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17 August 2018

Mr Jim Butterworth
Sent via email:

Our reference: CAS-406860-B65F60

request-501609-fddc5e61@whatdotheyknow.com

Dear Mr Butterworth

Your request for information

Thank you for your email dated 26 July 2018 in which you have requested the number of Ofsted reports that make specific comment on the mandatory requirement¹, relating to swimming, at Key Stage 1 and Key Stage 2; along with a list of those reports.

The Freedom of Information Act

We have dealt with your request in accordance with the Freedom of Information (FOI) Act 2000. The Act is primarily concerned with the disclosure of information to the public, it does not take into account who the requester is or the reasons for why the information is being requested.

Normally, the first requirement of the Act is that we should confirm whether or not we hold information of the description set out in your request. We are then under a duty to provide you with all the information we hold which falls within the scope of your request, provided it is not 'exempt' information.

However in this case we consider that to comply with your request, by confirming whether or not we hold the information you have requested, would exceed the appropriate limits set out under section 12 of the FOI Act.

Under section 12(1) of the FOI Act a public authority, such as Ofsted, is not obliged to comply with a request if the cost of doing so would exceed the 'appropriate limit'. The limit set for government departments is £600 per request or set of related requests. This figure equates to one staff member working for 24 hours at the hourly rate of £25.

¹ <https://www.gov.uk/government/publications/national-curriculum-in-england-physical-education-programmes-of-study/national-curriculum-in-england-physical-education-programmes-of-study>

Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

It may be useful for me to explain that inspectors check to see that schools are providing a broad and balanced curriculum, including participation in physical education and sport. This may include the school's swimming provision. Inspectors make a judgement on the personal development, behaviour and welfare of pupils by evaluating the extent to which the school is successfully promoting and supporting pupils' knowledge of how to keep themselves healthy, both emotionally and physically, including through exercising. In primary schools, inspectors will also look at how effectively leaders use the primary PE and sport premium and measure its impact on outcomes for pupils, and how effectively governors hold them to account for this.

Ofsted does not check that schools are meeting each statutory requirement individually. Instead, inspectors look to get a rounded view of a school as a whole. If there are concerns that a school is not meeting its statutory requirements, the inspector would investigate this further and report on it where it is found to be an issue.

Ofsted does not record information in a manner that would assist us in responding to your request. As explained above, Ofsted's inspection reports provide an overview of the quality of education in a school; they do not report on the compliance of individual statutory requirements, neither does Ofsted hold a database that records whether a school is meeting each of its statutory requirements. For Ofsted to be able to ascertain the numbers of reports that make mention to whether this requirement has been met would require a manual search of each individual published report.

To provide some context, we have conducted a keyword search of almost 25,000 published reports, from 2013 to date, to see whether or not they contain the words 'swim' or 'swimming'. Of these, less than 10% of published reports contain these specific words. Having looked at a random sample of these reports the majority of them only refer to the activity in wider commentary about the school. For example:

- "Swimming and music are among the many varied activities available to pupils"
- "Leaders and staff promote health and fitness frequently. [...] Pupils access many different sports and physical exercise, including regular swimming lessons, rugby tournaments and dodgeball competitions."

- "Pupils say that they enjoy the opportunities to swim weekly throughout the year in the school pool."
- "The specific funding for sports is having a positive impact on pupils' swimming and the range of clubs and competitions that are available for pupils. A specialist coach supports pupils to extend their skills and knowledge in sport."
- "The school's curriculum enables pupils to develop a wide range of skills. A high proportion of pupils learn to play a musical instrument and all pupils leave the school in Year 6 able to swim."

We consider that to carry out the necessary analysis of the reports, we have identified that contain these words, would exceed the 24 hours provided under the Act. Furthermore the exercise is unlikely to give a definitive answer to the number of reports that may mention compliance with the statutory requirement as the wording used to describe it may differ. Consequently we are content that the work required to comply with your request would exceed the appropriate limits set out under section 12 and we will not be making a disclosure in response to it.

Normally, when considering the use of the exemption at section 12, a public authority is required to provide advice and assistance² to a requester to help them revise their request to bring it within the appropriate limits. In this case we do not believe it is possible to do this. As we have explained we do not report on compliance of individual statutory requirements and as such there is no set wording or statement that we can searched against. Any review would require an extensive manual search of many thousands of reports which we believe would exceed the limits set out under section 12.

I understand that this response may be disappointing to you however I trust that this letter clearly explains our position. If you have any queries about our response, please contact me at 0300 013 1287 and I will do my best to address them.

Alternatively, if you are dissatisfied with our response or the handling of your request, you may request a formal internal review. In order to do this, please write to the following address, setting out which areas of the response you are unhappy with:

Email: Richard McGowan at informationrequest@ofsted.gov.uk or write to:

Head of Information Rights and Correspondence
Ofsted
2 Rivergate
Templequay
Bristol
BS1 6EH

² Section 16 of The Freedom of Information Act 2000

If you are not content with the outcome of the internal review, you also have the right to apply to the Information Commissioner for a decision as to whether or not we have complied with our obligations under the FOI Act with respect to your request. 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 "Alastair O'Neill", written over a horizontal line.

Alastair O'Neill
Information Access Officer
Information Rights and Access Team