

9 November 2021

Ermine Amies

request-724316-98200b70@whatdotheyknow.com

Dear Ms Amies,

Freedom of Information Act – Internal Review

Thank you for your email of 29 June 2021. In this you asked Ofsted to review its response to your Freedom of Information (FOI) Act request.

The internal review process is a requirement of the FOI Act and I am responsible for responding to requests of this nature in Ofsted. I have examined the correspondence between you and Ofsted. I have also taken account of any external guidance which may have relevance to this case.

I would like to stress that I am sincerely sorry for the length of time it has taken to provide you with the outcome to this review.

Summary of this review

Having reviewed Ofsted's original response, I have concluded that the balance of the public interests favours the disclosure of the majority of direct interactions between Ofsted and Stonewall, particularly where this has led to an assessment of Ofsted being completed by Stonewall. This information is disclosed alongside this response.

Due to the burden involved in checking and preparing the totality of the information you have requested, I have not provided the full range of policies and attachments shared to Stonewall over this period, but a list of these is still included for reference. I have also removed any personal information from the documentation disclosed to you, including references to the activities and identities of individual staff and also voluntary or social activities Ofsted staff have engaged in.

Your request

You wrote to Ofsted on 4 February 2021 to request the following information:

"1. Any application you made in 2019 or 2020 to be a "Stonewall Diversity Champion" or to be included on Stonewall's "Workplace Equality Index," including

any attachments or appendices to those applications. Please redact personal details if necessary.

2. Any feedback you received in 2019 or 2020 from Stonewall in relation to either application or programme.

3. Any other communication you have received from Stonewall in 2019 or 2020 unless privileged or otherwise exempt from disclosure (but if you claim privilege or exemption in relation to any material, please say in broad terms what the material is and the basis on which you claim to be entitled to withhold it).

4. Full details of any equality impact assessment you carried out connected with any of these applications (including any equality impact assessment carried out prior to an earlier application of the same kind, if no further assessment was done).

5. Details of the total amount of money you paid to Stonewall (i) in 2019; (ii) in 2020, whether or not as payment for goods or services.

6. Whether you intend to continue your membership of any Stonewall scheme in the future, and if so which..”.

Ofsted’s response to your request

Ofsted responded to your request on 12 March 2021. This letter confirmed that Ofsted held information relating to all but point 4 of your request.

You were provided the information you sought for points 5 and 6 of your request and some of the information related to point 3. Ofsted informed Stonewall in early 2021 that it would not renew its membership of the Diversity Champions Scheme, or participate in any further Workplace Equality Index.

Information related to points 1, 2 and 3 of your request was otherwise deemed exempt, as it was believed commercial prejudice might result from disclosing it. Section 43 of the Act was cited as the exemption justifying this decision. The remainder of this review concerns only these remaining areas of your request.

Your complaint

On 29 June 2021, you wrote to Ofsted to ask for a review of this decision.

In your submission you highlighted similar information which had already been disclosed by other public authorities. You also asked me to pay particular focus on a number of public interest factors. These included concerns about the accuracy of

advice provided by Stonewall on the operation of the law and Ofsted's own legal obligations, such as the Public Sector Equality Duty. You also directed me to the ICO's advice on the relationship between Freedom of Information rules with 'confidentiality clauses' in commercial relationships.

The Freedom of Information Act

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

Timeliness

To comply with the FOI Act Ofsted must reply to requests within a statutory 20 working day deadline, unless further time is required to consider the balance of the public interest.

Ofsted contacted you on 4 March 2021 in order to advise you that it was applying an 'extension' to the statutory timescale for responding to the request. This was done in accordance with the legislation.

Whether the requested information is held

There is also a requirement to indicate whether the information requested is held by Ofsted. Ofsted correctly confirmed where it held the information you had asked for.

Exemptions

Section 43 of the FOI Act – Commercial Interests

Ofsted cited an exemption relating commercial interests to withhold from disclosure the requested information. Section 43(2)¹ of the Act states:

"43(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

Ofsted's explanation for withholding the information was that its disclosure would undermine Stonewall's future activities and would be contrary to the terms and conditions of the scheme in question.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/43>

On examining this issue, I believe there is no doubt that this remaining information is underpinned by a commercial relationship. There is also sufficient external evidence to support the view that disclosing such information does harm ongoing similar commercial activities by Stonewall. I therefore believe it is evident that commercial prejudice would arise through the disclosure of all the information you requested, relating to points 1, 2 and 3 of your request.

I have also analysed the balance of the public interest, related to the use of this exemption. In doing so I have taken into account the comments you have made. I agree that there is greater public interest in Ofsted disclosing information related to the assessment it has completed with Stonewall. Equally there is similar public interest in disclosing a range of communications between the two organisations.

However, there remains a strong public interest in ensuring that separate details of commercially sensitive services, such as consultancy, are not disclosed, so as not to disadvantage Ofsted's future procurement of similar services.

Therefore, I have authorised the disclosure of the completed assessment and some communications alongside this response, subject to the following exemptions.

Section 14 – requests which impose a burden

As you may be aware your request has required Ofsted to identify and examine a large volume of information, related to disparate areas of its work. Under such circumstances it may be entitled to refuse the entirety of your request.

The ICO has explained that there may be a viable case to refuse a request if:

- “The requester has asked for a substantial volume of information **AND**
- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **AND**
- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material”.²

I believe that all three categories do apply to your request but, as I have explained above, I have already taken steps in the public interest to allow for the disclosure of the core elements of your request. This amounts to a significant volume of information being disclosed to you.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

That said, and in view of section 14 applying, Ofsted has not included the full range of internal documentation it originally attached to the submissions to Stonewall, in view of the burden that would occur if these were reviewed concurrently. These documents are nonetheless listed in the disclosed information, included alongside any discussions about them which occurred during the assessment.

Section 40(2) – personal data

Ofsted explained that some of the information you had requested was personal data and would not be disclosed. I agree that information which references the activities and identities of individual staff is personal data that would be exempt. This would also include some details of voluntary or social activities that Ofsted staff have engaged in.

The Information Commissioner

I hope this letter has been helpful in explaining Ofsted's position.

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/global/contact-us/>

Yours sincerely,

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

Richard McGowan

Head of Information Rights & Data Protection