

Handling and retention of inspection evidence

This publication was archived on 23 July 2015

Ofsted's policy for the handling and retention of inspection evidence with effect from 1 January 2010.

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Royal Exchange Buildings
St Ann's Square
Manchester
M2 7LA

T: 0300 123 1231
Textphone: 0161 618 8524
E: enquiries@ofsted.gov.uk
W: www.ofsted.gov.uk

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Retention of evidence

1. Ofsted reviewed its policy for the retention of inspection evidence during the autumn of 2009 and made changes with effect from 1 January 2010.
2. It was agreed that some types of evidence would move to a three year minimum retention period with effect from 1 January 2010. This standard three year period now applies for the inspection of local authorities and also to settings where children are more vulnerable than normal, for example where they are away from home in a children's home or other residential setting including in boarding provision. The main types of work this applies to are:
 - boarding provision in schools
 - children's homes, secure training centres, and so on
 - adoption and fostering services and agencies
 - residential family centres
 - social care registration and enforcement work
 - serious case reviews
 - children's services assessment
 - any other social care inspections.

In addition the following types of evidence will also be retained for a minimum three years:

- inspections which are of a very sensitive nature, or likely to be of national or regional importance due to high levels of political or press interest (to be agreed at director level)
- information needing to be retained for the duration of a registration or to ensure that disqualified individuals do not seek to re-register at a later date.

For other types of evidence, a minimum six-month retention period was introduced with effect from 1 April 2010.

The following table summarises the retention periods for each of Ofsted's remits.

Remit	Director responsible	Agreed retention period	Rationale for retention period
Regulation record in registered settings	Education and care and social care	Duration of registration plus three years or indefinitely (subject to periodic review) if registration has been cancelled or disqualified	The compliance record for registered settings is kept for duration of registration

Remit	Director responsible	Agreed retention period	Rationale for retention period
Maintained schools section 5	Education and care	Six months	Mainly local interest only. High proportion of personal data
Maintained schools section 8	Education and care	Six months	Mainly local interest only. High proportion of personal data
Service Children's Education	Education and care	Six months	Mainly local interest only. High proportion of personal data
Independent schools (162a)	Education and care	Six months	Mainly local interest only. High proportion of personal data. Destroyed at end of period unless child protection issues ¹
Social care boarding regulations and welfare (including integrated)	Education and care (policy), social care (framework)	Three years	Mainly local interest only. High proportion of personal data. Destroyed at end of period (except for condition as with independent schools)
Monitoring independent inspectorates	Education and care	Six months	Mainly local interest only. High proportion of personal data
Early Years Foundation Stage: maintained schools and parallel inspection events	Education and care	Six months	Mainly local interest only. High proportion of personal data
Early Years Foundation Stage: independent schools	Education and care	Six months	Mainly local interest only. High proportion of personal data

¹ This condition would apply to emergency inspections following on from ISA referrals.

Remit	Director responsible	Agreed retention period	Rationale for retention period
Early Years Foundation Stage: childcare, childminding and non-domestic premises	Education and care	Six months (no change)	Processes are linked to 6 month period – costly to amend. Mainly local interest only. High proportion of personal data. History of compliance failure is retained for 7 years
Early years/childcare registration and enforcement	Education and care	Six months (no change)	Processes are linked to six-month period – costly to amend. Mainly local interest only. High proportion of personal data. Registration data can be retained indefinitely. History of compliance failure is retained for seven years
Children’s Centres	Education and care	Six months	Mainly local interest only. High proportion of personal data
Initial teacher education	Learning and skills	Six months	
Further education teacher training	Learning and skills	Six months	
Judicial services	Learning and skills	Six months	Standard period for learning and skills
Secure children’s homes	Social care	Three years	Highly vulnerable children Some data may be retained for a longer period Where an integrated inspection, material relating to education need not be retained

Remit	Director responsible	Agreed retention period	Rationale for retention period
Secure children's homes and secure training centres (regulation)	Social care	Three years	Highly vulnerable children. Some data may be retained for a longer period. Where an integrated inspection, material relating to education need not be retained
Cafcass	Social care	Six months hand written notes	May contain personal data
		3 years for the electronic record of evidence	Standard period for social care inspections
Adult and community learning	Learning and skills	Six months	Standard period for learning and skills
Ministry of Defence	Learning and skills	Six months	Standard period for learning and skills
Department for Work and Pensions	Learning and skills	Six months	Standard period for learning and skills
Further education colleges	Learning and skills	Six months	Standard period for learning and skills
Work-based learning	Learning and skills	Six months	Standard period for learning and skills
Work on behalf of Border and Immigration Agency	Learning and skills	Six months	
Further education independent specialist colleges	Learning and skills	Six months	Standard period for learning and skills
		Three years for welfare evidence	
Learndirect	Learning and skills	Six months	Standard period for learning and skills
Nextstep	Learning and skills	Six months	Standard period for learning and skills

