

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 November 2022

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

**Address:** 2 Rivergate  
Temple Quay  
Bristol  
BS1 6EH

### **Decision (including any steps ordered)**

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1. The complainant has requested Ofsted to disclose information relating to the inspection of Welling School in February 2022. In relation to four elements of the request, Ofsted refused to disclose the information citing section 33(1)(b) of FOIA. For the fifth element of the request, Ofsted refused to confirm or deny whether it holds recorded information in accordance with section 33(3).
2. The Commissioner's decision is that Ofsted is entitled to rely on both sections 33(1)(b) and 33(3) of FOIA in this case. He therefore does not require any further action to be taken.

### **Request and response**

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3. On 26 May 2022, the complainant wrote to the Ofsted and requested information in the following terms:

"This FOI request is for the following inspection:

- Welling School URN 136720 8th-9th February 2022

We are requesting the following:

1. All EEF forms and entries from all Ofsted inspectors, HMI and lead inspectors for the inspection
  2. All EEF or other official entries from onsite quality assurance during the inspection
  3. All written records of discussions held between the lead inspectors and the Ofsted duty desk for the inspection
  4. Copies of any further written correspondences between the lead inspectors and the Ofsted duty desk for the inspection
  5. Copies of internal Ofsted correspondences with the regional director about the request to defer the inspection”
4. Ofsted issued its refusal notice on 5 July 2022 and then its internal review response on 2 August 2022. For the first four elements of the request, Ofsted refused to disclose the information citing section 33(1)(b) of FOIA, For the fifth element, Ofsted refused to confirm or deny whether it holds any recorded information citing section 33(3) of FOIA.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 13 September 2022 to complain about the way their request for information had been handled. They believe there is information Ofsted can legitimately disclose in line with previous similar cases the Commissioner.
6. The Commissioner has not obtained a copy of the withheld information or further submissions from Ofsted in this case. He is satisfied that he is able to make his decision based on a description of the withheld information and the comprehensive responses Ofsted has issued to the complainant.
7. The Commissioner is satisfied that section 33(1)(b) of FOIA applies to the first four elements of the request. In relation to the fifth element, the Commissioner is satisfied that section 33(3) applies. The following section of this notice will explain why.

## Reasons for decision

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### Section 33(1)(b) and the first four elements of the request

8. 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.
9. The Commissioner is satisfied that Ofsted is a public body which has audit functions and has received and gathered information from and about Welling School during the exercise of its functions falling within section 33(1)(b).
10. 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 Ofsted as a result of the inspection, are key factors in his decision.
11. He agrees with Ofsted that disclosure would be likely to harm and disrupt the ability of Ofsted 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. Section 33(1)(b) is therefore engaged.
12. In terms of the public interest test, again the timing of the request is key to the Commissioner's decision here.
13. It is noted that the school was reported as 'causing concern' and 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 will be concerned. They will want to know what improvements are required and what action is being taken to address them.
14. However, the published inspection report goes a considerable way to meeting the public interest arguments identified in favour of disclosure. It outlines what Ofsted's concerns are and what action is now required. Ofsted has also said that it will continue to monitor the school as a result, which should provide some comfort to parents and the local community.

15. The Commissioner considers the public interest clearly rests in protecting Ofsted'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 Ofsted to assist and work with the school in private for the time being to enable it to put the appropriate measures and improvements in place as quickly and as efficiently as possible.
16. The Commissioner notes that in other cases he may have ordered disclosure of the withheld information or Ofsted may have released some of the information, with personal data redacted. Where such decisions have been taken, it has usually been when the inspection is complete and no further, ongoing monitoring of the school is required. This is not the case here. At the time of the request the school had been identified as a school causing significant concerns and there was a need to continue its monitoring and auditing.

### **Section 33(3) fifth element of the request**

17. A public authority can refuse to confirm or deny whether it holds recorded information falling within the scope of a request if that confirmation or denial itself would or would be likely to prejudice the exercise of a public authority's audit functions in relation to the examination of other public authority's accounts or use of resources.
18. The Commissioner agrees with Ofsted that it is entitled to refuse to confirm or deny whether it holds any recorded information falling within the scope of this element of the request, as to do so would be likely to prejudice its ability to inspect the school in question here and others ongoing forward.
19. Any discussions that may or may not take place about the potential deferral of an inspection are private discussions between the relevant school and Ofsted. Confirming or denying if such information is held would be likely to prejudice the working relationship between the school and Ofsted. There are clear expectations of what information will be disclosed to the public – this being the fact that a school has been inspected and what the outcome of that inspection is. Ofsted provides a detailed report for both the school and parents and these are routinely published.
20. In terms of the public interest, many of the arguments outlined above apply here. While there is a public interest in openness and transparency and knowing whether a school has requested a deferral or not, the public interest rests in maintaining Ofsted's ability to work with and monitor schools efficiently and effectively.

## **Right of appeal**

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21. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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**

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**