

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2016

Public Authority: Office for Standards of Education
Address: Aviation House
125 Kingsway
London
WC2B 6SE

Decision (including any steps ordered)

1. The complainant has requested from the Office for Standards of Education ('Ofsted') information regarding database(s) of staff expense claims.
2. The Commissioner's decision is that the request is vexatious and Ofsted has correctly applied section 14 of the FOIA to refuse the request. Therefore, the Commissioner does not require Ofsted to take any steps.

Request and response

3. On 12 February 2016 the complainant wrote to Ofsted and requested information in the following terms:

"I am writing to request information under the Freedom of Information Act 2000, specifically under the dataset provisions of Sections 11, 19 and 45 of the Act.

In order to assist you with this request, I am outlining my query as specifically as possible. The time frame for my request is from 00:01 1 January 2013 to 23:59 31 December 2015.

In line with section 1(1) of the Act please either confirm or deny whether your department holds a database or databases of staff expense claims.

By 'staff expense claims' I mean any claim made by staff for any expenditure whatsoever.

If a confirmation, please disclose:

- *the number of databases held*
- *the purpose of each database*
- *a copy of each database*

For each individual claim on each database, please provide the following fields of information (where available):

- *The amount of money claimed for*
- *The date of the claim*
- *The name of the vendor*
- *The description of and/or reason for the claim*
- *The name and job title of each claimant*
- *Any other non-exempt field of information*

Please release the requested information as one single linked dataset - that is, in a machine-readable format such as a CSV or Microsoft Excel file, as per the dataset provisions of the Act. I expect you to release all non-exempt material."

4. On 24 February 2016 Ofsted responded. It asked the complainant if he would be content to exclude the vendor information category where this is not recorded on Ofsted's Business Expense System (BES).
5. On 26 February 2016 the complainant agreed to amend his request. He asked for information held as a dataset and everything on this topic held as a dataset.
6. On 8 March 2016 Ofsted asked the complainant to consider refining his request.
7. On the same day the complainant refused to refine his request and asked for the release of the information without redactions.
8. On 9 March 2016 Ofsted wrote to the complainant to clarify its position with the information previously described. It asked him if his request remained the same.
9. The complainant replied on the same day stating that his position remained the same.
10. On 11 March 2016 Ofsted refused to comply with the request under section 14(1) of the FOIA. On the same day the complainant asked for an internal review.

11. Following an internal review, Ofsted provided its response on 8 April 2016 and upheld its use of the exemption.

Scope of the case

12. The complainant contacted the Commissioner on 18 April 2016 to complain about the way his request for information had been handled.
13. The Commissioner considers the scope of the case is to determine whether the request is vexatious and if Ofsted is entitled to rely on its application of section 14 of the FOIA.

Reasons for decision

Section 14 – vexatious requests

14. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

The term “vexatious” is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*.^[1] The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

15. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment or distress of and to staff.
16. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

“importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).

17. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
18. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests.^[2] The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
19. In this case the Upper Tribunal defined a vexatious request as one that is "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
20. In order to reach a decision on whether the request is vexatious, the Commissioner has obtained submissions from both the complainant and Ofsted to understand the circumstances surrounding the request.

Ofsted's position

21. Ofsted confirmed that it holds information matching the description of the request. It argued that it had engaged with the complainant a couple of times to provide him advice and assistance with his request.
22. Ofsted explained that vendor information was not routinely recorded on its main BES database but it may be recorded on the hardcopy receipts kept by claimants. Ofsted said that for this information to be included in the scope of the request, it would be likely to exceed the cost limit.
23. Ofsted reported that it held a large quantity of relevant data although within the '*description of and / or reason for the claim*' section of the BES database there was a significant quantity of personal data. It explained that to manually sift and redact the personal information would be an unreasonable burden on its resources.

[1] GIA/3037/2011

[2]

http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

24. Ofsted acknowledged the complainant's argument that his request has a serious purpose and value, as there is a general public interest on how public money is spent. Ofsted considers that this public interest is broadly met through its publication of itemised expenses for senior officials, in line with civil service guidelines on transparency. This is published on its site:
<https://www.gov.uk/government/publications/business-expenses-of-senior-ofsted-officials-including-hospitality>.
25. Ofsted argued that the request is wider and seeks disclosure of itemised expenses for all Ofsted staff. It explained that its BES database contains approximately 100,000 claims each year. For the timeframe of 1 January 2013 to 31 December 2015, Ofsted reported that it holds approximately 300,000 lines of data for BES claims.
26. Ofsted considers a substantial volume of information had been requested which is for all information recorded on its expenses databases for a period of three calendar years. Ofsted said it had concerns about potentially exempt information which contains a significant quantity of personal data recorded within the description of activities box for each claim. It explained that a field in its database, recording '*reason for claim*' frequently contained staff personal data, such as home postcode, or sometimes medical information.
27. Ofsted argued that the potentially exempt information cannot easily be isolated and to redact this personal data would require a manual review of approximately 300,000 lines of data. It estimated that this would take 833 hours of staff time (almost six months) to complete the manual review.

