

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 August 2024

Public Authority: Office for Standards in Education, Children's
Address: Services and Skills (Ofsted)
Clive House
70 Petty France
London
SW1H 9EX

Decision (including any steps ordered)

1. The complainant has requested information relating to an inspection. Ofsted refused the request, citing section 33 (public audit functions) of FOIA.
2. The Commissioner's decision is that Ofsted was entitled to withhold the requested information under section 33. However, in failing to disclose all of the requested information, or cite an appropriate exemption, within the statutory timeframe, Ofsted breached section 10 (timescale for compliance) and section 17 (refusal notice) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 14 March 2024, the complainant wrote to Ofsted and requested information in the following terms:

"Pursuant to The Freedom of Information Act 2000, I request the following information relating to a section 5 inspection (Redacted):

A copy of the automated electronic record of all times and dates any individual or individuals has undertaken any form of activity (or non activity) relating to the above inspection on the internal Ofsted Electronic Evidence Gathering (EEG) platform provided via Microsoft

Power Apps or granted with respect to inspection activities logged under the following four data entry categories:

- evidence card
- summary card
- evaluation card
- report

The automated record of all time and date stamps recording activity/non activity should include any access or activity undertaken (or non activity) by any individual(s), who acts on behalf of, or who could reasonably be considered to be acting on behalf of, Ofsted, whether a direct employee, contractor, agent or third party and including but not limited to any HMI or inspector (whether allocated to the inspection or not), any manager, member of administrative staff and any other role.

Detail of the entries made in each activity shown on the electronic record is not required at this stage; the only information required is the time and date stamp of each access made by each individual and a generic description, as recorded on the electronic record of activity undertaken by each individual at the time and date of access e.g file created, permission created; entry made; entry amended, reviewed; evidence uploaded and the category of data entry it relates to (i.e. evidence, summary, evaluation or report card).

Activity can be anonymised (eg Inspector 1, 2, 3 or Staff Member X Y Z or Individual A or B or C). Where activity is attributed to an anonymised individual, then it should be identified if it was provided/entered/amended onsite during the inspection in field work, or by other individuals not onsite and part of the onsite inspection team e.g anonymised administrators assigned to the team but not onsite).

The activity log should include a generic job title or where that will result in identification of an individual, a general description of their role.

The electronic automated record should also include activities such as creation of permission/access right, or revocation of permission or access rights to the Electronic Evidence Gathering platform.

Please confirm the retention period for the detail of the information entered into the Electronic Evidence Gathering platform under the data categories of evidence card, summary card and evaluation card. The electronic record provided should cover time period from 28 February 2024 to 15 March 2024, but may cover a longer period if easier."

5. Ofsted responded on 28 March 2024. It refused to provide the requested information, citing section 33(2).

6. The complainant requested an internal review on 28 March 2024.
7. Ofsted provided the outcome to its internal review on 28 April 2024. It upheld its previous position.
8. During this investigation, the Commissioner flagged with Ofsted that it didn't appear to have addressed the final part of the complainant's request where they ask Ofsted 'to confirm the retention period for the detail of the information entered into the Electronic Evidence Gathering platform...'
9. Ofsted accepted that this part of the request was overlooked, but confirmed that this information could be found on its website.¹

Scope of the case

10. The complainant contacted the Commissioner on 14 May 2024 to complain about the way their request for information had been handled.
11. The Commissioner considers that the scope of his investigation is to determine whether Ofsted is entitled to refuse the request under section 33(2).

Reasons for decision

Section 33 – audit functions

12. 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,

¹ [Schools: Ofsted privacy notice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/schools-privacy-notice)

prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1)."

