

The Information Commissioner's response to the consultation on the Common Inspection Framework 2012

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIR) and the Privacy and Electronic Communications Regulations. He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner's Office (ICO) welcomes the opportunity to comment on the consultation. As many of the specific consultation questions relate to areas outside the ICO's remit, this response relates only to the proposal on page 15 of the consultation document to establish a secure web-based system for gathering the views of learners, employers and parents/carers between inspections, and possible data protection implications of this.

Whilst it is possible that many of the comments about particular providers input into the website by learners, employers and parents may not contain any personal data as defined by the Data Protection Act 1998 (DPA98), it is equally likely that some of the comments will – comments about a specific named teacher or pupil, for example. In addition, if the identity of the learner, employer or parent is also captured by the system then the comments they input, as their personal opinion, will also constitute their personal data.

Any personal data processed by the system must be treated by Ofsted, as data controller, in accordance with the DPA98. As a starting point compliance with the data protection principles (DPA98, Schedule 1, Part 1) is vital. Of these, particularly important to consider is the requirement to give fair processing information to learners, employers or parents at the point of system input so that they are made aware of what Ofsted intends to do with their personal data. Data should be processed only for the purposes for which it is collected. Reasonable steps should be taken to ensure that any personal data processed is accurate. Retention is another important consideration – personal data must not be kept for longer than is necessary for the purposes for which it was collected. After this point it should be securely destroyed or deleted – or appropriately anonymised so the individual is no longer identifiable. Consideration should be given to data subjects' rights under the DPA98, in that if Ofsted will be holding

personal data in the system then they will be required to consider subject access requests from, for example, learners, parents and teachers.

Especially important to consider is the seventh principle requirement to take "appropriate technical and organisational measures... against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data". The ICO is pleased to see that Ofsted intends the system to be secure. Sufficient technical security should be in place in the online system, to ensure that any personal data transmitted electronically is adequately protected, for example encryption to prevent unauthorised access while the data is being transferred to Ofsted's servers. If any of the processing is carried out by third party website contractors it is important to ensure they are fully aware of their responsibilities in ensuring that personal data is held and transmitted securely – and this should be reflected in appropriate contracts between the parties. Regular checks should be carried out on the website to ensure it remains secure and that any potential weaknesses are identified.

November 2011