

16 October 2018

Ms Rebecca Hickman

**Richard McGowan**  
Head of Information Rights &  
Correspondence

Sent by email to: [request-489348-91bc64c6@whatdotheyknow.com](mailto:request-489348-91bc64c6@whatdotheyknow.com)

Dear Ms Hickman

### **Your request for information – internal review**

I am responding to your email of 8 September 2018, in which you asked Ofsted to review the response it had made to your Freedom of Information (FOI) Act request.

I am responsible for responding to requests of this nature in Ofsted and I have examined the correspondence between you and Ofsted. In conducting this review, I have also taken account of any current case-law, which may have relevance to the matters you raise. I am sorry for the additional delay in providing this response to you.

### **Your request**

On 22 July 2018 you wrote to Ofsted, helpfully clarifying previous requests you had made. You requested the following information:

*"any kind of memo, guidance or circular that has been given to inspectors in relation to a) the implementation of Prevent in schools or b) schools' policies/approaches to Islamic customs and beliefs, between [January 2017 and today's date]. The memo or guidance would have been written by and cascaded from Ofsted senior management at head office.*

*This request excludes memos or guidance issued by the regional teams. This request also excludes any individual communications (e.g. emails) on these topics - i.e. where the communication was not part of general guidance but related to a specific school or matter."*

### **Ofsted's response to your request**

Ofsted responded to this request on 30 August 2018. The letter explained that Ofsted did not hold any information that may be considered as being issued by

senior managers, on the two topics specified. Ofsted had, however, published all its guidance documents about inspection in several places on its website to which you were directed.

The response also explained that Ofsted produced materials that were used in inspector training on the subject of the Prevent Duty. However, it declined to provide the information to you, because it was claimed it was subject to exemptions related to Ofsted's audit and law enforcement functions. Sections 31 and 33 of the FOI Act were cited to support that decision.

## **Your complaint**

On 8 September 2018 you wrote to ask for a review of this decision. You explained your belief that Ofsted's monitoring role with regards to Prevent is "limited" and that the existence of unpublished training materials might suggest that Ofsted has approached its role by prescribing how Prevent should be implemented, or doing so in a way that exceeded statutory guidance.

You have also explained that the existence of inspectors training would, in your view, warrant its disclosure so that it may assist schools (and parents) in implementing the Prevent Duty and identifying themselves where there has been poor practice.

For Ofsted's use of section 31 of the Act, you have challenged the basis of using this exemption, because you take the view that Ofsted does not have functions and responsibilities around Prevent that would engage any part of that exemption.

## **The Freedom of Information Act**

Having examined 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.

### *Timeliness*

To comply with the FOI Act Ofsted must reply to requests within a statutory 20 working day deadline, unless an extension is required to consider the balance of the public interest. Ofsted's response was not sent within the initial statutory timescale, but you were notified prior to that time that a further short period was required to consider the balance of the public interest. Ofsted's response was therefore provided within a legitimate timescale.

### *Information Held*

Ofsted is also required to indicate whether the information requested is held. This is provided for at section 1(1)(a) of the FOI Act. Ofsted correctly explained to you that it did not hold information precisely matching your description, but it did also make you aware that it held training information, which related to the first part of your request.

## Exemptions

Ofsted's response makes reference to exemptions at sections 33 and 31 of the FOI Act.

### Section 33 of the FOI Act – audit functions

Ofsted cited an exemption relating to its audit functions (section 33) to withhold from disclosure the evidence gathered from the inspection. Section 33(2) of the Act applies to information when disclosing it would be likely to:<sup>1</sup>

*"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."*

The statutory guidance for Prevent, under the headline 'Monitoring and Enforcement', makes explicit reference to Ofsted in its inspection role of schools<sup>2</sup>. No other authority is provided this role for state-funded schools. In addition, the Department for Education guidance, 'The prevent duty: for schools and childcare providers', refers in turn to Ofsted's inspection framework making:

*"specific reference to the need [for schools] to have safeguarding arrangements to promote pupils' welfare and prevent radicalisation and extremism. The associated handbooks for inspectors set out the expectations for different settings".<sup>3</sup>*

When judging leadership and management in a school, Ofsted's 'School inspection handbook' requires inspectors to consider:

*"the effectiveness of leaders' and governors' work to raise awareness and keep pupils safe from the dangers of abuse, sexual exploitation, radicalisation and extremism and what the staff do when they suspect that pupils are vulnerable to these issues."<sup>4</sup>*

The above sets out Ofsted's inspection role in relation to Prevent. Where leadership and management is concerned, it is for Ofsted to assess the effectiveness of school

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2000/36/section/33>

<sup>2</sup> Paragraph 72:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/445977/3799\\_Revised\\_Prevent\\_Duty\\_Guidance\\_England\\_Wales\\_V2-Interactive.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance_England_Wales_V2-Interactive.pdf)

<sup>3</sup> <https://www.gov.uk/government/publications/protecting-children-from-radicalisation-the-prevent-duty>

<sup>4</sup> School inspection handbook (150066), Ofsted, 2018:

[https://www.gov.uk/government/publications/school-inspection-handbook-from-september-2015\\_](https://www.gov.uk/government/publications/school-inspection-handbook-from-september-2015_)

leadership in raising awareness of and keeping pupils safe from radicalisation and extremism. This language is consistent throughout any official documentation related to Prevent and Ofsted.

