

26 October 2021

James Noble-Rogers

by email to:

J.Noble-Rogers@ucet.ac.uk

Dear Mr Noble-Rogers,

Your request for information – Internal Review

I am responding to your email of 28 September 2021, in which you asked Ofsted to conduct an internal review of the response it had made to your Freedom of Information (FOI) Act request.

I am responsible for responding to requests of this nature in Ofsted and I have examined the correspondence between you and Ofsted. In conducting this review, I have also taken account of any current external guidance, which may have relevance to the matters you raise.

Your request

On 3 August 2021, you wrote to Ofsted to request the following information:

"details of the specific pieces of evidence collected by Ofsted during the 75 research visits on training Teachers during COVID19 which can be equated with the following three conclusions of the resulting report published on 19 May 2021:

- *Too few partnerships have a sufficiently ambitious ITE curriculum. For example, only a minority of partnerships could demonstrate that they had incorporated trainees' statutory minimum curriculum entitlement into their plans, and very few had gone beyond it.*
- *Too many partnerships are overly reliant on the experiences that trainees gain through placements to provide ITE curriculum content in subjects and phases.*
- *While many partnerships have found innovative methods for enabling trainees to make up for lost time in the classroom due to COVID-19, these efforts are unlikely to be enough to provide trainees with full and rounded ITE."*

Ofsted's response to your request

Ofsted responded to your request on 1 September 2021. In this letter, Ofsted confirmed that it held evidence relating to these conclusions.

Ofsted also explained that this information was being withheld from release to the public, because the information had been obtained under a duty of confidence. The letter explained why this would be the case by reference to exemptions at sections 40(1) and 41 of the FOI Act.

Your complaint

On 28 September 2021, you wrote to Ofsted to ask for a review of the above decision. You asked for Ofsted's decision to be reconsidered:

"...as no details of individual ITE providers need to be released in order to supply the data requested, issues of confidentiality do not arise."

The Freedom of Information Act and this internal review

Having examined the documents relating to your request and the relevant aspects of the FOI Act, I am now able to comment on how your request was handled.

Timeliness

To comply with the FOI Act Ofsted must reply to requests within a statutory 20 working day deadline. Ofsted's response was sent within this permitted timescale.

Information Held

There is a further requirement to indicate whether the information requested is held by Ofsted. This is provided for at section 1(1)(a) of the FOI Act. Ofsted correctly indicated that it held evidence collected during these visits.

Nature of the disputed information

The information in dispute is the "specific pieces of evidence collected by Ofsted during the 75 research visits", where this information was eventually translated into three selected findings in the report. To determine how to respond to your request, I have examined the documents assembled during this project.

It is very difficult to make a precise read-across between the raw evidence gathered during the visits and the high-level findings as they are expressed in the report. From the information that Ofsted holds, it is not possible for me to identify retrospectively the raw evidence that informed each of those findings. In order to do this, I would need to additionally rely on the recollections of the research team and the report's authors, who analysed this evidence. This is not an activity that the FOI Act requires Ofsted to undertake.

You have clearly stated that this request relates only to the (raw) evidence collected by inspectors. Therefore, the only way Ofsted could be seen to comply with the meaning of your request would be to provide you with all the raw evidence gathered in full, from the 75 providers. Then you would be able to discern for yourself the extent to which it supported the three findings.

This review will therefore consider the use of exemptions in Ofsted's earlier decision to withhold this raw evidence.

Section 41 exemption: Information Provided in Confidence

My first observation about Ofsted's response is that, on its second page it refers to an exemption at section 40(1) of the FOI Act as the reason for withholding this information. Yet, in Annex A the response solely refers to a different exemption, section 41. It seems that the reference on the second page has been made in error and I am sorry for any confusion or misunderstanding this may have caused you.

Section 41 of the Act states:

"(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence."

This exemption (section 41 of the FOI Act) applies to information which has been provided in confidence to a public authority. For Ofsted to use this exemption, the Act requires that:

- the information must be obtained by the public authority from another person (outside of Ofsted) and;
- disclosure of the information to the public would constitute a breach of confidence, actionable by that person¹.

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/41>

Ofsted's response stated that "Partnerships gave their consent to take part in this research on the understanding that any information they provided would be in confidence and not shared with other third parties".

I have consulted the letters that were sent to the 75 participants who volunteered to take part. These each state that:

- inspectors may collect information about staff and trainees at the partnership by looking at documents, holding discussions with different stakeholders, responses to any trainee survey and responses to any staff survey where appropriate.
- inspectors would not make any judgements or provide a written report of any individual visit.
- The findings will be included into the ITE research and a national report would be published.
- Ofsted will not publish any information that identifies an individual or individual partnership in the final publication.
- The information will be securely stored and steps will be taken to prevent respondents from being identified.

In light of the requirements of this exemption, the disputed information has been collected by Ofsted from external sources. The participants have undoubtedly volunteered to take part under the terms of Ofsted's letter to them. This letter gives an express commitment to only refer to their contributions anonymously, in a national report.

Contrary to your most recent email, the information requested contains a large amount of detail about individual ITE providers. If it is published, removing their names would not prevent the provider themselves, staff or trainees easily recognising where the information has come from.

The conditions for an actionable breach of confidence to be established would require that the information has a 'quality' of confidence (ie it is confidential in nature and not widely known) and that it has been imparted in circumstances that suggest there is a 'obligation' of confidence upon the receiver, or an expectation given to the provider of that information that it would be treated as confidential.

I think these conditions are clearly met. Ofsted would not be able to alter this evidence, so as to render the source unidentifiable, and it is obvious that the stated terms of participation would be breached, should Ofsted disclose to the public the information that it has collected from participants.

It is my view therefore that the exemption at section 41 of the FOI Act was properly applied to the information collected during these 75 visits.

The Information Commissioner

I hope that this letter explains why Ofsted reached its decision. If you are dissatisfied with the conduct of this internal review you have a right to approach the Information Commissioner for a decision as to whether we have dealt with your request for information in accordance with the requirements of the Freedom of Information Act. The Information Commissioner can be contacted at:

<https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>

Yours sincerely,

A handwritten signature in blue ink, appearing to read "RMG", with a long, sweeping flourish extending to the right.

Richard McGowan

Head of Information Rights & Correspondence