

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 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 has requested information on the 'evidence' referred to in a letter from HM Chief Inspector for Education to a Select Committee on home education. Ofsted has stated that no information is held.
2. The Commissioner's decision is that the Ofsted has complied with its obligations under section 1(1)(a) of FOIA and, on balance, the information is not held.

Request and response

3. On 28 July 2022 the complainant made an information request to Ofsted in the following terms:

"In October 2018 Amanda Spielman wrote to the Chair of the Public Accounts Committee. Her letter said:

[T]he concept of home education is being warped. We have a lot of anecdotal evidence that suggest that parents are home-educating their children under duress, to prevent exclusion. Often, these parents do not have the capacity to provide a good standard of education. In other cases, parents use home

education as a guise to allow them to use illegal schools or to evade the scrutiny of public services.

I am interested in the evidence referred to in this letter. Could you please disclose the records that Ofsted holds of

(a) the "evidence that suggests that parents are home-educating their children under duress, to prevent exclusion"?

(b) the evidence that "these parents [often] do not have the capacity to provide a good standard of education"?

(c) the evidence that "parents use home education as a guise to allow them to use illegal schools or to evade the scrutiny of public services"?

I would be grateful if you could include in your disclosure the evidence that Amanda Spielman was referring to."

4. Ofsted responded on 9 August 2022. It stated that it had not located a record setting out the quantifiable evidence referred to in the letter. Ofsted explained the evidence was 'anecdotal' and unlikely to have been recorded. It further explained the reference to home-education to prevent exclusion is termed 'off-rolling' and Ofsted has publicly discussed this before in its education inspection handbook¹ and in a blog in 2019².
5. The complainant requested an internal review of this decision. They stated Ofsted had failed to either confirm or deny if the information was held. They argued the request was not for the "quantifiable evidence the HM Chief Inspector for Education (HMCI) was referring to in her letter" but was for the evidence itself which, they argued, could be located by asking Amanda Spielman what she was referring to. They also pointed to two areas where evidence might be held – evidence from section 97 inspections of unregistered schools and evidence held by each Ofsted region, outside of inspection evidence.
6. Ofsted conducted an internal review and upheld its decision that no information was held in scope of the request.

¹ [School inspection handbook - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

² [What is off-rolling, and how does Ofsted look at it on inspection? - Ofsted: schools and further education & skills \(FES\) \(blog.gov.uk\)](http://blog.gov.uk)

Reasons for decision

7. Section 1(1) FOIA provides 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.”

8. The Commissioner has sought to determine whether, on the balance of probabilities, Ofsted holds recorded information in scope of the request.

9. Ofsted explained the request asked for “the records that Ofsted holds of the evidence” referenced by HMCI. Ofsted reiterated it had not been able to locate a record setting out what anecdotal information HMCI’s comments were based on.

10. The complainant had suggested HMCI could be asked what information she was referring to – Ofsted argued that this validated its position in that it showed the complainant was aware that the request could not be answered by reference to recorded information alone and would need to rely on asking for an individual’s recollection of events. Ofsted further stated that given the letter was written nearly four years ago it would not be reasonable to expect HMCI to be able to recall if there was recorded information that the comments were based on, particularly as this was based on anecdotal evidence.

11. Ofsted addressed the complainant’s suggestion that inspection evidence of unregistered schools could be searched to identify information that might have been the evidence. It stated that searching this kind of information had been cited in previous FOIA requests for wider ranges of information on home education in a later time period but searching these areas now would not locate information relevant to this request as it would not identify information referred to in the letter of October 2018. Ofsted argued that by the very nature of the evidence being anecdotal it would have been highly unlikely to have been systematically recorded.

12. The complainant considers Ofsted has not complied with section 1 of FOIA as it has not confirmed whether information is held and has not made attempts to locate the information (or confirm it is held).

13. When making decisions in cases such as these the Commissioner is only required to make a decision on the balance of probabilities ie whether it is more likely than not that the information is held. Ofsted, in its internal

review response, stated it has not been able to locate any recorded information within the scope of the request and has conducted 'appropriate' searches. As such Ofsted has confirmed the information is not held. Ofsted has attempted to conduct searches for the evidence referred to in the letter, despite considering this a futile exercise as the information is anecdotal and likely to have been relayed verbally, and has found nothing to indicate "anecdotal evidence" was held in written format.

14. The Commissioner appreciates the difficulty of trying to conduct searches for evidence that is described as "anecdotal"; keyword searches will be difficult to do given the way the comments in the letter were worded ie " the evidence that parents use home education as a guise to allow them to use illegal schools or to evade the scrutiny of public services"" and evidence that "these parents [often] do not have the capacity to provide a good standard of education".
15. The Commissioner notes the complainant suggests approaching HMCI to ask them what evidence their comments were based on and he acknowledges that there are circumstances where it may be necessary to ask an individual for assistance in locating information. However, in this case the Commissioner does not consider this would have been likely to elicit any information – the letter was written four years ago and HMCI clearly informed the Select Committee this was anecdotal. If evidence existed of these practices it would be well know within Ofsted and easy to locate.
16. On the final point of the request; the evidence that "parents use home education as a guise to allow them to use illegal schools or to evade the scrutiny of public services". Ofsted explained this was what it referred to as "off-rolling" and it was not aware that any recorded anecdotal evidence of this practice was held but it did provide the complainant with links to information about this but the Commissioner considers this was outside the scope of the request.
17. The Commissioner considers that Ofsted has complied with its obligations under section 1(1)(a) FOIA in this case as it has confirmed no information is held and on the balance of probabilities, given the letter referred to "anecdotal evidence" which the Commissioner accepts is usually seen or heard, recorded information in scope of the request is not held based on the dictionary definition³ that anecdotal evidence is

³ [Anecdotal evidence Definition & Meaning - Merriam-Webster](#)

"evidence in the form of stories that people tell about what has happened..."

Right of appeal

18. 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

19. 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.
20. 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

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