

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 May 2025

Public Authority: Office of Qualifications and Examinations Regulation (Ofqual)

Address: 1 Friargate
Station Square
Coventry CV1 2GN

Decision (including any steps ordered)

1. The Commissioner's decision is that Ofqual isn't entitled to rely on section 31(3) of FOIA to refuse to confirm or deny it holds the requested information about two awarding bodies. The section 31 exemption concerns law enforcement.
2. The Commissioner requires Ofqual to take the following steps to ensure compliance with the legislation:
 - Confirm or deny to the complainant whether it holds any information within the scope of their request. If any information is held, Ofqual must disclose it or issue a refusal notice that complies with section 17 of FOIA.
3. Ofqual 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

4. The complainant made the following information request to Ofqual on 6 December 2024:

"... I would therefore like to see the notification that [redacted] submitted to Ofqual concerning substantial errors or issues with their braille Geography GCSE papers from the summer 2024 exam series, that they think could have had an effect on students.

I would also like to see the notification that [redacted] submitted to Ofqual concerning substantial errors or issues with their braille Physics, Biology and Chemistry GCSE papers from the summer 2024 exam series, that they think could have had an effect on students.

I would also like to see the notification that [redacted] submitted to Ofqual concerning substantial errors or issues with their braille Biology A Level papers from the summer 2024 exam series, that they think could have had an effect on students.

According to the above information from Ofqual, the notifications submitted by [redacted] and [redacted] should include: The nature and potential impact of the incident(s); What [redacted]/[redacted] proposed to do to mitigate this to protect students; [redacted]/[redacted's] analysis of the causes of the events, and how they propose to prevent reoccurrence."

5. Ofqual provided a refusal notice on 18 December 2024. It refused to confirm or deny it held any relevant information under section 31(3) of FOIA.
6. Ofqual maintained this position following its internal review dated 17 January 2025.

Reasons for decision

7. This reasoning covers Ofqual's reliance on regulation 31(3) of FOIA to refuse the request.
8. Under section 1(1)(a) of FOIA, a public authority must confirm whether it holds information an applicant has requested – this is known as 'the duty to confirm or deny.'
9. However, under section 31(3), a public authority can refuse to confirm or deny it holds any relevant information if do so would, or would be likely to, prejudice any of the matters mentioned in section 31(1).
10. Under section 31(1)(g) of FOIA – cited by Ofqual in its correspondence to the complainant - information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the exercise by any

public authority of its functions for any of the purposes specified in subsection (2).

11. The purpose referred to under section 31(2)(c) – which, again, Ofqual cited – is the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
12. In its correspondence to the complainant, Ofqual advised that it is concerned with regulating qualifications in England. Under the Apprenticeship Skills Children and Learning Act 2009 (ASCL 2009) it has the function (amongst others) of monitoring awarding organisations' compliance with its conditions of recognition.
13. Ofqual said that it requires awarding organisations to notify it promptly of events where a breach of its rules has occurred or where they become aware that there is a risk of a breach occurring. Ofqual also said that it relies on, and encourages, awarding organisations to engage with it early and to supply information voluntarily as one of several ways that it can investigate and assess issues falling within its regulatory remit. Once an awarding organisation has supplied information, Ofqual said, it relies on Ofqual's ability to investigate matters confidentially and to take appropriate action.
14. Ofqual went on to confirm that it considered that confirming or denying it held the requested information in this case would be likely to prejudice its ability to regulate effectively and to take any action against those organisations failing to comply with its General Conditions of Recognition.
15. It said that in its view, if it were to deny holding information in some cases and neither confirm nor deny in others, then a pattern would emerge from which it would be possible to deduce the circumstances in which Ofqual does hold such information. It is inadvertently releasing information in this way that Ofqual considers would undermine its ability to discharge its regulatory functions properly.
16. Ofqual noted that it has statutory powers to compel awarding organisations to disclose information. But, it said, its regulatory activity is more effective and efficient when regulated awarding organisations are co-operative and proactive in sharing information with the regulator, including self-reported breaches. Potentially notifiable breaches are reported and managed confidentially, away from the public gaze. Ofqual explained that this helps to promote openness, and to build trust and engagement with awarding organisations.

17. Ofqual advised that if it were to confirm or deny that information was held, it would be likely to discourage awarding organisations from properly engaging with it and voluntarily self-reporting breaches in the future, for fear of disclosure to world at large. Ofqual considered that this would be likely to damage its ability to gather evidence and monitor awarding organisations' compliance with its rules, and to pursue any further appropriate regulatory action.

The Commissioner's conclusion

18. First, the Commissioner is satisfied that the prejudice that Ofqual envisions relates to the interests that the section 31 exemption protects, namely Ofqual's ability to be an effective regulator.
19. The Commissioner has gone on to consider whether Ofqual has demonstrated that a causal relationship exists between confirming whether the requested information is held and the prejudice it envisions.
20. The request in this case concerns notifications sent to Ofqual; it isn't for information about any subsequent action Ofqual may have taken as a result of a notification.
21. Given that exam papers are usually sat around May and June, at the point the request was responded to in December, Ofqual would have had six months in which to consider whether any action was appropriate. If Ofqual were to confirm it held related information (and it may confirm that it doesn't), this would only reveal that a notification had been made, not what it contained.
22. Notification to Ofqual is mandatory, not optional. The Commissioner is therefore sceptical that awarding organisations would suddenly stop notifying Ofqual if Ofqual were to confirm or deny it held relevant information in this case.
23. By way of comparison, the Commissioner's usual practice is to confirm when an organisation has self-reported a personal data breach – unless doing so might compromise an ongoing investigation or reveal personal information – though he wouldn't reveal any further detail about what had occurred or why.
24. 2The Commissioner doesn't consider that a compelling causal link between confirmation or denial and prejudice to Ofqual has been established. He has therefore decided that Ofqual incorrectly relied on section 31(3) of FOIA to neither confirm nor deny it holds the information the complainant has requested. Because section 31(3) isn't engaged, it's not necessary to consider the public interest test.

Right of appeal

25. 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)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF