

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 December 2020

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

#### Decision (including any steps ordered)

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1. The complainant has requested a copy of the 'Academy Concern Reports' archive from 1 January 2019. The Department for Education (DfE/'the department') has withheld the information under FOIA sections 30(1) (investigations and proceedings) and 31(1)(g)(law enforcement), sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) (effective conduct of public affairs), section 40 (personal data), section 41 (information provided in confidence) and section 42 (legal professional privilege). Where an exemption is a qualified exemption DfE considers the public interest test favours maintaining that exemption.
2. The Commissioner's decision is as follows:
  - The information that DfE is withholding is exempt information under section 30(1)(a), section 31(1)(g), section 36(2)(b)(i), section 36(2)(b)(ii) and section 36(2)(c) of the FOIA. The public interest favours maintaining these exemptions.
3. The Commissioner does not require DfE to take any remedial steps.

#### Background and context

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4. DfE has provided the following background and context. The department's Academy Concerns Reports are important, internal

monthly reports on academies where the department has concerns about areas such as financial management and or governance. This includes: deficit funding, trusts' projected and actual deficits, closure, governance arrangements, fraud/irregularity cases and safeguarding concerns.

5. These reports also contain monthly overviews of all the academy cases causing the most serious concerns. The entries in these reports are about those academies, including multi-academy trusts, where the department has existing or emerging serious concerns, and are risk assessed as 'Red Plus' or 'Red'. The department uses these reports as part of its assessment of the risk about financial concerns, possible financial irregularities, or governance and compliance concerns about the operation of the trust, within the terms of their Funding Agreement.
6. The reports and annexes set out: all the relevant concerns, the history of the case, sensitive details of discussions with trusts, the proposed next steps for each case, the latest on ongoing investigations, which can include criminal investigations, information about 'whistle-blowers', and ministers' views.
7. Those marked as 'Red Plus' risk level cases are those with multiple financial/ governance concerns and/or where closure is being considered. Transfer of academies or withdrawal of the Funding Agreement are the likely remedial outcomes if such cases cannot be resolved. 'Red' risk level cases are those that require long term, serious intervention, to manage the department's concerns, in line with an agreed action plan.
8. The department does not publish the Academy Concerns Reports, as these are intended for internal use only, given the level of detailed and sensitive information they contain. The reports and annexes provide the main form of evidence to support, and record, all formal intervention and risk management the department undertook with academy trusts. The withheld information is also core documents that the department uses to provide monthly updates to ministers on high profile cases, and to support submissions to ministers.
9. The department has a public facing mechanism for highlighting concerns, which is the issuing of a Financial Notice to Improve (FNTIs). These are used in cases where the department has investigated the issues raised, found them to be substantiated, and has immediate concerns about a trust, and formal intervention and action is required.
10. These notices state the underlying financial and governance concerns that the trust needs to address and the conditions that the trust must meet to resolve them before the notice will be lifted.

11. To further meet its commitment to transparency, the department's Education and Skills Funding Agency's (ESFA), publishes reports when a school has appeared on the Academy Concerns Report, has been investigated, and has subsequently closed. The department publishes a range of other reports as part of its policy for greater transparency, such as Academy Investigation Reports, FNTIs and Academies Financial Management and Governance Reviews.

## **Request and response**

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12. On 9 July 2019 the complainant wrote to DfE and requested information in the following terms:

"Please provide a copy of the Academy concerns report archive from 1<sup>st</sup> January to date..."

13. DfE responded on 21 October 2019. It withheld the information the complainant has requested under sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the FOIA and confirmed that it considered the public interest favoured maintaining these exemptions.
14. Following an internal review, the DfE wrote to the complainant on 22 January 2020. It upheld its position with regard to the section 36 exemptions and advised at this point that it also considered the exemptions under section 40 and 41 apply. DfE directed the complainant to where information of some relevance to his request is published.
15. In its submission to the Commissioner, DfE has advised that it considers that section 30(1), section 31(1)(g) and section 42(1) of the FOIA are also engaged.

## **Scope of the case**

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16. The complainant contacted the Commissioner on 4 February 2020 to complain about the way his request for information had been handled. The complainant agreed to remove from the scope of his complaint DfE's reliance on section 40(2) of the FOIA to withhold third person personal data.
17. Given the spread of matters discussed across the withheld information the Commissioner has considered whether the exemptions under section 30(1), section 31(1)(g), section 36(2)(b)(i) and (b)(ii) and section 36(2)(c) are engaged, and the associated public interest test. If

necessary, she has also been prepared to consider DfE's reliance on the section 41(1) and section 42(1) exemptions.