Unjustified or disproportionate request

28. Ofsted considers the main purpose and value of the overall request is for the public to see in detail the nature of expenses claims submitted by Ofsted officials. It stated that it is prepared to disclose the bulk of information requested to meet that purpose. It said that this includes the type of claim, divided into specific areas such as: car parking, food and beverages, taxi, train, bus, fuel, hotel or software applications, the cost and date incurred. Ofsted also considers that the purpose and value of the request would be almost completely met by a disclosure made that does not include the '*free-text*' individualised comments.
29. Ofsted explained to the Commissioner what the free-text box contains. This includes intimate and personalised comments by identifiable staff (mainly junior staff). It also contains explanations of the items claims by reference to their own activities on the day in question.

30. Ofsted said that given that it would otherwise provide the information necessary to make detailed analysis of its expenses claimed over a prolonged period of time, this one aspect of the request veers towards unjustified intrusion into the lives of those individuals who have provided personal details in the free-text box.
31. Ofsted argued that the complainant had been insistent with his request for the information, which he said should be disclosed "*without redactions.*" Ofsted stated that it had informed the complainant twice that the information contained details such as medical conditions of Ofsted staff. It believes that this exhibits a manifestly unreasonable aspect and approach to this request –particularly given the information it indicated that it was prepared to disclose relating to the request.
32. Ofsted argued that the disclosure of the requested information would risk legitimate grievances and claims from the staff concerned, for invasion of privacy. It added that to redact the information would be at a significant cost to the public.
33. Ofsted considers this insistence that it disregards its duties under the Data Protection Act 1998 (the "DPA") is to harass and cause unnecessary concern to its staff that submitted these claims. Ofsted argued that disclosure of the information, some of which reveals their home addresses, would lead its staff to feel unsafe. It said that the complainant's language suggests that public servants are not entitled to the reasonable protections offered by data protection law.
34. Ofsted is of the view that there is no realistic justification for sifting and redacting the free-text box when it would also be disclosing data on the reason for the claim. Ofsted argued that without the free-text box, the public would know if a claim was for a taxi, fuel, food or a hotel and they would know the cost. It said that without the free-text information, the public would be able to judge whether or not the amounts spent appeared to be excessive. It added that if the public were interested to determine whether Ofsted had reasonably controlled any expenses granted and within that policy, they could see the types of scenarios that expenditure (e.g. taxis, hotels) were permitted.
35. Ofsted believes that it would be manifestly unreasonable to disclose personal data – sometimes sensitive personal data as it would breach the DPA. Ofsted explained to the complainant that refining the request would still provide some context but without the expanded detail which contains personal data.
36. Ofsted also explained to the complainant, why it would be an unreasonable burden on public resources to conduct a manual review of the data recorded in the description of activities section of the expenses

database. Ofsted said the complainant was asked to narrow his request to '*category of claim*' to avoid Ofsted having the burden of checking and redacting the detail of almost 300,000 individual claims. However, he refused.

37. Therefore, Ofsted has refused the entirety of his request under section 14(1) of the FOIA.

The Commissioner's conclusions

38. The Commissioner accepts Ofsted's representations in regards to the volume and contents of the information requested. She also accepts the estimated time it would require Ofsted to complete the activity of assessing and redacting the personal data prior to disclosure.
39. The Commissioner notes the complainant's view that the public interest in disclosing the information outweighs the burden on Ofsted to redact personal and other exempt information. The Commissioner acknowledges that the complainant considers this information to be important, and has a serious purpose and value as it provides context to the expense claims submitted by staff. She also notes the complainant's view that the public has a right of access to this information as it explains how and on what public money is being spent.
40. However, the Commissioner must also consider the burden of the request on Ofsted, and must do so in terms of the disruption, irritation and level of stress which the request would generate.
41. The Commissioner recognises that Ofsted has considered providing the information necessary to make detailed analysis of its expense claims over a prolonged period of time. She accepts that the disclosure of the personal information contained within the 'reason for claim' free-text column would be an invasion of privacy of Ofsted's staff. She also accepts that it would be a significant cost to identify and redact this information
42. The Commissioner must take into account the Tribunal's position in its Dransfield decision that a holistic approach is required to determine whether a request is vexatious. She has decided in this case that to comply with this request would present Ofsted with a serious and unjustified burden.
43. The Commissioner notes the merits of the complainant's request. However, on balance, she has decided that to comply with the request it would constitute a disproportionate and significant burden. Therefore, the Commissioner has determined that Ofsted is entitled to characterise the request as vexatious and has consequently applied section 14(1) of the FOIA.

Right of appeal

44. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

45. 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.
46. 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
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