

12 October 2012

Laura McInerney

BY E-MAIL: request-131654-994befb8@whatdotheyknow.com

Our Ref : F/150

Your Ref :

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Dear Ms McInerney

I refer to your recent request for information, made under the Freedom of Information Act 2000 (the Act) and received by Ofqual on 1 October 2012. You requested the following information:-

Could you please release the distribution of marks for each exam board's controlled assessments in English GCSE marked in the June series 2012. i.e. the number of students scoring marks equivalent to 1, 2, 3, 4 up to the maximum score for the assessment.

Under the Act, public authorities have two duties to individuals requiring information: firstly to confirm whether or not they hold the information requested, and secondly to provide a copy of that information unless one of the exemptions under the Act applies. The Act also requires public authorities to only release that information held at the time the request was made.

At the time your request was made Ofqual did not hold the information you have requested. However Ofqual has since obtained this information from exam boards in support of its work on summer 2012 GCSE English grading. As the information was not held at the time your request was made Ofqual is not obliged to release this to you under this request for information. In addition, the information is held in connection with Ofqual's on-going investigation into summer 2012 GCSE English Grading and Ofqual considers that the exemption at section 31 of the Act, relating to Law Enforcement, applies to this information. Depending on the outcome of its investigations Ofqual has the power, under the Apprenticeships, Skills, Children and Learning Act 2000, to take regulatory action in respect of exam boards. The disclosure of information held as part of that investigation before that investigation was complete would prejudice the exercise of its public functions in investigating this matter which includes the purpose of ascertaining whether circumstances that would justify regulatory action in pursuance of any enactment exist or may arise. Ofqual considers that this information is exempt from disclosure under section 31(1) g and 31(2)(c) of the Act. An extract of this section is set out below for your information:-

Extract – Freedom of Information Act 2000 – s31 Law enforcement.

- (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—
- (a) the prevention or detection of crime,
 - (b) the apprehension or prosecution of offenders,
 - (c) the administration of justice,
 - (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
 - (e) the operation of the immigration controls,
 - (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
 - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
 - (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
 - (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.
- (2) The purposes referred to in subsection (1)(g) to (i) are—
- (a) the purpose of ascertaining whether any person has failed to comply with the law,
 - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
 - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
 - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
 - (e) the purpose of ascertaining the cause of an accident,
 - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
 - (g) the purpose of protecting the property of charities from loss or misapplication,
 - (h) the purpose of recovering the property of charities,
 - (i) the purpose of securing the health, safety and welfare of persons at work, and
 - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

Information withheld under section 31 of the FOIA is subject to the public interest test and Ofqual has considered whether in all the circumstances of the case, the public

interest in withholding the information outweighs the public interest in disclosing the information. In reaching our decision we have considered the following factors in favour and against disclosure:-

factors in favour of disclosing the information are:-

- to promote transparency and accountability; and
- to allow people to understand the decisions made by Ofqual

factors against disclosure are:-

- the information is part of an on-going investigation that could be prejudiced if it were to be released;
- release of the information could prejudice Ofqual in the exercise of its public functions in investigating this matter;
- concern that organisations might become reluctant to assist Ofqual with its investigations for fear of suffering commercially or reputationally due to the release of confidential information
- the release of information may harm the frankness and candour of future investigations; and
- maintaining the confidentiality of discussions.

In the circumstances of the case we have reached the decision that the public interest in withholding the information is greater than disclosing it. We are therefore not prepared to disclose that information related to the on-going investigation.

If you are unhappy with the way in which your request has been handled you have the right to request an internal review. You can request an internal review by contacting:-

Alison Townsend
Board Secretariat Manager
Ofqual
Spring Place
Coventry Business Park
Herald Avenue
Coventry, CV5 6UB
(alison.townsend@ofqual.gov.uk).

If you are dissatisfied with the outcome of the internal review, you can apply to the Information Commissioner. Complaints to the Information Commissioner should be sent to:-

FOI/EIR Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alison Townsend', written in a cursive style.

Alison Townsend
Board Secretariat Manager

Direct line 024 7671 6726