## Reasons for decision

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### Section 30 – investigations and proceedings

18. DfE has confirmed that it has applied section 30(1)(a) to information it is withholding. Under this section, information held by a public authority is exempt information if it has at any time been held for the purpose of any investigation which the public authority has a duty to conduct with a view to it being ascertained (i) whether a person should be charged with an offence; or (ii) whether a person charged with an offence is guilty of it.
19. DfE has explained in its submission that academies are registered charities. DfE has an obligation, under its Memorandum of Understanding (MOU) with the Charity Commission, to undertake investigations where allegations are made against academies, in areas including safeguarding and possible financial misconduct.
20. The MOU specifies that the Secretary of State is the 'Principle Regulator in England' for a number of charities, including academy trusts, under Schedule 3 of the Charities Act 2011 (the 'Act').
21. As part of this the department has to investigate allegations made against academies and their trusts, to achieve its compliance objective as the Principal Regulator, as outlined in paragraphs 21 of the MOU:

*"Principle Regulators have a 'compliance objective', which is to do all they reasonably can to promote compliance by the trustees of the charities for which they are responsible with their legal obligations in exercising control and management of the administration of their charity (section 26 of the Act). If they identify a concern about a charity, they may invite the Commission to use its powers of investigation and intervention under the Act. This does not affect the use of the Principle Regulator of its own regulatory powers."*
22. DfE has provided the Commissioner with a sample of the Academy Concern Reports it is withholding. It has discussed one example in one of the reports when DfE has investigated particular allegations. The Commissioner has reviewed that example but, in the circumstances, does not intend to reproduce it in this notice.

23. DfE says that, in parallel to this, investigations are also often driven by its role as a provider of government funding, so safeguarding the use of the 'public purse'.
24. The Commissioner also notes that in its section 31 submission, which is discussed below, DfE advises that the withheld reports and annexes outline incidents including criminal investigations that are at the consideration stage and criminal investigations currently being taken forward by police. The information also discusses proposed next steps in relation to potential and actual criminal investigations. Such matters are actually of particular relevance to section 30 of the FOIA.
25. DfE goes on to argue that withholding the information protects the space in which it can share intelligence about police investigations. It considers that releasing it would be very likely to deter the police from sharing such information in the future. This would negatively impact the department having the 'full picture' when it comes to such cases.
26. DfE has told the Commissioner that it considers that there are clear examples to support this throughout the withheld information, where actual and potential criminal investigations are mentioned. DfE has discussed one such example that is included in one of the reports. The Commissioner has reviewed that example but, again, in the circumstances, does not intend to reproduce it in this notice.

### *Conclusion*

27. Having considered the nature of the information being withheld, the Commissioner is satisfied that it includes information that DfE holds and has held for the purpose of carrying out criminal investigations as described under section 30(1)(a)(i) or (ii). That information therefore engages the section 30(1) exemption. The Commissioner has gone on to consider the public interest test.

### **Public interest test**

#### *Arguments in favour of disclosing the information*

28. In his complaint to the Commissioner the complainant argued that there is a very strong public interest case across all the exemptions DfE had relied on in its correspondence to him. This is the importance of understanding how concerns about academies are highlighted and raised in the department. The complainant considers it is also important to know if any serious concerns raised have not led to corrective action. In the complainant's view, this strongly outweighs the public interest in withholding the information.

29. For its part, DfE accepts that releasing the information could enhance scrutiny of its decision-making and investigative processes and improve how transparent and accountable it is.
30. DfE has also said that it accepts that there is a strong public interest in effectively investigating allegations, such as those made about misuse of public funds and safeguarding.

