutiny of documentation, performance information and samples of pupils' work.

11. The RIF brings together team members' contributions and is created by the VIR system for the reporting inspector to work on. The reporting inspector will rationalise the text/comments made by the team and evaluate judgements against both text and the evidence base, to ensure that judgements recorded are reasonable and appropriate and that there is no duplication. Once the reporting inspector has completed this stage, the quality assurance work is carried out by an independent senior HMI. Until the quality assurance stage, no independent assessment or evaluation of the evidence collated is undertaken.
12. Once the quality assurance is completed, the RIF then becomes a draft report and is sent to the school for the school to correct any factual inaccuracies. It is only at this stage that the school has any ability to comment on the report. There are therefore a number of stages of checks and balances and quality assurance which take place between the original collation of information and the final report being published.
13. Similarly, in the case of a school being placed in an 'improvement' category and requiring 'follow-up' activity, Estyn will monitor the progress of the school and record the details of their findings/judgements on an electronic RIF within the VIR. The content of the RIF is extracted automatically into a 'report of visit'. Estyn states that, where possible and practical, inspectors will complete their input forms electronically in the VIR. However, there will be some inspection information retained by inspectors outside of the VIR, for example on laptops and in emails or in hard copy.

Reasons for decision

Section 33(1)(b)

14. Section 33(1)(b) of FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the examination of the economy, efficiency and effectiveness of a public authority's use of resources whilst discharging its functions.

15. The Commissioner is satisfied that Estyn is a public body which has audit functions and has received and gathered information from and about the school during the exercise of its functions falling within section 33(1)(b).
16. In relation to the Teams call log requested, Estyn stated in its correspondence with the Commissioner that this was not held by Estyn.
17. It had spoken to the relevant inspectors who had provided details of their calls, which Estyn passed on to the complainant. However, at the time of the complainant's request, Estyn did not hold this information, therefore section 33(1)(b) is not engaged in relation to that part of the request.
18. Estyn has also specified that it only holds a RIF completed by one of the named inspectors, i.e. the inspector who was actually present during the inspection (the other inspector apparently fed into the RIF following an off-site inspection of photographed workbooks) so the Commissioner has only considered Estyn's application of section 33(1)(b) to that part of the request, i.e. the RIF completed by one of the named inspectors.

Estyn's submissions

19. Regarding the timing of this specific request, it is important to note that the complainant's request was made in June 2022. This was after Estyn's core inspection which took place in November 2018 when the school was categorised as in need of "significant improvement" and after the first follow-up visit which took place in June 2022, when the school was found to require an increased level of follow-up activity and categorised as needing "special measures" but before the publication of the report following monitoring which was published on 25 July 2022. As such, Estyn's inspectors were, at the time of the request and subsequently have been, continuing to monitor the school and work with the school to establish if sufficient improvement has been made to enable it to come out of special measures. The most recent follow-up visit which took place in spring term 2023 saw the school being removed from special measures. A confirmation letter was issued to the school on 20 April 2023 and a report published on 27 April 2023. During this period, it has been of particular importance that Estyn inspectors have a safe space to formulate their views as to the performance of the school.
20. Estyn also considers that the need for a safe space extends to the period after an inspection report when the school and its stakeholders are digesting its contents. This is particularly relevant where the school requires a level of follow-up activity. The public scrutiny of the inspection documents, which are not intended for the public, would intrude on this safe space.

21. Estyn considers that the aspects outlined above all serve to demonstrate that releasing inspection documents would be highly likely to result in a real, actual and substantive prejudice to Estyn's ability to fulfil its audit functions.

The Commissioner's view

22. The Commissioner considers that the published inspection outcome (the school requiring significant improvement), the timing of the request and the clear need for ongoing monitoring of the school by Estyn as a result of the inspection are key factors in his decision.
23. He agrees with Estyn that disclosure would be likely to harm and disrupt the ability of Estyn to carry out its ongoing monitoring and inspection of the school. If the withheld information was disclosed whilst this process was still ongoing, it would be likely to hinder the inspectors' ability to carry out further robust and candid evaluations of the school and its performance. He is therefore satisfied that section 33(1)(b) is engaged.

Public interest test

24. In terms of the public interest test, again the timing of the request is key to the Commissioner's decision here. It is noted that the school was reported as requiring significant improvement because it was performing significantly below the standards that are required. The Commissioner accepts there are clear and significant public interest arguments in understanding more closely why this is and what evidence was taken into account. Disclosure of the withheld information would assist with that. It is accepted that the school, its staff and the parents of children that attend would be concerned. They would want to know what improvements are required and what action is being taken to address them.
25. Estyn recognises that there is a clear public interest in increasing transparency of public authorities and disclosing 'inspection documents' would increase transparency by placing more information about the school inspection process into the public domain. However, the Commissioner agrees that the argument in favour of increasing transparency is reduced given that published monitoring reports themselves contain a significant amount of the information contained in the 'inspection documents'.
26. A further argument in favour of releasing the information relates to providing the public with further information to allow them the ability to scrutinise the processes and mechanisms designed to ensure the quality of inspections. Although it is important to allow members of the public the ability to challenge inspection and monitoring reports, there is

already a mechanism in place to allow interested parties to do this. In addition, there is an internal moderation process in place to ensure that the judgements of inspectors are consistent and appropriate which in itself would be jeopardised should the 'inspection documents' be put into the public domain.

27. Estyn is of the view that releasing the 'inspection documents' into the public domain would be likely to have a prejudicial impact on its relationship with the school in question. It would not be in the public interest to risk damaging Estyn's relationship with schools which would affect the cooperation that schools give to Estyn.
28. Estyn states that the inspectors' judgements at all stages of the inspection process are essential to ensure that it carries out its functions, produces an accurate and thorough inspection report that does not mislead the public, and which has the outcome of accurately reporting on the quality and standards of education in schools, ultimately improving the standards in schools. It considers that inhibiting the free and frank recording of judgements would lead to less candid and robust inspections and monitoring visits, more 'average' judgements being made. It would also hamper decision making and would not be in the public interest and would be detrimental to the public functions of Estyn.
29. Estyn has put forward the argument that it is essential that inspectors follow due process and procedure and are not deterred from recording their judgements within 'inspection documents'. Releasing 'inspection documents' would be likely to result in inspectors' judgements not being recorded in the 'inspection documents' which would have the consequence of information being forgotten and/or lost and ultimately not being considered as part of the monitoring visit process. In addition, the ability to audit the inspection report and trace back how judgements were arrived at would not be possible, making it difficult to investigate complaints about the findings of an inspection or monitoring report and making it difficult to thoroughly moderate an inspection report.
30. However, the published inspection report goes a considerable way to meeting the public interest arguments identified in favour of disclosure. It outlines what Estyn's concerns are and what action is now required.
31. The Commissioner has viewed and considered the withheld information and the balance of the public interest. He concludes that the public interest clearly rests in protecting Estyn's ability to carry out its ongoing monitoring of the school and its inspectors' ability to evaluate the ongoing performance of the school freely, frankly and robustly without the fear of public or the school's intrusion. It is in the public interest for

Estyn to assist and work with the school in private to enable it to put the appropriate measures and improvements in place as quickly and as efficiently as possible.

Procedural requirements

32. Section 1(1) of FOIA states that: "Any person making a request for information to a public authority is entitled:
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
31. As Estyn failed to state in its initial response to the complainant that it did not hold part of the requested information, it has not complied with the requirements of section 1(1)(a) of FOIA.

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

Deirdre Collins
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