For the purposes of this FOI exemption, Ofsted inspection, where it considers the effectiveness of Prevent, is incorporated into the existing inspection arrangements for schools (as other public authorities). As such, this inspection activity also falls within the definition of an 'audit function' as set out in section 33.

In determining whether the exemption applies, the question to be posed is whether the disclosure of inspectors' training on Prevent will harm any of Ofsted's functions, where these are related to its inspection of schools.

These requested training materials are still being delivered by Ofsted. They set out an overview of the Prevent strategy and also provide specific guidance on the steps inspectors should take to examine the effectiveness of Prevent in schools.

The training also includes interactive questions, answers and a notebook (for inspectors to work through their responses to various 'activities'). If these interactive elements were disclosed, and if inspectors saw them before actually undertaking the training, this would defeat the purpose and disrupt the intended learning experience. Likewise, harm would also arise from disclosing the contents of the training, should this lead to information becoming available to inspectors in advance: from sources other than Ofsted, presented in different ways or altered to give it different meaning. These effects would harm Ofsted's inspector training function, which is closely related to its inspection function.

There is also a strong case that disclosure of this information would be likely to directly harm Ofsted's inspection function itself. This training provides details of the specific areas inspectors should check, in particular how to explore a schools approach to safeguarding, radicalism and extremism.

I do appreciate that, without the contents of the training in front of you, you are only able to speculate on what areas it may cover. This training gives inspectors advice on the types of techniques and questioning they should use to help them test the impact of a school's work on the Prevent strategy. When reading the training, it becomes apparent to the reader that making such information publicly available will, for example, create the opportunity for schools or others to prevent inspectors finding out about any such indicators of extremism, radicalisation or safeguarding matters. This is because this training could easily be transformed into a 'checklist' of steps that could be taken to frustrate an inspection. Even if the vast majority of schools take their Prevent responsibilities extremely seriously, some schools, or those linked to schools, can attempt to frustrate inspectors.

I agree with Ofsted's original analysis that disclosing this training information would be likely to harm Ofsted's inspection function and the related function it has to train inspectors.

This review has also considered Ofsted's balance of public interest arguments in light of your own comments. You are concerned that the training may encourage inspectors to 'over-reach' Ofsted's statutory role, by interpreting beyond the non-statutory guidance. In this review I have already outlined the range of published guidance covering Ofsted's role. The availability of such information should be sufficient for members of the public to identify, from the content of inspection reports or inspectors' behaviour, whether or not they have over-reached their role. I have been informed by specialist colleagues that this training is designed to be completely consistent with the published guidance.

Taking your points into consideration, I do believe that the balance of the public interest can favour the disclosure those parts of the training which provide Ofsted inspectors with knowledge of the Prevent Duty. From this the public would be able to see that inspectors are given no scope or encouragement to go beyond what is set out in the published guidance or Ofsted's own understanding of the Prevent Duty.

I have therefore concluded that you should be provided pages 1 to 18 of the training slides delivered to inspectors.

The balance of the public interest would, however, favour withholding those parts of the training which provide inspectors with techniques for observing, questioning and reporting on schools; and also the interactive workbook activities to be undertaken by inspectors during the training. Given the very serious consequences of any failure to counteract extremism and radicalisation, the public interest would firmly support inspectors being able carefully explore these issues during inspection without schools or others being given an opportunity to undermine those inquiries.

### **Section 31 of the FOI Act – law enforcement**

I have also examined Ofsted's use of the exemption at section 31 of the FOI and your comments on this.

My immediate observation, reflected in your own comments, is that this part of Ofsted's response can prove hard to follow and has not definitively linked the exemption to any of Ofsted's existing functions.

I can see, however, that Ofsted does participate in the regulation of independent schools through its inspections. Under part 4 of the Education and Skills Act 2008, the Department for Education may ask Ofsted to inspect an independent school at

any time.<sup>5</sup> Ofsted inspects independent schools under this legislation and reports on the extent to which a school meets the Education (Independent School Standards) Regulations 2014. One of those standards requires that:

*"7. (...) the proprietor ensures that—  
(a) arrangements are made to safeguard and promote the welfare of pupils at the school; and  
(b) such arrangements have regard to any guidance issued by the Secretary of State."*

My understanding is that Ofsted's role with regards to Prevent in independent schools can be incorporated within its inspection of the above standard and also in conjunction with the Secretary of State's guidance on the Prevent Duty.

Section 31 of the Act can be used if disclosure of the requested information:

*31(2)(c) "would be likely to, prejudice (...) the exercise by any public authority of its functions for (...) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise"*

Ofsted's role is to help ascertain whether regulatory action is required, in view of an independent school's failure to meet any of the independent schools standards. This would include any failure to safeguard pupils from extremism or radicalisation.

Above I have outlined why the disclosure of this training information can harm Ofsted's inspection of maintained schools, as some schools could use the information to frustrate inspectors and avoid detection. I believe the same effects would be felt on the process of deciding on regulatory action for independent schools, if specific inspection techniques were disclosed. I would also have a similar view on the balance of the public interest: in that it would favour the disclosure of Ofsted's explanation of the Prevent Duty, but that it would not fall in favour of disclosing the detail of inspector's working practices in this area.

## **The Information Commissioner**

I hope that the information disclosed with this response is useful to you. I hope that this letter further explains why other information has been withheld.

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.

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<sup>5</sup> <https://www.legislation.gov.uk/ukpga/2008/25/part/4/chapter/1/crossheading/inspections-and-reports>

The Information Commissioner can be contacted at:

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

or:

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

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 & Correspondence