Remit	Director responsible	Agreed retention period	Rationale for retention period
Adoption agencies (local authority and voluntary)	Social care	Three years	Relates to children's services. Regional or national interest. Vulnerable children
Residential family centres	Social care	Three years	Relates to children's services. Regional or national interest. Vulnerable children
Private fostering arrangements	Social care	Three years	Relates to children's services and other providers. Regional or national interest. Vulnerable children
Social care, independent fostering agency	Social care	Three years	Relates to children's services and other providers. Regional or national interest. Vulnerable children
Adoption and Children Act 2002 and Adoption Support Agencies Regs 2005 (Regulation)	Social care	Three years	Relates to children's services. Regional or national interest. Vulnerable children
Social care registration and enforcement framework	Social care	Three years except where exceptions apply elsewhere and for registration	Relates to children's services. Regional or national interest. Vulnerable children. Registration data can be retained indefinitely
Residential special schools	Social care and education and care	Six months for education, 3 years for welfare aspects	
Childcare not requiring compulsory registration (regulation)	Education and care	Six months	Processes are linked to six-month period – costly to amend. Mainly local interest only. High proportion of personal data

Remit	Director responsible	Agreed retention period	Rationale for retention period
Independent fostering agencies with local authorities (regulation)	Social care	Three years	Relates to children's services. Regional or national interest. Vulnerable children
Inspection of local authority fostering services	Social care	Three years	Relates to children's services. Regional or national interest. Vulnerable children
Children's homes	Social care	Three years	Highly vulnerable children. Some data may be retained for a longer period. Where an integrated inspection, material relating to education need not be retained beyond six months
Serious case reviews	Social care	Three years	Relates to children's services. Regional or national interest
Full inspections of safeguarding and looked after children	Social care	Three years	Request by Select Committee. Relates to children's services. Regional or national interest
Unannounced inspections	Social care	Three years	Relates to children's services. Regional or national interest
Children's services assessment	Education and care	Three years	Request by Select Committee. Relates to Children's services. Regional or national interest. Little personal data involved
Surveys	Strategy	Six months after publication	Evidence is destroyed six months after publication of report

Complaints, appeals and court proceedings

- Irrespective of any specified retention periods in the disposal schedule, in any case where a complaint has been made, there is an appeal to the first tier tribunal or other court proceedings are brought, information must retained until

the complaint process or legal proceedings are completed and for an additional six months.

Retention of draft reports

4. Inspectors working on a report will often write a number of versions of a report as they build up to their final, considered version. It is not necessary to retain all such unfinished versions and these can be deleted as work towards the final report continues. However, when reports are subject to editing, moderation and quality assurance, they may be subject to alteration by third parties; in these cases, the successive versions of the report should be retained for the duration of the normal notice period. Draft versions are liable to disclosure under Freedom of Information, just as is any other documentation unless covered by exemptions.

Management of evidence

5. Inspectors must not keep hard or electronic versions of inspection and regulation material in any unauthorised place.
6. The Ofsted Information Assurance Policy states:

Please minimise the risk of data being read by non-Ofsted employees at home by:
 - keeping paper information stored at home to a minimum
 - only printing documents where needed and shredding sensitive documents once used
 - storing protectively marked documents securely in a filing cabinet when not in use.
7. Any material about an inspection or regulatory visit is potentially part of the evidence base except for that which is purely administrative, for example where inspectors are arranging when to meet each other. Therefore inspectors should not keep paper copies of any material relating to inspections at home unless this is required for an inspection they are currently working on, or has previously been authorised and is kept in a locked place.
8. Any materials such as rough notes, can still be classified as inspection evidence, so should normally be returned with the evidence base to the correct place for storage; if it merely duplicates what is held elsewhere, it can be destroyed when no longer required.
9. All inspection evidence should normally be written up using the correct evidence forms or toolkit. If there is anything additional, such as photocopied sheets given to the inspector by the provider, they should be included with the evidence base – preferably attached to an evidence form.

