

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2022

Public Authority: Ofsted
Clive House
70 Petty France
London
SW1H 9EX

Decision

1. The complainant has asked Ofsted for information about two schools. The Commissioner's decision is that Ofsted is entitled to withhold some of the information it holds under section 40(2) of FOIA as it is the personal data of another individual and disclosure would be unlawful.

Request and response

2. The complainant made the following information request to Ofsted on 16 March 2021:

"Please send me all info you have on the schools having URN [redacted] and URN [redacted]."
3. The final position of Ofsted was to withhold basic information it holds under section 21 of FOIA (as it already accessible to the complainant through the Department for Education's 'Get Information About Schools' portal). Ofsted withheld the remainder of the information it holds under 40(2) as it considered that information to be another individual's personal data.

Reasons for decision

4. From their request for an internal review, the Commissioner understands that the focus of the complainant's concern is Ofsted's application of section 40 to some of the information being withheld. This reasoning therefore covers whether Ofsted has correctly applied section 40 of FOIA to the request.
5. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
6. The Commissioner has viewed the email correspondence being withheld. He considers that the individual concerned (the 'data subject') can be identified from the information. This is because a specific school can be identified from the URN number referred to in the request, and because of the content of the correspondence. The Commissioner agrees with Ofsted that all the information being withheld can therefore be categorised as personal data. Redacting information and disclosing the remainder would render the disclosed information meaningless. Furthermore, the withheld information can be categorised as special category personal data.
7. Special category data is particularly sensitive and therefore warrants special protection. It can only be processed (which includes disclosure in response to an information request) if one of the stringent conditions under Article 9 of the UK General Data Protection Regulation (UK GDPR) is met.
8. In this case the relevant condition has not been met. The Commissioner has seen no evidence or indication that the data subject has consented to the disclosure of the information or that the information has been made manifestly public by the data subject.
9. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this data would therefore contravene a data protection principle; that set out under Article 5(1)(a) of the UK GDPR. The information is therefore exempt under section 40(2) of the FOIA.

Right of appeal

10. 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

11. 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.
12. 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

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