

21 April 2020

A. Marfo

Our Reference: CAS-437015-S7NGN3

[request-648926-
038124cb@whatdotheyknow.com](mailto:request-648926-038124cb@whatdotheyknow.com)

Dear Ms Marfo

Freedom of Information Act – Internal Review

Thank you for your email of 21 March 2020, sent via the WhatDoTheyKnow website, in which you requested that Ofsted 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 an official 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 advice or guidance which may have relevance to this case.

Your request

On 23 February 2020 you wrote, asking:

1. I would like to see all documents and written notes by your inspectors, relating to the recent inspection of Slough Borough Council (local authority children services).

2. How many complaints has OFSTED recieved in year 2018, 2019, Feb 2020 from; A. Slough Borough Council Staff B. Parents C. Foster Carers D. Government Agencies

3. How many complaints has Ofsted investigated regarding the local authority children services in year 2018 and 2019?

Separate Enquiry;

4. What is ofsteds policies and procedures for vetting staff that work with children and young people?

- I. Can members of the public work with children with a previous misdemeanour as a minor?*
 - ii. Can adults involved in care proceedings with/without criminal record still work with children?*
- 5. Ofsted's policies on how to become a foster Carer and the protocol of the local authorities?'*

On 24 February 2020, you clarified that: 'Q2 and 3 is in relation to 1. Slough Local Authority children services and 2. independent fostering agency'.

Ofsted's response to your request

Ofsted responded to your request on 20 March 2020. In this letter, Ofsted confirmed that it holds information relevant to points one to three of your request, but explained that it was unable to provide it to you. The exemption concerning 'audit functions' (section 33) was cited to justify this decision.

Ofsted also explained that it did not have information relating to points 4 and 5 of your request, as Ofsted is not responsible for setting policy in those areas of work.

The response stated that the FOI Act did not apply to any information held by Ofsted for the purpose of its role as the registration authority for Slough Children's Services Trust.

Your complaint

On 21 March 2020 you wrote to Ofsted to ask for a review of the above decision.

In response to my request that you clarify which aspect(s) of Ofsted's response you are dissatisfied with, you said only that your 'request for internal review is to answer all the questions under FOI which is not exempt from the guidelines or the law.'

The Freedom of Information Act

Having examined all the documents 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. Ofsted's response was sent within the permitted timescale.

The remainder of this review concerns whether Ofsted has the information you requested, and determining whether the decision to withhold that information is supported by exemptions within the Act.

For clarity, references to Slough Borough Council relate to the local authority children's services.¹ References to Slough Children's Services Trust relate to the independent fostering agency.²

I will address each part of your request below:

1. 'I would like to see all documents and written notes by your inspectors, relating to the recent inspection of Slough Borough Council (local authority children services)'.

Ofsted confirmed in its response that it has the evidence from the inspection.

Ofsted explained that it was not providing the evidence as disclosure would be likely to harm Ofsted's inspection/audit function. It used an exemption at section 33 of the Act in support of that position.

Section 33 of the Act – Audit function

Section 33(2)³ of the Act states:

(1) This section applies to any public authority which has functions in relation to—

[...]

(b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

This means that section 33(2) of the FOI Act can be used when one public authority, such as Ofsted, audits other public authorities, such as Slough Borough Council. Through our published inspection reports, Ofsted holds local authorities to account for how effectively they use the resources at their disposal. This means that Ofsted's inspection work in relation to local authorities falls within the definition of an 'audit

¹ <https://reports.ofsted.gov.uk/provider/44/871>

² <https://reports.ofsted.gov.uk/provider/4/1183495>

³ <http://www.legislation.gov.uk/ukpga/2000/36/section/33>

function’.

The exemption applies if disclosing the requested information might harm any function related to such inspections, and is drafted so that it can be used broadly, to protect a range of situations that are related to inspection.

The inspection of the Local Authority was carried out under section 136⁴ of the Education and Inspections Act 2006. Guidance on the inspection of local authority children’s services can be found on gov.uk⁵.

Ofsted explains in the published inspection report that, although ‘significant progress has been made’ since previous inadequate inspection outcomes, the service still ‘requires improvement to be good’.

Ofsted’s ‘Framework, evaluation criteria and inspector guidance for the inspection of local authority children’s services’⁶ explains that:

‘20. Local authorities judged to require improvement to be good at their most recent inspection will receive a standard inspection. The standard inspection will usually take place about three years after the previous inspection. [...]

21. In between inspections, the local authority will receive up to two focused visits. A focused visit may be replaced by a JTAI.’⁷

An annual engagement meeting between the authority and Ofsted will also take place.

