

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 July 2025

Public Authority: Oxford, Cambridge and RSA Examinations
("OCR")

Address: Shaftesbury Road
Cambridge
CB2 8EA

Decision (including any steps ordered)

1. The complainant has requested information relating to texts currently forming part of the syllabus. OCR disclosed the majority of the information but withheld specific information under section 40(2) (personal information).
2. The Commissioner's decision is that OCR has provided the majority of the information requested and was correct to withhold the information it did under section 40(2).
3. The Commissioner require the following steps:
 - If it hasn't already done so, confirm or deny that the specific information referred to within paragraphs 20-22 is held and either disclose it or issue a valid refusal notice.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court

Request and response

5. On 4 January 2025, the complainant wrote to OCR and requested information in the following terms:

"...please treat this as an FOI...Can you please use the latest text that you added and removed to illustrate your answers to the questions below:

1. We asked who translates the DfE subject level conditions into the actual syllabus. What we would like to know now is what local criteria you use to get from the thousands of books that could meet the high level spec/subject conditions into a shortlist, and then the final choice(s). You stated that you just use the GCSE DfE criteria - but for example that says 19th century novels - there are very many of those - what criteria do you use to choose the particular texts that you do? Texts are not just plucked out of thin air. You must take the GCSE criteria set by the DfE and apply local criteria. For the last texts you added, please can you state what those criteria were. We are trying to understand what underpinned the decision making process and the considerations that helped you choose one text over another. There must be some.
2. Can you please state the names of the experts you used for choosing new texts and removing existing ones for the last text changes you made and what their pedigree was. It is implausible that you do not hold this information - OCR needs to be transparent about the process they go through to select texts for their exam lists.
3. We asked you previously "what do you routinely monitor in respect of exam outcomes with respect to gender balance in the curriculum content on the list, and the choices schools are making (e.g. at a macro level even if not at an individual identifiable school level)?" Your answer to this question did not actually answer our question. Please answer this question. If the answer is nothing then please state that.
4. We also asked as a supplementary to that "If you monitor this and found imbalances, what action was taken to address this?". Please also answer this now.
5. You previously stated that the review after each exam series will cover a number of reasons why a text should be retained or replaced, including balance of the entire list, the degree to which candidates answered questions on the text, the performance of questions and the amount of material in the text that can still be assessed at the appropriate level of complexity. Why then do you

keep texts on the list that less than 1% of students answer, for example Meera Syal's Anita and Me? And conversely why do you keep An Inspector calls on the list - how many years has that text been offered by OCR and surely given the number of years it has been there, you will be struggling find enough material in the text that can still be assessed at the appropriate level of complexity? your answers seem contradictory and we do not understand based on your response why you have not changed some of your existing texts.

6. Why is the gender balance of the texts you offer not 50:50? (Group A in 2024-25 4 male and 2 female authors - you replaced one female author for another recently but did not change the overall gender balance, and the same for Group B 4 male, 2 female).
 7. Could you send us your equality policy please or what you work to, from the perspective of equality of the texts you choose, or the nearest equivalent."
6. OCR responded on 31 January 2025. It provided answers to questions 1 and 3 – 7. It withheld the names being requested at question 2 under section 40(2).
 7. The complainant requested an internal review on 24 March 2025. They disputed the application of section 40(2) and asked a significant number of follow up questions.
 8. OCR provided the outcome to its internal review on 12 June 2025; its final position was:
 - It explained that it didn't hold much of the information the complainant was asking for, in recorded form;
 - It upheld its use of section 40(2);
 - It explained it had treated some of the follow up questions as a new request for information, including the complainant's question about how long 'An Inspector Calls' had been on the syllabus.

Scope of the case

9. The complainant contacted the Commissioner on 22 June 2025 to complain about the way their request for information had been handled. Their concerns are:
 - OCR has failed to provide much of the requested information which they raised when requesting their internal review;
 - There is still information outstanding, including but not limited to information relating to 'An Inspector Calls' as per question 5. This is touched upon below and also at the end of the decision, in the 'other matters' section;
 - They disputed the application of section 40(2).
10. The Commissioner considers that the scope of his investigation is to consider how OCR has handled this request.

