



J Roberts

22 September 2021

By email to: request-785407-2edf3f54@whatdotheyknow.com

Dear J Roberts

Freedom of Information Act 2000 (“FOIA”) request

Thank you for your request, which we have handled under the Freedom of Information Act 2000 (the Act).

Under the Act, public authorities have two duties to individuals requesting information: firstly, to confirm whether or not they hold the information requested, and secondly to provide a copy of that information unless one or more of the exemptions under the Act apply.

Your request

In your request dated 25 August 2021 you requested the following information:

‘Please provide all the information the Commissioner requires you to disclose in her decision of 5 August 2021 with the reference number IC-70514-H7K5. The request related to “adjustments made to A-level grades in 2020, based on what is known as ‘the algorithm’.”

Decision Notice:

<https://ico.org.uk/media/action-weve-taken/decision-notice/2021/4017807/ic-70514-h7k5.pdf>

Our response

We have interpreted your request as being a request for statistical information relating to the adjustments made to Centres Assessed Grades (CAGs) in 2020, following standardisation. The information you seek shows the changes made between CAGs and grades following standardisation, broken down by named centre and level of variation.

Ofqual holds information of the type you have requested. We have however decided not to disclose the information as section 36(2)(c) of the Act applies. In that regard, it should be noted that Ofqual is presently engaged in appealing the decision notice of the Information Commissioner's Office referred to in your request.

By way of structure of this reply, below we set out the statutory test for section 36(2)(c) of the Act. After this, we provide some further context relevant to your request before then explaining the reasons for our decision to apply the exemption within section 36(2)(c) of the Act. We hope you find this structure to be of assistance in understanding how we have arrived at our decision.

The statutory test:

Section 36(2)(c) provides that information is exempt from disclosure if:

in the reasonable opinion of a qualified person, disclosure of the information under this Act would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

In relation to statistical information, subsection (4) provides:

s.36(2) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

We are satisfied that your request is a request for statistical information, therefore subsection (4) of section 36 of the Act applies to your request and we are satisfied that it is appropriate for us (rather than the Chief Regulator who is Ofqual's qualified person for the purposes of the Act) to consider the application of the exemption.

Context: the process for arriving at centre assessment grades in 2020

With the cancellation of exams, results for A-Levels in 2020 were derived using a different approach to prior years. Following public consultations, as part of the arrangements for 2020, teachers were asked to make judgements about what a student would have achieved if exams had taken place (CAGs).

CAGs were determined by centres bearing in mind Ofqual guidance dated

3 April 2020.¹ Schools were required to make their judgments in good faith, in line with Ofqual guidance and with appropriate internal quality assurance. They were also told that, if 2019-2020 results differed significantly from previous years' results, the awarding organisation would apply an adjustment to ensure consistency.

As such, when submitting centre assessment grades 'Heads of Centre' were obliged to sign the following declaration:

"I confirm that these centre assessment grades, and the rank order of students have been checked for accuracy, reviewed by a second member of staff (where possible) and are accurate and represent the objective and professional judgements made by my staff, that entries were appropriate for each candidate and that each candidate has no more than one entry per subject. Having reviewed the relevant processes and data, I am confident that they honestly and fairly represent the grades that these Summer 2020 grades for GCSE, AS and A level ... would have been most likely to achieve if they had sat their exams as planned. ... I understand that exam boards will conduct a statistical standardisation exercise, using a model developed with Ofqual, and that, if the profile of grades submitted is substantially different from what might be expected based on my centre's historical results and the prior attainment of this year's students, the grades for my centre will be adjusted to bring them into line with national standards."

It was originally envisaged that a process of standardisation would operate. In the event, however, it was apparent that this system did not command sufficient public confidence and students received the higher of their CAG or calculated grade.

Context: release of performance related data for awarding in summer 2020

We should also highlight that, in a statement made to Parliament on 23 March 2020, the Government confirmed that it would not publish any school or college level educational performance data for 2020.²

The Department for Education has confirmed to Ofqual that the main reason for this position was to make the grading process as robust as possible: teachers were promised that neither they nor their schools would be 'judged' on the basis of good faith opinions about how pupils would have performed in exams. Furthermore, Ofqual understands that the Department's policy position on this issue followed its receipt of representations from key stakeholder groups, including teaching unions

¹ Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887018/Summer_2020_Awarding_GCSEs_A_levels_-_Info_for_Heads_of_Centre_22MAY2020.pdf. Note that the guidance was updated on 22 May 2020.

² See the final sentence of the statement accessible here: <https://questions-statements.parliament.uk/written-statements/detail/2020-03-23/HCWS176>

and schools.

Context: information made publicly available in respect of 2020 awarding arrangements

Whilst specific performance level data at centre level has not been made publicly available, we did want to draw your attention to a number of publications Ofqual has made in respect of awarding arrangements in 2020:

- In its Interim report published on 13 August 2020, Ofqual provided detailed analyses with respect to AS and A-Level results (including detailed equalities analysis³);
- Ofqual also provided further equalities analysis in respect of summer 2020 awarding in its final report published on 26 November 2020.⁴

Context: awarding arrangements and performance related data for 2021

Whilst not the focus of the information caught within the scope of your request, we should briefly identify that examinations were again cancelled for 2021.

Following further public consultations, a new set of awarding arrangements were put in place which again involved teacher judgments (although we should identify the precise nature of the judgments were not the same as in 2020). Those judgments were again subject to quality assurance arrangements that were put in place following public consultation.

The Department for Education confirmed publicly that it would again not be publishing performance data based on qualification results in respect of schools or colleges.⁵ We understand that the rationale for the Department's policy position here remains the same as for its policy in respect of publication of 2020 awarding data.