This means that a range of audit activity is still to take place as an outcome of the January 2019 inspection.

I believe that Ofsted’s response to you, at Annex A (page 4), satisfactorily explains the harm that disclosure of the evidence would cause during this continuing improvement process. I therefore agree that the exemption applies.

As section 33 is a qualified exemption, I am also required to consider whether the public interest in maintaining the exemption outweighs that in release of the information. I agree with Ofsted’s view that any disclosure of information which would harm the process of securing improvement for the authority cannot be seen to be in the public interest. I therefore agree with Ofsted’s original decision not to

⁴ <http://www.legislation.gov.uk/ukpga/2006/40/part/8/chapter/4/crossheading/inspections-and-annual-reviews>

⁵ <https://www.gov.uk/government/collections/ofsted-inspections-of-local-authority-childrens-services>

⁶ <https://www.gov.uk/government/publications/inspecting-local-authority-childrens-services-from-2018>

⁷ Joint targeted area inspection

provide the evidence to you.

In addition to the above exemption, I consider that this part of your request would also be a 'burden' for Ofsted to respond to. This is covered by section 14 of the Act, as I will explain below.

Section 14 of the Act - Vexatious requests

Section 14(1) of the FOI Act states:

'Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.'

The Information Commissioner has published a guidance document⁸ which describes the range of features that indicate whether a request is vexatious. This includes 'burdensome requests'.

I consider that the amount of work required to comply with your request would place such a burden on Ofsted that the effort required would outweigh the benefits of disclosure. This meets the criteria of a 'vexatious' request.

It may be helpful if I explain that the evidence recorded during the January 2019 inspection of Slough Borough Council is predominantly made up of the handwritten notes of the inspection team. The information is recorded in hardbacked evidence notebooks. Usually each inspector will have their own notebook, and may record evidence across multiple notebooks. Evidence for a full inspection can run into many hundreds of pages of handwritten evidence, and is not usually categorised in such a way that specific themes or business areas can be easily identified.

For Ofsted to be able to comply with your request, someone would first need to acquire, then individually photocopy and/or scan every page of each physical notebook, and check the quality of those scans. It is not possible to remove the pages from the notebooks to run them automatically through a scanner. Once a copy has been created, the level of personal data contained within the notebooks means that a member of staff would have to carefully read every page to identify and then remove personal data about children, young people, carers and staff. It is likely that a lot of information would have to be removed in this way, and it would make much of the remaining information meaningless.

Ofsted's official findings are set out in the published inspection report. The notebooks themselves, and the specific evidence recorded, is unlikely to contribute to the wider public understanding of what Ofsted found during the inspection.

⁸ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

I consider that the burden of carrying out this task; preparing and redacting the evidence for disclosure, would require a disproportionate level of effort. Consequently, I believe that the request meets the criteria of a 'vexatious' request under section 14 of the FOI Act, and Ofsted was correct not to provide the evidence in response to your request.

2. 'How many complaints has OFSTED received in year 2018, 2019, Feb 2020 from;

- A. Slough Borough Council Staff**
- B. Parents**
- C. Foster Carers**
- D. Government Agencies'**

and:

3. 'How many complaints has Ofsted investigated [...] in year 2018 and 2019?' [...] about Slough Borough Council

Ofsted confirmed in its response that it has a record of any complaints received about Slough Borough Council.

That is correct. However, Ofsted does not record the information in the way you have asked for it. To answer question 2, Ofsted would have to look at each complaint record to find out whether the instigator declared their connection to the council (e.g. staff, parent, foster carer, other agency, as in your request). It is possible that there would be complaints for which Ofsted does not have enough information to know the connection to the council.

In relation to question 3, I should explain that Ofsted cannot investigate individual complaints.⁹ Instead, it uses the information provided to inform the next inspection of the authority. It may also pass the information to another organisation that does have the power to investigate complaints. I apologise that Ofsted did not explain this in its original response to you.

Ofsted explained in its response that it considered the information it has about the numbers of complaints regarding Slough Borough Council to be exempt from disclosure. It used an exemption at section 33 of the Act in support of that position.

As I have explained, complaints received by Ofsted are used to inform our inspections. This means that they are part of Ofsted's audit/inspection function. I explained the exemption at section 33 of the Act and how it applies to Ofsted's inspection function under the heading of question 1. It applies in the same way here.

⁹ For more information, see <https://www.gov.uk/government/publications/whistleblowing-about-childrens-social-care-services-to-ofsted>

Ofsted's response describes two ways in which disclosure would, or would be likely to, harm the inspection function:

- (a) By giving the authority advance notice of areas inspectors may focus on, allowing them to artificially prepare for the inspection
- (b) By discouraging individuals from contacting Ofsted with concerns.

