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7 December 2018

Mr Ross McGill  
Sent via Email:

Our reference: CAS-411738-G3H4PB

[request-531234-2beea3e3@whatdotheyknow.com](mailto:request-531234-2beea3e3@whatdotheyknow.com)

Dear Mr McGill

### **Your request for information**

Thank you for your email of dated 9 November 2017, in which you clarified your request as being for the following information:

A list of schools, from September 2017 to July 2018, who have been inspected twice, because the first visit was inaccurate or not validated for whatever reason.

Please break down the information by:

1. Name of school
2. Date of the first visit
3. Inspection outcome
4. Date of the second visit
5. Inspection outcome

### **The Freedom of Information Act**

We have dealt with your request in accordance with the Freedom of Information (FOI) Act 2000. The Act is primarily concerned with the disclosure of information to the public, it does not take into account who the requester is or the reasons for why the information is being requested.

Normally, the first requirement of the Act is that we should confirm whether or not we hold information of the description set out in your request. We are then under a duty to provide you with all the information we hold which falls within the scope of your request, provided it is not 'exempt' information.

In this case, I can confirm that, during the period you have requested, 22 inspections were deemed to be incomplete<sup>1</sup>, where a further visit had to be completed to gather more evidence. This can be for a number of reasons, including where the school may have had to close during an inspection due to an emergency/staff illness, or any other reason where we have completed a further visit to gather more evidence. I can also confirm of the 22 inspections, that required a further visit, three of them resulted in a change in judgement. It is important to highlight that during the final feedback meeting with the school, it is confirmed that the inspection judgement grades are subject to the quality assurance processes as conducted by Ofsted and therefore may change<sup>2</sup>.

We consider that a further breakdown of this data, to include the individual details of each school, dates of their inspection and follow up visit, is exempt from disclosure to the public under sections 33 and 40(2) of the FOI Act. This decision is explained in the annex below.

I trust that this letter clearly explains our position. If you have any queries about our response, please contact the Ofsted Information Rights and Access team by email at [informationrequest@ofsted.gov.uk](mailto:informationrequest@ofsted.gov.uk) who will do their best to address them.

Alternatively, if you are dissatisfied with our response or the handling of your request, you may request a formal internal review. In order to do this, please write to the following address, setting out which areas of the response you are unhappy with:

Email: Richard McGowan at [informationrequest@ofsted.gov.uk](mailto:informationrequest@ofsted.gov.uk) or write to:

Head of Information Rights and Correspondence  
Ofsted  
2 Rivergate  
Temple Quay  
Bristol  
BS1 6EH

If you are not content with the outcome of the internal review, you also have the right to apply to the Information Commissioner for a decision as to whether or not we have complied with our obligations under the FOI Act with respect to your request. The Information Commissioner can be contacted at:

<https://ico.org.uk/concerns/getting/>

or:

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<sup>1</sup> <https://www.gov.uk/government/publications/gathering-additional-evidence-to-secure-an-incomplete-inspection-ofsted-related-protocol>

<sup>2</sup> <https://www.gov.uk/government/publications/school-inspection-handbook-from-september-2015>

Customer Contact  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

Yours sincerely,

Neil Redmond-King  
Principal Officer  
Schools Policy

## **Annex A**

### **Exempt Information**

The FOI Act describes circumstances in which information is 'exempt' and therefore does not have to be provided in response to a request. On this occasion, we have concluded that the exemptions at sections 33 and 40(2) of the Act apply to the further breakdown of the information you have requested.

### **Section 33**

Section 33(2) applies to information when its disclosure would be likely to prejudice the exercise of any of a public authority's functions in relation to the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

For the purposes of the FOI Act, schools are considered to be public authorities. Through our published inspection reports we hold providers to account for how effectively they use the resources at their disposal. This means that our inspection work falls within the definition of an 'audit function' as set out in section 33(1).

Our published inspection handbook sets out the processes undertaken prior to, during and after an inspection. As explained in the handbook, all judgements given at the end of an inspection are provisional and may be subject to further change prior to the final report being published and up until the period of challenge has passed. At any point during this process we may deem it necessary to gather additional evidence as per our published protocol. The final result of the audit process is the publication of the final report.

We believe that the disclosure of data which would identify individual inspections, which have been subject to the gathering additional evidence process, is likely to draw unwarranted attention to those reports and their findings. We believe this would be likely to undermine the authority of those findings by bringing attention to them, and would result in assumptions being made about their validity solely based on the fact that a further visit was associated with the inspection. Although the individual reports identify where further visits have been conducted, if we were to disclose a list, we would be effectively publishing 'official' data and tacitly supporting any analysis that might be done with it.