³ See Ofqual's interim report accessible here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/909368/6656-1_Awarding_GCSE_AS_A_level_advanced_extension_awards_and_extended_project_qualifications_in_summer_2020_-_interim_report.pdf

⁴ See Ofqual's final report accessible here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938869/6713_Student-level_equalities_analyses_for_GCSE_and_A_level.pdf

⁵ <https://www.gov.uk/government/publications/coronavirus-covid-19-school-and-college-performance-measures/coronavirus-covid-19-school-and-college-accountability-2020-to-2021>

Context: further research following 2020 awarding

By way of final contextual point, we also wanted to identify that Ofqual is permitting independent research by accredited researchers concerning the summer 2020 awarding arrangements to take place through the ONS secure research service. The ONS secure research service will permit accredited researchers to undertake independent research into the operation of the standardisation model and further equalities analyses. Significantly, keeping in mind the explanation provided earlier, we should note that centres will be de-identified.

Reasons for applying s36(2)(c) of the Act:

As we identified at the outset of this response, we have concluded that disclosure of the information you seek would be likely to prejudice the effective conduct of public affairs, thereby engaging the exemption with s36(2)(c) of the Act.

We have reached this conclusion for the following reasons:

- The Department for Education ('the Department') confirmed in March 2020 that it would not publish school/college level educational performance data for 2020. Ofqual understands that the Department's decision not to publish centre-level performance data in respect of Summer 2020 grades followed its receipt of representations from key stakeholder groups, including teaching unions and schools.

The reasonable expectations of those key stakeholders that the requested information would not be published would be rendered nugatory by disclosure of the information you seek. There is therefore a strong likelihood that those stakeholders' trust and confidence in the Department would be materially reduced upon disclosure.

- Disclosure of the requested information is likely to lead to scrutiny of judgments made by individual centres and comparison between centres by variation in judgment. We consider this would likely result in two following consequences:
- Disclosure would likely have a disruptive effect on Ofqual and centres and lead to a diversion of resources in managing the effect of disclosure, in particular at the extreme ends of variation; and
- In the public domain, the data is likely to lead to an unfair perception and/or potential criticism that some centres' subjective holistic judgments arrived at in good faith on a CAGs were less reliable, more generous or more lenient than others.

- In turn, this would likely result in less confidence being placed in awards for some centres, unfairly prejudicing students at those centres on the basis of circumstances that were wholly beyond their control.

Whilst it is presently envisaged that exams will take place in 2022, the context of the last two years shows that this should not be simply assumed. It remains possible that alternative awarding arrangements might still be required, depending on the continued evolution of the ongoing pandemic.

In light of this, and bearing in mind the context set out earlier, in the event teacher judgments are required again in the future, Ofqual considers there is a real risk that centres might seek to insulate themselves from criticism and reputational damage when undertaking future grading by seeking to align their grades as closely as possible to past performance to ensure that adjustments are minimised, rather than reflecting their good faith judgements of the level of performance of their students in that examination year. Where a subsequent cohort of students properly merited higher grades than their predecessors, they would be disadvantaged by such conduct.

Given the prejudicial effect on centres, and consequential potential effect on centres' reputations, we consider it is likely disclosure could have an impact on judgments made by centres in the future. This could undermine Ofqual's ability in future to undertake a novel approach which relies on information provided by centres, should it consider this to be necessary.

- Given the disruptive effects of disclosure identified above, release of such data at centre level is likely to have an adverse effect on Ofqual's relationships with stakeholders, particularly centres, teachers and their representatives. This in turn is likely to prejudice Ofqual's ability to perform its functions.

Public Interest Test

The exemption in section 36(2) of the Act is a qualified exemption and subject to the public interest test. We have 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 considered the following:

Factors in favour of disclosing the information are:

- Disclosure supports the general principle of transparency.
- Improving public confidence in Ofqual's performance as a regulator, and in the qualifications which Ofqual regulates.
- It is possible that the information requested *might* indicate whether some schools/centres adopted a more or less generous approach

that others. We put the public interest factor on this point no higher than that recognising the fact that differences in results will naturally occur in cases where teachers have in good faith exercised their judgment simply on the basis of their assessment of the cohort before them. Ofqual is additionally mindful of the limitations of the data (which does not by itself properly reflect awarding arrangements last year and is incapable of enabling proper analyses and/or inferences to be drawn on, for example, equality matters).

Factors against disclosure are:

- The fact that Ofqual has already placed a great deal of analysis in the public domain about awarding arrangements for 2020 and is enabling the conduct of independent research to take place to provide further scrutiny of those arrangements (crucially, however, with centres being de-identified). In the circumstances, there is minimal additional public benefit to the disclosure of the information sought;
- Releasing the information in the level of granularity requested is likely to lead to the significant prejudices identified above. This would not be in the public interest.
- Disclosure would undermine past and current Departmental policy relevant to seeking to support teachers having to make difficult judgements in exceptional circumstances.
- Disclosure would undermine the relationship between the Department and schools/colleges, by undermining the promise made by the Secretary of State before Parliament.

Outcome of Public Interest Test for Section 36 exemption

Taking into account the above factors, we consider that the exemption should be applied as the factors in favour of disclosure are outweighed by the factors against disclosure.

Internal review

If you are unhappy with the way in which your request has been handled you have the right to request an internal review. You must do this within forty working days of the date of this letter. You can request an internal review by contacting:

Naik Sandhu
Legal Practice Manager, Ofqual
Earlsdon Park
53-55 Butts Road
Coventry, CV1 3BH
(naik.sandhu@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

Kind regards

The FOI Team, Ofqual