13. 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'. The information requested was created during this inspection, so the exemption is relevant.
14. 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.
15. In their internal review request, the complainant argued that disclosure wouldn't impact Ofsted's ability to finalise and publish any such inspection report.
16. To reiterate, the information being requested is 'EEG evidence forms from the recent inspection of (Redacted). These contain details of activities undertaken within the EEG system during the inspection, namely date and time stamps showing the activity by the individual using the system.'
17. Ofsted has confirmed to the Commissioner that 'this request was made **before** the audit function was completed, whilst Ofsted and the school were still within a process of discussing the inspection outcome and prior to the finalised inspection report being published...this case is exclusively focused on the impact of disclosure **before** the report's publication and the specific prejudices which accompany that.'
18. Ofsted has cited a previous decision² of the Commissioner's which it says support its application of section 33 in this instance. However, those decisions concerned requests for evidence itself, not entries on the EEG. In order for the EEG entries to be withheld, there must be a causal link between the withheld information and any prejudice to Ofsted's audit functions.

² [ic-214862-n3m2.pdf \(ico.org.uk\)](#)

19. Ofsted is concerned that, whilst the requested information 'may look innocuous at first glance, it still could very easily have been used to mislead by mispresenting the inspection process.'

20. In its internal review outcome, Ofsted explained:

"At the time of your request, and at the time of conducting this review, the inspection process was not yet complete. Ofsted's school inspection handbook sets out the processes which occur after the visit to the school has concluded.³ At this time, the inspection and its report are still subject to quality assurance, and open to the possibility of complaint. It remains possible that further evidence may be required, and amendments to the report are possible until such time as it has been finalised and published.

From your correspondence, it seems possible that you have concerns about the inspection, and potentially about the editing of the evidence. Publicly sharing information which may be subject to dispute, prior to those concerns having been properly considered and addressed, would be likely to harm the proper processes of quality assurance and complaint handling, which are functions related to Ofsted's overall audit function. As such, the exemption applies."

21. Ofsted has elaborated on the above to the Commissioner, detailing the causal link between the requested information and the prejudice to its audit functions, specifically the investigation, and the final report into the school in question.

22. The Commissioner doesn't deem it necessary or appropriate to replicate the entire circumstances surrounding the complaint. However, according to Ofsted the requestor is an individual who was directly involved in the inspection process and has a specific interest in the school. Ofsted is concerned that the requestor, through the inspection process, sought to influence the inspection at the same time that the request was made. Ofsted had fears this would happen again were the requested information disclosed.

23. The Commissioner is satisfied there's a causal link between disclosure and the envisaged prejudice and therefore the exemption is engaged so he'll go onto consider the balance of the public interest test.

³ [School inspection handbook - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Public interest test

24. The Commissioner concurs with Ofsted when it says the balance of the public interest lies in maintaining the exemption.
25. Ofsted has identified 'a public interest in transparency of inspections.' There is a public interest in understanding how inspectors work, gather and record evidence, both generally and in relation to this specific case.
26. However, Ofsted believes this public interest is met through means other than FOIA:

"To satisfy this interest, Ofsted publishes a report following each school inspection⁴, as well as details of how inspections are carried out⁵. Ofsted is also able to share aspects of inspection evidence with representatives of the school which was subject to the inspection, though its inspection and post-inspection processes."
27. There is a complaints procedure which is the appropriate means by challenging Ofsted's investigation, or any evidence gathered as part of it. Since there are alternative methods of scrutinising the process, which wouldn't prejudice the investigation itself whilst it was ongoing, the Commissioner has determined the public interest lies in maintaining the exemption.

Procedural matters

28. Section 10 of FOIA states that a public authority must disclose any non-exempt information to the requestor as soon as possible and within twenty working days.
29. Section 17 of FOIA states that, if a public authority is applying an exemption in order to withhold information, it must specify the exemption in question within the same timeframe.
30. Ofsted needed to either disclose the information in paragraph nine, or since the information is in the public domain, inform the complainant that it would be exempt from disclosure under section 21 (Information

⁴ <https://reports.ofsted.gov.uk/provider/23/136643>

⁵ <https://www.gov.uk/government/publications/school-inspection-handbook-eif>

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accessible to applicant by other means) within twenty working days. In failing to do so, Ofsted breached section 10 and section 17.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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