Reasons for decision

Section 1 – general right of access to information

Section 8 – request for information

11. The complainant has explained to the Commissioner that 'OCR did not answer many of the questions answered.'
12. The Commissioner has looked at the request, and the response that OCR provided, and is satisfied that it has provided the majority of the information being requested, bar one example which the Commissioner will come onto later.
13. In response to the request, OCR explained what criteria it used to pick texts for its syllabus. It explains how it monitors the texts included and when it might need to take action to review the texts upon feedback. It addressed the complainant's concerns about the gender balance of the texts and explained that, rather than having a specific equality policy in relation to texts, its equality, inclusion, diversity and belonging considerations are embedded in its processes.
14. The Commissioner notes that OCR provided ample contextual information, in response to each question, to help explain its answers. This has led to the complainant asking further questions as part of their internal review and the Commissioner has provided some examples below:

- “For example OCR used to have Of Mice and Men on their set text list but removed it when the requirement was for only British authors. In what was this text, with its racism and misogyny, without a single named female character, and the stereotyping and victim blaming of Curley’ wife, considered appropriate?
- With respect to the choice you made to introduce the text Leave Taking by Winsome Pinnock, your answer provided does not shed enough light on how you applied the above set of criteria. Please illustrate the process through your choice of this text.
- How did Jane Eyre even make it on the list given the book length and the planning burden involved?
- So when you added your latest new text, you did not choose to address that major imbalance in representation. This omission is stark. Please explain how you apply your representation criteria because ESIS (End Sexism in Schools) is struggling to see how this is applied to white women, and your claim that representation is a factor does not seem therefore to follow through.”

15. In response, OCR explained that:

“Your questions focus on the criteria applied by OCR when selecting set texts for its syllabuses. You feel that these criteria are “too vague”. You have therefore asked OCR to be more specific about these criteria and how they are applied, with a focus in relation to some questions on how the criteria are applied in practice to address imbalances in the representation of women or people of colour.

... some of the questions seem to assume that OCR follows a pre-defined flow chart when making decisions on set texts or that it applies a set of quantitative criteria, for example, in relation to matters such as the extent to which women are represented in certain books or have authored these books...given the broad range of criteria which have to be taken into account when selecting books (these being criteria which will no doubt vary over time both in terms of their weight and number), it is not possible to reduce the decision-making process to a set of fixed steps.”

16. It confirmed to the complainant that the further information they’re requesting isn’t held and it’s not obliged to create it in response to FOIA.
17. The Commissioner concurs. FOIA is a vehicle to request official, recorded information. It’s not a means by which individuals can ask public authorities to justify their decisions or express dissatisfaction with these decisions. A public authority doesn’t need to create information, or write down information that might be in someone’s head, to fulfil an FOI request.

18. For a request to be valid, it must clearly describe the information being requested. Whilst questions can represent valid requests for information under FOIA, OCR has explained to the complainant that it doesn't hold a specific criteria, and therefore, official recorded information, for every text on its syllabus. Furthermore, the Commissioner notes that some of the complainant's original questions in their original request don't represent valid requests under FOIA. They don't clearly describe what information is being sought; they just express dissatisfaction with OCR's actions. However, OCR has endeavoured to assist anyway.
19. The complainant is asking OCR to justify its inclusion, or exclusion, of certain texts but OCR has confirmed how it makes these decisions in general and that's the extent of the information it holds relating to the matter.
20. However, the Commissioner notes the complainant requested specific information in question 5, specifically how many years 'An Inspector Calls' has been on the syllabus. Whilst OCR confirmed in its response that the text was 'very longstanding', it has failed to confirm exactly how many years as per the request, or whether it even holds this information. The Commissioner imagines this information will be likely be held by OCR.
21. Even if this isn't the case, OCR erroneously confirmed to the complainant, in its internal review outcome, that it would be treating this specific question as a new request. However, it was wrong to do so since this query was clearly outlined in the complainant's original request.
22. With this in mind, the Commissioner has ordered the step in paragraph 3, which is, if it hasn't already done so, OCR must confirm or deny that the specific information is held and either disclose it or issue a valid refusal notice.
23. In relation to the rest of the information being requested, which represent valid requests for information, the Commissioner considers OCR has provided it.
24. OCR was correct to handle the request under FOIA, because the complainant specifically requested information under the act. However, in the Commissioner's opinion, the complainant's concerns would be better dealt with through any internal complaints procedure because much of their request represents a complaint, rather than a valid FOI request.

