

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2022

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

Decision

1. The complainant has requested, from Ofsted, a list of inspections that involved a named Ofsted inspector.
2. The Commissioner's decision is that Ofsted was correct to rely on section 40 of FOIA (the exemption for personal information) to withhold the information.
3. The Commissioner does not require any steps to be taken following this decision notice.

Request and response

4. The complainant made the following information request to Ofsted on 10 February 2022:

"Please will you provide me with a list of the inspections in which the lead inspector, [inspector's name redacted], was involved over the past five years."

5. Ofsted's final position was to uphold its original response that section 40(2) applies. Ofsted also said that to the extent any information is already available to the complainant via internet searches, section 21 of FOIA ('information accessible to applicant by other means') applies.

Scope of the case

6. The complainant contacted the Commissioner on 8 June 2022 to complain about the way their request for information had been handled.
7. The complainant said that Ofsted gave invalid reasons for refusing the request.
8. The Commissioner will first consider the application of section 40(2).
9. The Commissioner has not seen the withheld information, nor obtained further submissions from Ofsted. He considers that he is able to make his decision without seeing it/them, based on the wording of the request and the information from the complainant.

Reasons for decision

10. The following analysis explains why the Commissioner is satisfied that the University was entitled to apply section 40(2) to the information that the complainant is seeking.
11. The Commissioner highlights his detailed [guidance](#) on section 40.
12. Section 40(2) of FOIA allows a public authority not to disclose information if it is personal data (information that relates to an identified/identifiable individual, or 'data subject') and if one of the conditions listed in section 40(3A), 40(3B) or 40(4A) is satisfied.
13. The Commissioner is satisfied that the requested information will be personal data as it is about a named Ofsted inspector – the inspections in which they were involved over a particular period.
14. The condition at section 40(3A)(a) of FOIA is satisfied, as disclosure would contravene the data protection principle at Article 5(1)(a) of the UK General Data Protection Regulation (UK GDPR) – 'lawfulness, fairness and transparency'.
15. The Commissioner has considered whether there is a lawful basis for processing (disclosing) the requested information under Article 6(1)(f) of the UK GDPR. He acknowledges that there are legitimate interests in

disclosure. According to Ofsted's internal review, the complainant had expressed concerns about the quality of an inspection report; and in response to Ofsted's internal review, the complainant told Ofsted "My purpose is to look for themes and consistencies in report writing". There is also an argument that wider legitimate interests like accountability, transparency and the quality of Ofsted inspections/reports are relevant here. While disclosure of the requested personal data would be necessary to satisfy such interests, on this occasion the legitimate interests in disclosure are overridden by the interests/fundamental rights and freedoms of the data subject which require the protection of personal data.

16. The Commissioner has determined this by balancing the legitimate interests in disclosure against the fact that the individual concerned would have a reasonable expectation that the requested information would not be disclosed 'to the world' by Ofsted in response to a request under FOIA.
17. The complainant argued that Ofsted is a public body; that disclosing the information would not cause embarrassment to the inspector or Ofsted; and highlighted that Ofsted includes the names of inspectors on the inspection reports that Ofsted publishes. The complainant said "It is possible as a result to track the work of individual inspectors with a simple internet search. You cannot on one hand publish the information and on the other refuse to release it".
18. Ofsted's refusals focused on fairness. Ofsted told the complainant that it has a complaints process in place for situations where an individual has concerns about the performance or conduct of an inspector, and that it is not appropriate for Ofsted to publish information about the work activity of individual members of staff. It argued that providing the requested information would have an unjustified adverse effect on the inspector. It would allow a profile of their work/performance to be created; such information is not shared about the inspector's colleagues; and it could cause distress and harm.
19. The Commissioner considers that it is important to note that the request was for a **list** of inspections by a named inspector, over a specified period. Even if the names of inspectors appear on published Ofsted reports, and even if the complainant could "track the work of individual inspectors with a simple internet search", the requested information (a list, for a particular inspector) has not already been published by Ofsted.
20. The Commissioner highlights a decision notice in [FS50483410](#) involving a complaint relating to a similar request to Ofsted for information about a named inspector, including a list of schools inspected. The request had

been refused under section 40(2), and the Commissioner did not uphold the complaint.

21. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, it is not necessary for him to go on to consider separately whether disclosure would be fair or transparent.
22. Because the Commissioner has decided that section 40(2) applies to the requested information, he does not need to consider Ofsted's application of section 21 at internal review.

Right of appeal

23. 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

24. 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.
25. 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

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