*Arguments in favour of maintaining the exemption*

31. DfE argues that it is essential that it can include the type of information in these reports for consideration, without fear of this making its way into the public domain. If it were to do so, DfE believes it would significantly hinder its ability to investigate allegations made, and to resolve them efficiently.
32. DfE is currently undertaking ongoing investigations - including actual and potential criminal investigations - into a number of academies/academy trusts named within the withheld reports and releasing such information could jeopardise any investigations – now and in the future.
33. DfE considers that these reports need to remain confidential to ensure they are handled sensitively and in the strictest confidence. This is so that it can make informed decisions with other officials and ministers, without the threat of this information becoming public.
34. Should the department have to disclose this information, it would be likely, in DfE's view, to inhibit the effectiveness of future investigations into serious and potentially criminal allegations. It is also likely to have a negative impact on the schools named. This is because the information withheld under this exemption could influence the opinions of both current and prospective parents. Those parents may lose confidence in the school and may decide against sending their children to the school. Investigations and actions should not be influenced by external pressures arising from relevant information being released to the public.
35. Finally, the department says that it considers that the paramount public interest lies in ensuring that academies are run efficiently and effectively. Academies should use public funding in line with the Academies Financial Handbook, in order to provide an excellent standard of education to their pupils in a safe environment. Where allegations are raised, it is important that officials are able to establish all the relevant information about allegations made and make appropriate decisions confidentially. This is so that the education of the pupils at such academies is not unnecessarily disrupted.

*Balance of the public interest*

36. The Commissioner does not consider that the complainant's argument is a strong one. In the absence of any evidence to the contrary, the Commissioner considers that the public can be confident in the general process by which concerns about academies are identified and managed.
37. The Commissioner is satisfied that there is significantly more public interest in DfE being able to investigate concerns about academies – including concerns of a potentially criminal nature - effectively and efficiently, with minimum disruption to students, parents and the academies themselves. This is particularly so in this case when investigations in the reports were still recent at the time of the request or were and are still ongoing. As such the Commissioner finds that the public interest favoured maintaining the section 30(1)(a) exemption.

**Section 31 – law enforcement**

38. DfE has confirmed that it has also applied section 31(1)(g) of the FOIA to information it is withholding, by virtue of sections 31(2)(a) and 31(2)(c). DfE has advised that it has an obligation, and an expectation from parliament and the public, to make sure that academies use public funding in an appropriate manner, and that all safeguarding issues raised are investigated, assessed, and acted upon appropriately. The department therefore considers that information in the reports about criminal investigations being considered by the department or the police is relevant to sections 31(2)(a) and 31(2)(c). As noted, it is section 30 of the FOIA that is more relevant to criminal investigations. However, the Commissioner has considered DfE's reliance on section 31 in terms of a more general prejudice to its functions, such as safeguarding children and protecting public funding.
39. Section 31(1)(g) says that information which is not exempt information by virtue of section 30 is exempt information if its disclosure would, or would be likely to prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2). The purpose under section 31(2)(a) is the purpose of ascertaining whether any person has failed to comply with the law. The purpose under section 31(2)(c) is the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
40. DfE has confirmed that it is relying on the lower level of prejudice for both limbs of section 31 cited – that this "would be likely to" follow disclosure of the withheld information.



41. In its submission, DfE has noted that in her published guidance on section 31 the Commissioner advises that the application of section 31(2)(a) relates to:

“The importance of the relevant public authority having the power to make a formal decision to take some action.”

42. Discussing its application of 31(2)(a), DfE says that, given its obligations, it continues to believe that releasing the reports and annexes would be likely to prejudice its ability to exercise its cited functions. This is because the reports and annexes outline incidents including criminal investigations that are at the consideration stage and criminal investigations currently being taken forward by police. They also include proposed next steps in potential or actual criminal investigations or proceedings. That particular point has been noted above, in the section 30 analysis.
43. However, DfE says such instances are highlighted throughout the withheld information, where the department acted on concerns brought to its attention, which were subsequently recorded within the withheld information. If this information were to be disclosed it could prejudice DfE’s ability to investigate current or future concerns. Disclosure would also prejudice its ability to consider whether legal action would be appropriate, to safeguard pupils and staff and to protect public funding.
44. Release could also lead to officials modifying or being less candid in their future recommendations/next steps and advice to senior officials and ministers within these reports, if release of such information was a possibility.
45. DfE has discussed one example of candid advice being given, that is included in one of the reports. The Commissioner has reviewed that example but, in the circumstances, does not intend to reproduce it in this notice.
46. DfE argues that it is essential that its officials are allowed to have this safe space to clearly communicate and share internally any such action being proposed or taken. This is so that the department can, as in this instance, carry out its obligations to safeguard public funding and seek criminal investigations as and when appropriate. Withholding this information also protects the space in which it can share intelligence about police investigations. To release would be very likely to deter the police from sharing such information in the future. This would negatively impact the department having the ‘full picture’ when it comes to such cases.