I do not think that point (a) applies to your request, as you have asked for numbers, rather than details of concerns. I do, however, think that disclosure of numbers of concerns would be likely to give the authority an indication of the possible timing of their next inspection.

The information you have requested for 2018 is from before the most recent inspection of the authority, however information from 2019 and 2020 (to date) would feed into subsequent visits.

The 'Framework, evaluation criteria and inspector guidance for the inspection of local authority children's services' at pages 6 and 7 explains that:

'There will be times when concerns arise about a local authority. The regional director will decide whether to carry out an inspection (standard or short inspection), at which we make a graded judgement, or whether a focused visit would be more appropriate.'

If Ofsted were to disclose the number of complaints received, this would give the authority the ability to speculate about whether they may be visited by Ofsted sooner than originally anticipated. This would enable them to try and prepare for a visit, making it more difficult for the inspectors to get an accurate view of the effectiveness of the authority at that time.

I consider that point (b) applies to the number of complaints from all years, regardless of whether an inspection has since taken place. Disclosing the number of complaints, especially broken down by date and complainant 'category' as you have requested, means that it is likely that individuals who have complained would be able to identify their own complaints, and also worry that the authority would suspect them of having complained to Ofsted. Some of those individuals would therefore be unwilling to share further information, and other individuals may be wary of reporting concerns to Ofsted in case the authority is able to identify them from the information.

This means that Ofsted would have less information available with which to determine the necessary timing and focus of inspections, which would have a negative impact on the effectiveness of Ofsted's inspection function.

Again, as section 33 is a qualified exemption, I am also required to consider whether the public interest in maintaining the exemption outweighs that in release of the information. Any disclosure of information which would harm Ofsted's ability to effectively inspect the authority cannot be in the public interest. I therefore agree with Ofsted's original decision not to provide the number of complaints to you.

[...] about Slough Children's Services Trust

Slough Children's Services Trust is an independent fostering agency.

The Freedom of Information Act does not cover all areas of Ofsted's work. Ofsted is only described as being subject to the Act:

*'in respect of information held for purposes **other** than those of the functions exercisable by Her Majesty's Chief Inspector of Education, Children's Services and Skills by virtue of section 5(1)(a)(iii) of the Care Standards Act 2000.'* (as amended).¹⁰

Section 5 of the Care Standards Act (CSA) gives Ofsted functions as the 'registration authority' for children's social care such as independent fostering agencies.¹¹

This means that any information held by Ofsted for the purpose of its role as the registration authority for independent fostering agencies, such as Slough Children's Services Trust (URN: 1183495), is not subject to the FOI Act.

Ofsted does have a record of whether there have been any complaints about the fostering agency, and details of any such complaints. As Ofsted explained in its response, there is no public entitlement to information regarding complaints about independent fostering agencies. I therefore find that Ofsted was correct not to provide information about complaints regarding Slough Children's Services Trust in response to parts two and three of your request.

4. 'What is ofsted's policies and procedures for vetting staff that work with children and young people?

- i. Can members of the public work with children with a previous misdemeanour as a minor?**
- ii. Can adults involved in care proceedings with/without criminal record still work with children?'**

and:

'5. Ofsted's policies on how to become a foster Carer and the protocol of the local authorities?'

¹⁰ <http://www.legislation.gov.uk/ukpga/2000/36/schedule/1/paragraph/1A>

¹¹ <http://www.legislation.gov.uk/ukpga/2000/14/section/5> section 1A

Ofsted explained in its response that it does not have this information.

From the context of your request, I have understood these two questions in the same way as described in the original response you received: to relate to staff that work for a local authority or members of the public either involved in care proceedings or wishing to become a foster carer.

Ofsted does not directly recruit and/or 'vet' foster carers or those that work with children on behalf of the local authority. On this basis, Ofsted does not have such policies. I can only reiterate Ofsted's original advice that you should ask the local authority directly for this information.

This information, published by the Department for Education (DfE) about the requirements for fostering services may also be of interest to you:
<https://www.gov.uk/government/publications/fostering-services-national-minimum-standards>. Any queries about those requirements should be directed to the DfE.

I appreciate that the outcome of this review may be disappointing to you but I hope that this letter further explains why the information has been withheld.

If you have specific concerns or queries about the local authority or the fostering agency, you may find you receive a more helpful response if you direct these to the local authority or Ofsted (as appropriate), rather than making further FOI requests.

Yours sincerely,

A handwritten signature in blue ink that reads "E Banks".

Elizabeth Banks
Information Rights and Access Manager

The Information Commissioner

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/>