Section 40(2) – personal information

25. This part of the Commissioner's analysis concerns section 40(2), further details of which can be found below:

[Decision notice support materials | ICO, section 40\(2\)](#)

26. OCR is withholding the names of the experts requested at question 2, under section 40(2). An individual's name and their qualifications are clearly their personal data.
27. The complainant is concerned:
- "It is not credible to claim use of experts if they and you are not willing to state who they are, and what their qualification and claim to expertise is, so this is transparent for the general public to see and judge. This is especially so, given that you are an exam board providing a public service."
28. In order to decide whether disclosure of this personal data would be lawful, the Commissioner considers the following three part test:
- i. Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii. Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii. Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.
29. There's a legitimate interest here. The complainant wants to understand how texts are chosen for inclusion on the syllabus and the complainant wants to ensure considerations around female authors, and non-white authors, are being taken into account. This is a valid legitimate interest to have.
30. Next, the Commissioner must decide whether disclosure of the personal data is necessary to meet the legitimate interest in question or if there is an alternative method of doing so. 'Necessary' means more than desirable but less than indispensable or absolute necessity.
31. In this instance, the Commissioner has considered whether disclosure of the personal data is necessary. The decision to add, or remove, a text from the syllabus lies in the criteria OCR has described. However, as previously noted, it's a 'complex process' and not formulaic. To a certain extent then, it depends on how the expert in question makes their decision.

32. OCR has given the complainant extensive contextual and explanatory information about this criteria in response to this request. The Commissioner doesn't believe that disclosing the names or qualifications of the experts in question will help the complainant substantially more than the information OCR has given them about the decision making process. However, he does acknowledge the complainant's concern that the experts employed all represent white men.
33. The Commissioner does think that disclosure is necessary in this instance. It will show **who** is making these decisions, and from that the complainant can draw their own conclusions about unconscious bias and a wider discussion around the suitability of those experts can be had. So he's gone on to consider the balancing test.
34. OCR has confirmed:

"These individuals are not in public facing roles, with no expectation that their names would be placed in the public domain."
35. This information isn't already in the public domain, or known to some individuals. Not only does the Commissioner agree that disclosure would be against the reasonable expectations of the experts, but he is also concerned that disclosure may cause them distress, should complaints about the curriculum be directed to them individually rather than OCR.
36. OCR has assured the complainant:

"However, we can say that the work is undertaken by a combination of in-house subject specialists, assessment experts and qualification designers along with external developers, reviewers and our EDIB Advisory Panel who have experience in the classroom and in setting or marking GCSE assessments. Senior managers review this to ensure it meets the needs of schools and colleges and their students, along with the DfE GCSE criteria."
37. In the Commissioner's opinion, OCR has given enough information to assure the complainant that it takes their concerns about representation seriously, without disclosing to the world at large the personal data of its employees. If the complainant has specific concerns they can continue to raise this matter with OCR, they don't need the identity, or qualifications, of the experts to do so.
38. So, the Commissioner believes that there's insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there's no Article 6 basis for processing and so disclosing the information wouldn't be lawful. Since disclosure would be unlawful, the Commissioner doesn't need to go on to consider separately whether disclosure would be fair or transparent.

39. The Commissioner has decided that OCR was entitled to withhold the experts personal data under section 40(2).

Procedural matters

40. Section 1 of FOIA states:

"(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

41. Section 10 of FOIA states:

"(1)...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

42. Section 17 of FOIA states:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

43. The Commissioner has identified OCR's failing to address one specific point of the request, relating to the text 'An Inspector Calls.' In failing to confirm whether it holds the information and either disclose it or issue a valid refusal notice explaining why this information is exempt, within the statutory timeframe, the Commissioner has found procedural breaches of section 1, 10 and 17.

Other matters

44. The scope of a request can't be changed once submitted, even at internal review stage. The complainant's original request for information didn't ask any specific questions about 'A Christmas Carol' or request a copy of the customers' survey that the OCR appears to have withheld at a later stage under section 43(2).
45. If the complainant has any concerns that this information, or any further requests that they added at internal review stage, remain outstanding, they should raise it with the Commissioner as a new complaint¹ once OCR's internal review procedure has been exhausted, or is delayed. However, the Commissioner would urge the complainant to consider whether FOIA is the best route to pursue their concerns.

¹ [FOI and EIR complaints | ICO](#)

Right of appeal

46. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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