



National Audit Office

The UK's independent public spending
watchdog

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Reference FOI-1632

Date 26th July 2023

SCHOOLS WITH THE HIGHEST LEVEL OF CONIDITION NEED

Thank you for your request of 30th June 2023 for information about the schools with the highest level of condition need from the Condition Data Collection programme collected by the Department for Education (DfE).

Your request is being handled under the terms of the Freedom of Information Act 2000 (FOIA). After reviewing our records, I can confirm that we partially hold the information within the scope of your request. We hold the names of the 22 schools considered to have the highest level of condition need and which were eligible to apply for the DfE's Condition Improvement Fund between 2016-17 and 2022-23 but which did not apply. We do not hold details on the reasons why each of these were considered to have the highest level of condition need.

The FOIA provides a legal right of access to recorded information held by a public authority, but it is subject to certain exemptions that may apply. Whilst we hold information within the scope of your request, having reviewed it, we consider this to be exempt from disclosure under section 33 – Public Audit function of the FOIA. Your original request has been reproduced below in **Annex A** for your reference. **Annex B** explains further details of the Section 33 - Audit exemption, how this applies to your request and our consideration of the public interest test.

Annex C sets out the steps you may wish to take if you are not satisfied with the way we have handled your request for information under the FOIA.

I am sorry not to be able to share the information with you and I hope you find this response helpful. DfE are the owners of the information you have requested and while we will respond to information requests and associated queries, we believe DfE are much better placed to do so. Details of how to do this can be found here: [Contact the Department for Education - Contact type - DfE Online Forms](#).

Yours sincerely,

NAO FOI Team

157-197 Buckingham Palace Road, Victoria, London SW1W 9SP
020 7798 7000 www.nao.org.uk



Cert No. 8835

ISO 14001

Annex A

Your original request for information about schools with the highest level of condition need

(Your request is in italic below)

- *The names of the 22 schools considered to have the highest level of condition need by the Condition Data Collection programme that have not lodged a single application to the DfE's Condition Improvement Fund between 2016-17 and 2022-23. This is referred to on page 40 of the NAO's recent condition of school buildings report, which can be seen here <https://www.nao.org.uk/reports/condition-of-school-buildings/#downloads>*
- *The reasons why each of the 22 schools were considered to have the highest level of condition need by the Condition Data Collection programme*

Annex B

This annex sets out the exemption we have applied to your request.

Section 33 Freedom of Information Act 2000 – Public Audit

Section 33 of the FOIA provides that:

(1) This section 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.

(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

Reasons why we have applied the Section 33 exemption:

We have applied the Section 33 exemption to the information we hold in scope of your request and which we are withholding from release, which are the details you requested about the 22 schools considered to have the highest level of condition need and which were eligible to apply for the DfE's Condition Improvement Fund between 2016-17 and 2022-23. This data was provided to us by DfE for the purposes of our audit and it was highlighted at the time that it was highly sensitive and should not be released to anyone.

Where an audited body raises reasonable concerns about the disclosure of their information, then we consider the implications for the future conduct of our public audit functions should we release it. The audit process is enhanced significantly by audited bodies or third-party entities responding promptly to information requests and/or volunteering information to support a constructive, timely and effective audit. The disclosure by NAO of sensitive information beyond that required for audit reporting purposes and in the face of representations against such disclosure would impair the provision of audit information in the future – it would reduce, if not cut off, critical information flows. It would incentivise DfE and other audited bodies to take a minimalist approach to NAO information requests or, in the case of bodies whose engagement is optional, serve to discourage such information sharing altogether.

Audited bodies regularly challenge the extent of the NAO's access rights and seek to place conditions around meeting information requests. Such issues consume time and resources as we work them through. The disclosure of this sensitive information would encourage DfE and other audited bodies to approach our audit work in this way going forwards.

An effective, efficient audit is supported through an open and constructive approach between the NAO and the audited body. As such it is critically important that we have a safe space to gather information and knowledge and can engage in a free and frank way with audited bodies. The release of this information would remove this safe space - precipitating a backdrop of increased challenge and procedure around requests for audit information. This would require the NAO to formally assert our statutory access rights more frequently and potentially seek to enforce them, leading to significant delay, escalation of issues and increased audit costs.

Section 17(3) of the Budget Responsibility and National Audit Act 2011 places a duty on the C&AG to “aim to carry out functions effectively and cost effectively”. Given the above factors, we consider that our disclosure of the information requested would be at odds with this statutory requirement – it would serve to undermine the effectiveness and increase the cost of the C&AG’s public audit functions.

For the reasons set out above, we consider it appropriate to apply the public audit exemption available under Section 33(2) of the FOIA.

Reasons why the public interest in maintaining the exclusion outweighs the public interest in disclosing the information in this case:

The NAO is independent of government and scrutinises public spending on behalf of Parliament. Our work serves the public interest by helping Parliament hold government to account, providing transparency on matters of public interest and driving improvement in the use of public resources.

We recognise that there is a public interest in knowing that the use of public money is subject to appropriate levels of accountability and transparency, delivered through an effective audit function. We consider that disclosure of sensitive audit evidence supplied to the NAO by departments and other public bodies in pursuit of our statutory functions and beyond that published in our reports would impair the audit process for the reasons set out above. Bodies and officials would be reluctant to engage with us, which would delay and diminish the audit process.

The NAO’s work puts information into the public domain and helps Parliament hold government to account. In our view, the balance of public interest rests with the NAO being able to deliver an effective and efficient public audit function and report our findings to the public.

Given the negative impact that would result from disclosure, we consider it appropriate to maintain the Section 33 public audit exemption in this instance.

Annex C

Statement of Policy

Our policy is to respond to requests made under the Freedom of Information Act 2000 as helpfully and promptly as possible, having regard to the principles set out in the Act. I therefore hope you are happy with the way we have handled your request. If you are not, then you should take the following steps.

In the first instance, within 40 working days, write to the National Audit Office Freedom of Information (FOI) Team at FOI.requests@nao.org.uk or by post to:

FOI Team, Green 2, National Audit Office, 157-197 Buckingham Palace Road, London, SW1W 9SP.

The Head of FOI will arrange a review, which will be conducted by a senior member of staff who was not involved in decisions relating to your original request. Once the review has been completed, we will write informing you of the outcome. If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The primary way of escalating your concerns to the Information Commissioner is at: www.ico.org.uk/foicomplaints. Alternatively, you can contact the ICO at [Contact us | ICO](#) or Information Commissioner’s Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF.