

28 February 2020

Dear

Secondary school monitoring inspections – Freedom of Information request

Thank you for your email of 4 February 2020, in which you formally request the following:

1. Copies of the Post Inspection Action Plans for all secondary schools that have been placed in any category of Estyn monitoring from 2015 to 2020.
2. Copies of their Follow-up Estyn monitoring reports

When dealing with requests for information made under the Freedom of Information Act 2000 (the 'Act'), Estyn's obligations include:-

1. Confirming or denying whether it holds information of the description specified in the request; and
2. Communicating the information requested to the applicant.

There are a number of exemptions under the Act that impact these obligations. Estyn is required to consider whether an exemption applies in the context of the information being released into the public domain. Not in the context of the information being released to the particular applicant that has requested the information.

If Estyn releases information in response to a Freedom of Information request, this is essentially a decision that the information can be released in response to any similar request from any member of the public.

In response to your request for copies of Post Inspection Action Plans, I can confirm that these are documents forwarded to us by schools in a statutory category and as such belong to the school. These are shared with us in a draft form for comment, feedback and discussion. They are held on a temporary basis by Estyn and then disposed after a period of six months following the publication of the report in which the school is removed from its follow-up category. I am of the opinion that the submitted action plan documents and associated correspondence and reports

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Mae Estyn yn croesawu gohebiaeth yn Gymraeg a Saesneg. Bydd gohebiaeth a dderbynnir yn y naill iaith neu'r llall yn cael yr un flaenoriaeth. | Estyn welcomes correspondence in both English and Welsh. Correspondence received in either language will be given equal priority.

relating to post-inspection action plans are exempt from release into the public domain under the following sections of the Act.

- Section 33 – Prejudice to audit functions
- Section 40 (2) – Personal Information

Section 33 applies to any public authority which has functions in relation to a) the audit of the accounts of other public authorities or b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

A public authority to which this section applies is exempt of disclosing information if the disclosure of this information would, or would likely to, prejudice the exercise of any of the authority's functions in relation to any matters referred to above.

Estyn, as Her Majesty's Inspectorate for Education and Training in Wales, holds functions in relation to the examination of the economy, efficiency and effectiveness with which other public authorities, namely schools, use their resources in discharging their functions. Therefore, I consider that releasing the information requested would, or would be likely to, prejudice Estyn'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.

Public interest test

Section 33 is a qualified exemption which requires Estyn to consider whether the public interest in releasing the draft action plans received outweighs the public interest in maintaining the exemption.

I have considered the arguments in favour of releasing those post-inspection action plans that Estyn still retains into the public domain and appreciate the importance of Estyn, as a public authority, being open and transparent. However, I consider that the argument in favour of increasing transparency is reduced given the existing substantial volume of information concerning school inspections that following publication of the monitoring report will be made available to the public, and should be viewable on school websites.

In my view the arguments against releasing the post inspection action plans and maintaining the exemption outweigh the arguments in favour of disclosure.

It is also my view that some of the information held within the above request constitutes personal data and therefore falls to be considered under section 40(2) of the FOIA. The exemption contained in section 40 (2) of the Act applies where the information requested contains the personal data of a third party and disclosure of the information would breach one of the data protection principles contained in schedule 1 of the Data Protection Act or would contravene section 10 of the Data Protection Act (where disclosure would be likely to cause damage or distress).

Under section 40(2) of the Act, information which consists of personal data is exempt from release if release of the information, otherwise than under the FOIA, would

contravene any of the data protection principles contained in the Data Protection Act 1998. This exemption is an absolute exemption, which is not subject to the public interest test.

In respect of your second request, regarding the issue of monitoring reports for those schools that have submitted post inspection action plans to Estyn since January 2015, I have concluded that these are not subject to the exemptions as listed above, and are included with this response. Owing to the large number of documents, I am now sending these across a series of emails to the address you have provided.

In those reports dating from 2015 to 2017, these have been redacted slightly to remove the names of inspection team members. This has been carried out in accordance with Section 40(2) FOIA exemption, for the reasons as outlined above.

If you are not satisfied with the decision Estyn has taken regarding your request for information, you are entitled to request that we review the matter. Your request for a review should be addressed to the Feedback and Complaints Manager, and received no later than 20 working days after the date of this communication.

If you are still not satisfied, you also have a right to complain to the Information Commissioner at:

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

Telephone: 0303 123 1113
Email: enquiries@ico.gsi.gov.uk

Yours sincerely

A handwritten signature in black ink that reads "R. Gairey". The signature is written in a cursive style with a large initial 'R' and a long, sweeping tail on the 'y'.

Robert Gairey
FOI case officer