



Department
for Education

Qualifications Division
Qualifications, Curriculum and Extra-Curricular Directorate
Early Years and Schools Group
2nd Floor
Department for Education
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

8th March 2021

Dear Mr Maitland,

Re: 2020 0042783

Further to my letter of 22nd February 2021, the Department has now considered whether the public interest lies in disclosing or withholding the information you requested. You requested; "a copy of all correspondence (including emails) and written directions between the Department for Education and: (a) Ofqual (b) Examination Awards Bodies (e.g. AQA, Cambridge Assessment) Between 4 August 2020 and 10 August 2020."

A copy of the information which can be disclosed is enclosed, at Annex A.

The Department holds the remainder of the information you requested, but it falls within the exemptions set out in Section 35(1)(a), Section 36(2)(b)(i) and (ii) and Section 36(2)(c) of the Act, which cover information which relates to the formulation of government policy, information likely to inhibit the free and frank provision of advice or inhibit the free and frank exchange of views for the purposes of deliberation and information which is likely to prejudice the effective conduct of public affairs, respectively.

In applying section 35(1)(a), Section 36(2)(b)(i) and (ii) and Section 36(2)(c), the Act requires that the Department balances the public interest in withholding the information against the public interest in disclosing the information. We have now carried out this public interest test and concluded that the public interest in maintaining the exemptions and not disclosing the information outweighs the public interest in disclosure in this instance. I have set out below the particular factors which the Department considered when deciding where the public interest lay.

Section 35(1)(a)

It can be argued that there is a significant public interest in providing greater transparency and accountability for decision-making processes. There is a related public interest in allowing individuals and organisations to understand decisions made by public authorities affecting their lives and work.

On the other hand, the material covered by your request relates to a period of rapid policy development to respond to emerging events, including the decision by the Scottish government to move to awarding grades based on teacher assessment following concerns raised about the use of an algorithm to standardise results. During this period we were also discussing policy on issues relating to the exceptional autumn exam series. Such a situation required a “safe space” for policy formulation, where officials could liaise with Ofqual and the exams board to enable them to provide the Government with advice which explored options and their implications in a frank and candid way without having to conduct a public running commentary on which options were being ruled in or out, or on what should be published or not. Some such discussions and information are continuing to influence current policy development on the awarding of qualifications in 2021. As such, releasing information could have a chilling effect on those debates by inhibiting open and honest discussions on potential options, damaging future decision making and processes.

Section 36(2)(b)(i) and (ii) and Section 36(2)(c)

Under Section 36(2), the Department is not required to provide information if, in the reasonable opinion of a qualified person (a Minister in the case of Government Departments), disclosure of the information under the Act would, or would be likely to, inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation; or would otherwise prejudice, or be likely otherwise to prejudice, the effective conduct of public affairs. In relation to your request, a Minister has decided that, in their reasonable opinion, disclosure of some of the information in scope is likely to have this prejudicial effect and therefore the exemption in Section 36(2) applies.

Section 36(2) is a qualified exemption and therefore a public interest test has been carried out. In doing so the following factors have been taken into consideration.

As with Section 35(1)(a), it can be argued that there is a significant public interest in providing greater transparency and accountability for decision-making processes. There is a related public interest in allowing individuals and organisations to understand decisions made by public authorities affecting their lives and work.

On the other hand, as noted above the period in question was a particularly intense and fast paced working environment when the Department and Ofqual were under considerable pressure to develop policy against the background of the Scottish government having decided to reissue results based on teacher assessed grades. This required frank and open exchanges of views in order to reach suitable compromises for a workable policy and to agree on public presentation.

A close and trusting relationship between the Department, Ofqual and the exam boards is critical to the successful delivery of awarding qualifications in 2021 and to the successful development and delivery of qualifications policy more broadly, and these relationships would be damaged if views expressed during the period in question were released into the public domain. It is fundamental to the successful functioning of government that the Department can share sensitive information and views openly with other government departments and public bodies like Ofqual and exam boards to ensure the best interests of

the public are served, without the threat of having to reveal confidences and provide a running commentary. Equally Government has the right to ensure that information is released in a responsible and timely manner. Discussions between DfE, Ofqual and awarding bodies on the best means and timing for the release of information and response to media stories and speculation must be allowed to be formulated in a free and frank manner.

On balance our view is therefore that the public interest is in favour of withholding this material.

Section 40(2)

We are also withholding some information under s40(2) of the Act, which allows for the withholding of information of some personal data.

Personal data is that which relates to a living individual who can be identified from that data, or from that data and other information which is likely to be in, or to come into, the possession of the requestor. Disclosure of this information would contravene a number of the data protection principles in the General Data Protection Regulations/Data Protection Act 2018 and would be regarded as 'unfair'. By that, we mean the likely expectations of the data subject that his or her information would not be disclosed to others and the effect which disclosure would have on the data subject. Section 40(2) is an absolute exemption and does not require a public interest test consideration.

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If you have any queries about this letter, please contact us. Please remember to quote the reference number above in any future communications.

If you are unhappy with the way your request has been handled, you should make a complaint to the Department by writing to us within two calendar months of the date of this

letter. Your complaint will be considered by an independent review panel, who were not involved in the original consideration of your request.

If you are not content with the outcome of your complaint to the Department, you may then contact the Information Commissioner's Office.

Yours sincerely,

Qualifications team

Qualifications.CORRESPONDENCE@education.gov.uk

Annex A;



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