Disclosure of evidence under the Freedom of Information Act and Data Protection Act

10. Ofsted will share some types of information with other bodies where it has a duty to cooperate.
11. Ofsted cooperates fully with its duties under the Data Protection Act and the Freedom of Information Act. We are committed to ensure that all inspection and regulation guidance is published on our public website and updated through our four regular guidance publications.
12. Ofsted must comply with a request made under the Freedom of Information Act promptly, and in any event, not later than twenty working days following the date of receipt of the request. The exceptions are where a fees notice has been issued or where Ofsted considers applying a 'qualified' exemption if it requires additional time to consider specific public interest arguments.² Ofsted is not obliged to comply with a request for information if it estimates that the cost of complying would exceed £600.³ There is also no obligation for Ofsted to comply with a request if it is vexatious (for example it is a repeated request or an example of manifestly obsessive behaviour on the part of the applicant)⁴ or if it is readily available elsewhere.
13. Ofsted has a duty to provide advice and assistance, so far as it would be reasonable to expect Ofsted to do so, to persons who propose to make, or have made, requests for information to it.⁵ Where there is the possibility of a qualified exemption, we will consider the public interest in deciding whether to disclose the information or not.
14. In law Ofsted may refuse to comply with a request for information on the basis that the information is exempt information. Information may be considered exempt if:
 - it is accessible by other means (for example, published inspection guidance) (section 21)
 - it is information which we intend to publish, for example an inspection report that is still 'in process' (section 22)
 - any information held at any time by Ofsted for the purposes of investigating whether a person should be charged with an offence or if criminal proceedings should be instituted is exempt information;⁶ and similarly

² Freedom of Information Act 2000, section 10.

³ Section 12 and regulation 3 of Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, SI 2004/3244.

⁴ Freedom of Information Act 2000, section 14.

⁵ Freedom of Information Act 2000, section 16.

⁶ Freedom of Information Act 2000, section 30(1).

regarding investigations of failure to comply with the law, improper conduct, possible regulatory action, fitness of a person in a regulated activity, investigations of accidents or health and safety risks, and it relates to the obtaining of information from confidential sources (sections 30 and 31)

- information held in respect of tribunal or court hearings (section 32)
- information is exempt if its disclosure would, or is likely to, prejudice the exercise of Ofsted's audit functions in relation to the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions. Ofsted holds that it is essential for individuals to be able to engage with us in a free and frank exchange of views in order to ensure well informed inspection, and the disclosure of such information would impede our ability to inspect⁷ (it would also prejudice that person's chances of being able to demonstrate capacity to improve). This exemption cannot be used in relation to the inspection of private provision such as independent schools or private childcare, as well as Children and Family Court Advisory and Support Service (Cafcass) and initial teacher education (section 33)
- if the information disclosed would be prejudicial to the conduct of public affairs (section 36)
- information is exempt if its disclosure would, or would be likely to, endanger the physical or mental health of any individual, or endanger the safety of any individual (section 38)
- if the information constitutes the personal data⁸ of third parties, and its disclosure would contravene the Data Protection Act, in particular the data protection principles, or if the person to whom it relates would not have a right to know about it or a right of access to it under that Act (section 40 (2))
- information is exempt if it was obtained by Ofsted from another person and the disclosure of the information to the public by Ofsted would constitute an actionable breach of confidence (section 41 exemption)
- information is exempt if it is covered by legal professional privilege (section 42).

15. Certain types of information, either accessed or gathered as part of an inspection or regulatory visit, may be classified as **personal data** under the

⁷ For example, college senior leaders or school headteachers should be able to engage in a rigorous discussion about the strengths and weaknesses of teaching in order to demonstrate that they have the capacity to improve. If, because of the risk of publication by others, they could not do so, this would prejudice their own interests but also impede Ofsted's ability to carry out its audit functions efficiently.

⁸ Personal data is information which relates to a living individual who can be identified from that information or from that information and other information which is in the possession of, or likely to come into the possession of, Ofsted (section 1 of Data Protection Act 1998).

Data Protection Act and therefore will not be disclosed except to the person whose personal data it is⁹ unless the disclosure complies with the data protection principles in the Act. Examples of circumstances in which the personal data may be disclosed to other parties include if it is necessary for the exercise of our functions, if required by order of a court, or if the data subject provides their consent. Material that we classify as personal data includes:

- evidence relating to the direct observation of an individual, for example a lesson observation. Here it is possible to identify a person from extraneous details of such observations or via other information that is available
- the personal opinions and commentary of any individual, either written or as the result of a 1:1 interview. Such material includes evaluative comment from self-evaluation forms shared with Ofsted, opinions expressed during 1:1 interviews with inspectors, and opinions expressed on individual questionnaire forms
- any material where children and young people aged under 18 have been interviewed by inspectors either individually or in a group
- any material that enables the identification of an individual, for example a child or a teaching assistant.

Sharing of observation evidence with those observed and senior managers in learning and skills and school inspections

16. Ofsted inspectors will endeavour to promote improvement through the sharing of their evaluations of observed practice with individuals wherever appropriate. However, in the observation of case management work in social care (for example Cafcass) inspections, this may not be appropriate.
17. Feedback on the quality of teaching and learning is an integral and essential part of both learning and skills and schools inspection. Guidance directs inspectors to provide clear feedback following formal observations.^{10,11} In school inspections this is expected for any observation of 20 minutes or more and in learning and skills this is for any formal observations of teaching, training or assessment activities.
18. In both remits guidance states that the feedback will include a summary of the strengths and areas for improvement. In addition in learning and skills the

⁹ There may be circumstances when the personal data is not disclosed to the person to whom it relates under the Act. For example, if its disclosure would prejudice the prevention or detection of crime (section 29) or if the disclosure would prejudice the proper discharge of our functions for protecting children against risk to health or safety (section 31).

