

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 January 2015

**Public Authority:** Ofsted  
**Address:** 7th floor  
Aviation House  
London  
WC2B 6SE

#### Decision (including any steps ordered)

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1. The complainant requested lesson observation data obtained from Ofsted's school inspections.
2. The Commissioner's decision is that Ofsted correctly exempted the information under s40(2) FOIA.
3. The Commissioner does not require Ofsted to take any steps.

#### Request and response

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4. On 5 November 2013 the complainant made the following request:
5. *"I would like the following lesson observation data (3 years if possible): the subject, the various ratings for that observation, time of day (if available), the date (or at least month and year), type of school (VA, academy, Free etc), local authority, and a redacted version of the inspector id. I don't need to know who the examiner is, I don't need to know their official inspector id so if the inspector ids could be replaced with an anonymous number that would be fantastic as it would be very helpful if I could analyse how the same examiner rates across different schools and subjects."*
6. On 11 February 2014 Ofsted informed the complainant that the information was exempt from disclosure under s40(2) and s36 FOIA.

7. On 16 February the complainant requested an internal review. On 27 March he was informed that the exemptions had been upheld.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 12 May 2014 to complain about the way his request for information had been handled.
9. This decision notice addresses whether the information was correctly exempted under s40(2) and s36 FOIA.

### **Reasons for decision**

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10. Section 40(2) FOIA provides an exemption for information which is the personal data of an individual other than the applicant and where one of the conditions at either s40(3) or s40(4) is satisfied.
11. The condition at s40(3)(a)(i) FOIA concerns the disclosure of information to the public which would contravene any of the data protection principles in schedule 1 to the Data Protection Act 1998 (DPA).
12. On 4 June 2014 the Commissioner asked the DfE for a sample of the information that had been withheld from the complainant in order to ascertain whether the information had been appropriately exempted from disclosure. The information was supplied to the Commissioner on 9 July.
13. Since submitting the request the complainant withdrew his stipulation for 'full date' but still required month and year of the lesson observation data.
14. The Commissioner's investigation has determined that despite the more limited stipulation of month and year, a considerable number of teachers and the majority of inspectors can be easily identified from the data when applied to internet resources and local knowledge.
15. He is informed that with date and month stipulated as part of the request, the schools and inspectors' names can be identified simply by checking the dates of inspection in each local authority and cross checking these against the published report. All such information is available on Ofsted's website. The names of individual inspectors can then be substituted across the id numbers (which were suggested by the requester) wherever they occur in the wider dataset thus enabling the opening up of more school information in a 'domino effect'.

16. Once a school has been identified, data filtering with Excel spreadsheet tools can then identify individual teachers who have been observed by an inspector. Ofsted does not allow this in the normal course of events in order to protect personal data. For this reason it does not collate the names of teachers.
17. The Information Tribunal has previously recognised in EA-2009-0121 the ease with which head teachers and other members of a school community are able to identify "observed teachers" from such so-called "anonymised" data.
18. Similarly, the Commissioner in this investigation has determined that the information requested has been insufficiently anonymised for it to be taken outside the definition of personal data. He is satisfied that the withheld information in this instance constitutes the personal data of both teachers and inspectors.
19. The Commissioner considers that disclosure of the information would breach the first principle of the DPA which requires that personal data shall be processed fairly and lawfully. In both cases the data would reveal performance information that neither group would have any expectation of public disclosure. For teachers to be associated with particular scores such disclosure can have grave significance on their future careers as evidenced in the above Tribunal judgment. For inspectors, the product of their work is already available for all to see on the reports they have published with their names on. They have no expectation however that an intimate and detailed examination of their work may occur through the publication of a record of lesson scores. It would be unfair for any member of the public to analyse and offer a view on an individual's performance or ability on the basis of this data alone.
20. The information is partial. It does not accurately reflect each inspection as it lacks essential context including the necessary accompanying written evidence. Disclosure of the information without its context would be likely to fuel inaccurate conclusions about the quality of teachers in localities. Ofsted inspections and the observations of teachers within inspections are not selected as representative samples therefore they cannot be extrapolated to local authority, regional or national level as proposed by the complainant. This means that comparisons, either between regions, types of school, lesson subjects or between points in time are not possible with any level of certainty.
21. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the individuals concerned, the potential consequences of disclosure and has balanced

the rights and freedoms of the data subjects with the legitimate public interest in disclosing the information.

22. Whilst the information may be of interest to the requester, there is no evidence to suggest that there is a sufficiently wider legitimate public interest which would outweigh the rights and freedoms of the individuals concerned.
23. In light of the above the Commissioner is satisfied that public disclosure would be unfair to the individuals concerned and accordingly the information is exempt under s40(2) FOIA.
24. Ofsted provided arguments in support of the exemption at s36 FOIA. However, because the Commissioner has found the information to be exempt under s40(2) he has not needed to consider the s36 exemption further.

## Right of appeal

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4. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

5. 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.
6. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**