

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2011

Public Authority: The Department for Education
Address: Sanctuary Buildings
Great Smith Street
Westminster
London SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested a copy of a specific Serious Case Review. The Department for Education explained that it would be publishing the Serious Case Review in the future and withheld the information under section 22 (information intended for future publication).
2. The Commissioner's decision is that the Department for Education has applied section 22 appropriately.

Request and response

3. On 26 January 2011, the complainant wrote to the department for Education (the "DfE") and requested information in the following terms:

'Under the terms of the FOI Act I would like a copy of the Serious Case Review (SCR) into the Edlington case involving the two brothers who committed an attack on two other children in April 2009. I would expect the SCR to be suitably redacted along the lines of the SCR into the Baby P case published last year. If public interest issues come up during the consideration of this request, I would be grateful if the comments of the Prime Minister on January 25 last year were taken into account. David Cameron made clear his belief the report should be published and said: "There is a sense at the moment that it is a sort of establishment stitch-up where all the people who have taken part in this issue are not named, they are not having to take proper

responsibility, the public isn't able to see what has gone wrong and the pressure isn't there to put it right."

4. The DfE responded on 21 February 2011. It stated that it was withholding the information under section 22 (information for future publication).
5. Following an internal review the DfE wrote to the complainant on 21 June 2011. It stated that it was upholding its decision to withhold the information under section 22.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular he complained about the length of time the DfE took to handle his request and that the DfE has not published the requested Serious Case Review ("SCR") even though it stated that this was the intention at the time of his request.
7. The Commissioner has considered the length of time taken to deal with the request and the DfE's application of section 22.

Background

8. On 10 June 2010 the Government announced its commitment to ensuring that the overview reports and executive summaries of all new SCRs initiated on or after 10 June should be published, unless there were compelling reasons relating to the welfare of any children directly concerned in the case for this not to happen. Both the overview report and executive summary should be anonymised, with identifying details removed. Amended statutory guidance was issued to Directors of Children's Services and Local Safeguarding Children Board Chairs reflecting this.
9. The Government also confirmed its intention to publish, suitably redacted and anonymised, the two SCR overview reports on the Baby P case and the SCR overview reports on the three high profile cases in Edlington, Kirklees and Birmingham unless there were compelling reasons relating to the welfare of any children directly concerned in the case for this not to happen.
10. In publishing SCRs the Government's stated aim is to restore public confidence and improve transparency in the child protection system and to ensure the context in which the events occurred is properly

understood so relevant lessons are learned and applied as widely as possible.

Reasons for decision

Exemption

11. Section 22(1) of FOIA states that -

Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

12. As section 22 is a qualified exemption it is subject to the public interest.

13. The Commissioner has considered whether the section 22 exemption is engaged. He considered whether the requested information was held by the DfE with a view to publishing it at some future date, whether the date has been determined or not. He also notes the complainant's argument that the issues surrounding the intention to publish at the time of the request should be looked at. Further, the complainant argued that simply announcing that there was an intention to publish was not enough to engage section 22.

14. In this case the Commissioner notes that the Government had stated that certain SCRs (including this one) should be published. He also notes that the DfE confirmed that at the time of the request its intention was to publish the SCR, although it did not provide a date.

15. The Commissioner notes the complainant's argument that simply announcing an intention to publish and then not doing so within a reasonable length of time, is not the way section 22 should be used.

16. Generally speaking the Commissioner accepts that when a public authority applies section 22 and has not provided a date for publication, it is reasonable to expect that the information in question should be

published reasonably soon afterwards. If this is not going to be the case, the Commissioner considers that it is reasonable for a complainant to be given an indication of when the information will be disclosed.

17. However, in this case the Commissioner accepts that it was the DfE's intention to publish the SCR at the time of the request. He also accepts that it was reasonable at the time of the request to withhold the information until various issues had been resolved. It follows that a precise date for publication could not have been given at the time of the request.
18. In all the circumstances, the Commissioner is therefore satisfied that the section 22 exemption is engaged.

Public interest arguments in favour of disclosing the requested information

19. The complainant argued that it is unacceptable that given that the intention to publish SCRs was announced in a press notice dated 10 June 2010 this particular SCR had not been published yet. He pointed out that 2 SCRs regarding Baby P had been published four and half months after the June 2010 announcement.
20. The complainant pointed to a statement made by the Prime Minister, David Cameron, on 25 January 2011 about the Edlington SCR:

'There is a sense at the moment that it is a sort of establishment stitch-up where all the people who have taken part in this issue are not named, they are not having to take proper responsibility, the public isn't able to see what has gone wrong and the pressure isn't there to put it right.'