¹⁰ *Handbook for the inspection of further education and skills from September 2009* page 69, Ofsted, 2009; www.ofsted.gov.uk/publications/090105.

¹¹ *Conducting school inspections: guidance for inspecting schools in England under section 5 of the Education Act 2005, from September 2009* paragraph 73, Ofsted, 2009; www.ofsted.gov.uk/publications/090097.

feedback will include the grade awarded and in schools the grades for the quality of teaching, learning and any others which are considered pertinent.

19. The Handbook for the Inspection of Further Education and Skills from September 2009 states 'The provider will receive overall feedback on the quality of teaching, training and assessment; however, the lead inspector will not produce a profile of the grades awarded' (paragraph 69). However this is not precluded in school's guidance. Paragraph 43 directs inspectors to inform the headteacher where any inadequate teaching has been seen or where outstanding practice has been observed.

In addition paragraph 74 of *Conducting School Inspections* states:

Inspectors may feed back their general findings to:

- small groups of staff following a series of short visits
 - key senior staff, for example the head of a key stage and/or senior staff with responsibility for professional development
 - subject leaders, for example specialist subject leaders in secondary schools and foundation subject leaders and/or core subject leaders in primary schools.
20. Inspection evidence does not form a methodical assessment of any individual's ability or professional expertise. Observations normally only cover part of a session and may focus on a particular issue, such as the use of assessment, rather than being a summary of an individual lesson or session. It is good practice to ensure the headteacher is made aware of the fact that any Ofsted evidence about lesson or session observations, whether joint or otherwise, is therefore not suitable for use as evidence in competence or disciplinary proceedings.

Confidential evidence given during an inspection

21. The concept of 'confidential information' in the context of legislation is often misunderstood. In the case of Freedom of Information processes, 'an actionable breach of confidence' is said to mean that Ofsted would be successfully sued if it disclosed this information to the public.
22. In establishing whether a breach of confidence has occurred, the following test applies:
- the information has the necessary quality of confidence
 - the circumstances in which the information was communicated imposed a duty of confidence
 - there was an unauthorised use of the information.

23. Factors which would be taken into account in this situation are:
- whether the information was trivial or already widely-known
 - whether promises were made as to how it would be used
 - the reasonable expectations of the confider
 - whether use of the information could cause detriment to the confider or another party
 - whether there is a clear 'public interest' in disclosing the information.
24. Because this is not always fully understood, it is important for inspectors to ensure that individuals who they meet in private discussions are aware of the position. Guidance should therefore indicate that:
- inspectors should explain to interviewees, at the earliest opportunity, that if they regard personal opinions and information as confidential they need to make this clear and that general material may be disclosed under the Freedom of Information Act. Where they do so, material will then be treated in confidence as far as possible and the record of evidence should clearly indicate where interviewees have specifically asked for confidentiality as an added safeguard. Where comments are made, every endeavour will be made to protect the identity of the individual who made them
 - inspectors should make clear that there may be circumstances in which it may not be possible to guarantee that the identity of the interviewee will remain anonymous. The most likely scenario would be where other factors would make it easy for third parties to narrow down which individual made a particular statement
 - inspectors have a duty to pass on disclosures which raise child protection or safeguarding issues, or circumstances where serious misconduct or potential criminal activity are involved. Inspectors should therefore make clear that it may not be possible to guarantee confidentiality if an interviewee raises such an issue that inspectors are obliged to act on.

Disclosures made after an inspection, or after the publication of a report

25. Occasionally information comes to light following the publication of an inspection report that might raise doubts about the security of the inspection. In most cases this information will come to light as a result of correspondence or a complaint to Ofsted.

If the information is received within 30 days after the publication of the report

26. Ofsted's working definition of a complaint is:

'any expression of dissatisfaction in relation to our actions that needs a response'.

27. Any information received within 30 calendar days from the date of publication of the report that might raise doubts about the validity of the inspection should be investigated under this definition since it calls into account the judgement of the inspection. If the complaint is upheld Ofsted will make a decision regarding amending the published report. This might include changes to the report, withdrawal of the report or in some cases a reinspection.

If the information is received more than 30 days after the publication of the report

28. It is unlikely that information would be received more than 30 days after the publication of the report. However, in these cases an exception to the 30-day limit is applied for complaints that raise doubt about the security of the inspection and are dealt with in the same way as complaints, as outlined above.