As a result we consider that this information is exempt from disclosure under section 33(2) of the Act. As section 33 is a qualified exemption, we are required to consider whether or not the public interest in maintaining the exemption outweighs that in releasing the information.

There is an argument that there is a public interest in disclosing this information as this would underline the thoroughness and rigour of the inspection process.

However, as mentioned above, we believe that disclosure of the information being requested would be likely to harm Ofsted's audit function.

The fact that an inspection has been subject to an additional inspection visit does not allow the public to gain any additional information about the circumstances of the inspection. There are a number of reasons why a further visit to a school may be necessary, which should not impact on the security of the final judgements in the report. However, drawing attention to the fact that further visits were conducted would bring uncertainty and questions about the reasons for the visits, and would be likely to result in some public concerns about the validity of reports.

There is a very clear public interest in ensuring that schools are effectively appraised through inspection, that the published results of this activity are authoritative and accurate, and that effective action is taken to address any weaknesses that are identified. Any disclosure of information that is likely to prejudice our inspection function, in this case by removing the focus from the published outcomes of our inspections, would be contrary to the public interest; particularly where this may harm any action that is required to secure improvement. Consequently, we believe that section 33 of the Act applies and we will not be disclosing a list of inspections that have been subject to a further visit.

## **Section 40(2)**

Section 40(2) of the FOI Act<sup>3</sup> applies to any requested information which is personal data. Personal data is defined, within the GDPR<sup>4</sup>, as being 'any information relating to an identified or identifiable natural person [...] who can be identified, directly or indirectly [...]'. Section 40(2) of the FOI Act sets out a number of conditions which, if they apply to the personal data, mean that it cannot be disclosed to the public.

The first such condition is where disclosing the personal data to the public 'would contravene any of the data protection principles'. We think this condition is relevant to this request.

The data protection principles, as set out in Article 5(1) of the GDPR, require that personal data shall be processed lawfully, fairly and in a transparent manner. If no lawful basis can be found, then our processing will contravene this principle. In order to process personal data fairly, Ofsted must only handle it in ways that people would reasonably expect; and not use it in ways that have unjustified adverse effects on them.

We consider that identifying which schools have been subject to an incomplete inspection would allow individuals to, rightly or wrongly, profile particular inspectors

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<sup>3</sup> As amended under Schedule 19, Part 1, Paragraph 58 of the Data Protection Act 2018

<sup>4</sup> Art 4(1) of General Data Protection Regulation (GDPR)

who have been on inspections where a further visit has been completed. We believe this is identifiable information about the inspectors as individuals.

We do not have consent from those inspectors to disclose to the public information about their performance in the form of collating lists of inspections they have conducted which have been subject to a further visit. They would have no expectation that this sort of performance data, generated through their work, would be used in this way. We then have to consider whether it is reasonable to disclose this information to the public without their consent.

We consider that the disclosure of information relating to inspectors' work activity, from which it may be possible to discern or make assumptions about their performance in their roles, would be unfair. Disclosure of this sort of information would reveal data about the performance of the inspectors in their role and allow assumptions to be made about their expertise and experience, possibly incorrectly.

When an inspector carries out an inspection and the report is quality assured and published, their name appears on the final report and they are publicly accountable for it. However, identifying lists of inspections that have involved a further visit also identifies those carried out by a particular inspector; this goes beyond accountability for individual reports and allows a profile of the work carried out by that inspector, and their overall performance, to be created. Doing this and disclosing it to the public may lead to a misleading impression being formed of the work carried out by an inspector. Inaccurate conclusions may be drawn if an inspector has carried out more or less inspections than their colleagues that have been subject to a further visit. For example, if an inspector is perceived to have conducted more inspections that have been subject to a further visit than one of their peers, it may be assumed that they are less able in the role, where in fact, it may simply be coincidental and the further visits have been required for reasons unconnected to the inspector.

Although some information could be discerned by reviewing individual inspection reports on our website and carrying out searches, if we were to supply the list to you, we would be effectively publishing 'official' performance data and tacitly supporting any analysis that might be done with it.

The overall performance of an inspector is for Ofsted to manage and it is not appropriate for this performance management to be conducted in the public domain through the provision of performance data. Ofsted has a legal obligation to ensure that it processes personal data in line with the data protection principles set out under the GDPR; we believe that disclosure of this personal information would be in contravention of those principles. This being the case, the disclosure would contravene the first data protection principle. The exemption at section 40(2) of the FOI Act therefore applies and we are not disclosing this information to you.