21. The complainant also argued that there were no differences between the Baby P SCR and the Edlington SCR and therefore the Edlington SCR should be disclosed now as it was in the public interest.
22. He also explained that the DfE had already acknowledged that disclosure was in the public interest.

Public interest arguments in favour of maintaining the exemption

23. The DfE argued that at the time of the complainant's request it applied section 22 because there was an intention to publish the SCR in question.
24. The DfE acknowledged that there is a public interest in openness, transparency and making information available on request. However, it argued that there is also a public interest in the publication of

information as a planned activity within the control of public authorities in order to support the effective conduct of public affairs.

25. The DfE also pointed to the press notice of 10 June 2010 which acknowledged that from 10 June onwards both the overview report and the executive summaries of SCRs were to be published in an anonymised form, withholding identifying details, unless there were compelling reasons relating to the welfare of any children directly concerned in the case, for this not to happen.
26. In its refusal notice to the complainant the DfE explained that it had taken account of the steps that were needed in order to ensure that the right balance was struck between transparency and openness and the protection and welfare of individuals.
27. It also explained that an explanation of this process had been included in the published SCRs about Baby P. The process includes considering the welfare of children involved in the case and the redaction of any personal or sensitive personal data including clinically confidential information that had not been published and which would not be justified as necessary or relevant, bearing in mind the overall purpose of publishing the overview reports. (see appendix 1 for full list of the considerations in the process).

Balance of the public interest arguments

28. The Commissioner has considered all of the public interest arguments. He accepts that there should be transparency in the way a public authority deals with sensitive issues such as SCRs. The Commissioner notes that the present Government ordered that 5 specific SCRs including the Edlington SCR were to be published.
29. He also accepts that there is now an expectation that they should be published unless there are compelling reasons related to the welfare of any children directly concerned in the case.
30. Further the Commissioner notes the complainant's comments about there being no differences between this SCR and the SCR concerning the tragic case of baby P. However it is the Commissioner's view that there are significant relevant differences between the two cases: Baby P died and therefore in terms of his being identified, there were no issues. Furthermore the perpetrators were adults, their names were in the public domain and a court case followed.
31. However in the Edlington case the Commissioner notes that all of the children involved are alive and therefore he accepts that there are concerns regarding their identities. Further he notes that the

perpetrators are children and there is little information about them in the public domain.

32. The Commissioner notes that the DfE explained to the complainant that there was a process to be followed when considering SCRs.
33. In the circumstances of this particular case, the Commissioner accepts that at the time of the request although it was the DfE's intention to publish the SCR in question, there were ongoing issues with regards to the case and this remains the position. For example in July 2011 there was a meeting in Doncaster, in which the DfE was involved at a senior level, about issues relating to the publication of the report and the welfare of the various children.
34. Given that there are ongoing issues surrounding the children involved, it is the Commissioner's view that in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing it.
35. Further details of the rationale for the Commissioner's decision can be found in the confidential annex which he is issuing to the public authority at this stage only due to its specific references to the content of the withheld information.

Other matters

36. The Commissioner notes that the complainant requested an internal review on 5 March 2011 but the DfE did not confirm it had carried out an internal review until 21 June 2011. Although the Act does not specify how long a public authority should take to carry out an internal review, the Commissioner considers it should take no longer 20 working days.

Right of appeal

37. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1

Steps taken in redacting the SCR:

- consider the welfare of children involved in the case;
- compare the executive summary already in the public domain, with the overview report; no information that is included in the executive summary has been redacted;
- consider the extent to which information in the overview report is capable of being used to identify living individuals whose identity is not already common knowledge;
- consider whether information that is by its nature sensitive personal data under the Data Protection Act 1998 (for example, because it is information about a person's physical or mental health or condition, his / her sexual life, or the commission or alleged commission by him / her of an offence) is likely to have already been made public (for example, as part of criminal proceedings) and whether its inclusion in the reports is necessary to give a complete picture of events.
- redact personal data or information which would breach reporting restrictions imposed by the Court; and
- redact any personal or sensitive personal data, including clinically confidential information, that has not already been published and which cannot be justified as necessary or relevant, bearing in mind the overall purpose of publishing the overview report.