47. To put this safe space where agencies share intelligence at risk, may result in criminal activity going unnoticed or taking longer than necessary for such allegations to be raised, assessed, and investigated as appropriate. Such delays have the potential to have a significant negative impact on public funding or safeguarding pupils and staff in the sector.
48. This safe space also ensures that where any allegations are subsequently proven to be unfounded, there is no detrimental impact on any individuals, academies or trusts mentioned, or on the relationship between the department and specific schools. Protecting this allows cooperative relationships to prosper in the future. It prevents any unnecessary personal or professional harm to any individuals, trusts or academies, where allegations made turn out to be unfounded.
49. In its submission, DfE has gone on to note that in her published guidance on section 31 the Commissioner advises that the application of section 31(2)(c) relates to:

“...ascertaining whether circumstances exist which would justify regulatory action in pursuance of any enactment exist or may arise, any person has failed to comply with the law.”
50. DfE says that investigations can, and do, progress from preliminary fact-finding investigations, to ascertain the validity of allegations made and concerns raised, to actual criminal proceedings. As such, releasing such information would be likely to have an impact on how candid officials are in the future when advising senior officials and ministers on proposed investigations and criminal proceedings. Potentially such advice would become diluted or more guarded. Clearly, this would be likely to have a prejudicial effect on the department being able to put forward plans to ascertain whether circumstances exist, that would justify any regulatory and/or legal action.
51. The concerns raised are about matters such as financial irregularities, fraud and safeguarding. To prevent the department from being able to execute appropriate plans to investigate whether these allegations are legitimate in a fast and effective manner, cannot be in the public interest.
52. The Commissioner notes that DfE considers that prejudice would be likely to occur, rather than would occur. ‘Would’ occur places a stronger evidential burden on a public authority.

### *Conclusion*

53. Having considered the nature of the information being withheld, the Commissioner is satisfied that disclosing the information would be likely

to prejudice the exercise by DfE of its functions: to ascertain whether any person has failed to comply with the law and to ascertain whether circumstances which would justify regulatory action in pursuance of any enactment, such as the Charities Act. The Commissioner therefore finds that the information engages the section 31(1)(g) exemption. The Commissioner has gone on to consider the public interest test.

### **Public interest test**

#### *Arguments in favour of disclosing the information*

54. The Commissioner has noted the complainant's and DfE's arguments for disclosure, above.

#### *Arguments in favour of maintaining the exemption*

55. DfE argues that disclosing the withheld information has the potential to prejudice any regulatory or legal action it takes. It could also prejudice possible discussions between the department and key stakeholders, including the police and the Charity Commission.
56. There is a strong public interest in effectively investigating a number of the academies and trusts listed in the withheld information. This is because the allegations raised are about serious issues including alleged financial irregularities, fraud and safeguarding concerns. As such the reports are about the use of public funding and pupil and staff safety.
57. DfE says it also highly likely to be detrimental to its relationship with the schools listed, should this information be released. If such schools and key partners, including the police, feel that confidential and sensitive information about potential or actual investigations could be released into the public domain, they are less likely to cooperate when working with the department in the future. Such restrictions and any associated delays in resolving issues could not be in the public interest, nor that of the pupils at these schools.

#### *Balance of the public interest*

58. As above, the Commissioner does not consider that the complainant's argument is a strong one. In the absence of any evidence to the contrary, the Commissioner considers that the public can be confident in the general process by which concerns about academies are identified and managed.
59. The Commissioner is satisfied that there is significantly more public interest in DfE being able to exercise its functions in respect of academies effectively and efficiently. That is, ascertaining whether any person has failed to comply with the law and ascertaining whether

circumstances which would justify regulatory action exist or may arise. The Commissioner has again taken account of the timing of the request and that the reports and the matters discussed in them were recent or ongoing at that time. As such the Commissioner finds that the public interest favoured maintaining the section 31(1)(g) exemption.

### **Section 36(2)(b)(i) – inhibit the free and frank provision of advice**

60. DfE has confirmed that it has applied section 36(2)(b)(i) to information it is withholding. Under this section, information held by a public authority is exempt information if, in the reasonable opinion of a qualified person, disclosing the information would, or would be likely to, inhibit the free and frank provision of advice.
61. Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised, qualified person for that public authority. The qualified person's opinion must also be a "reasonable" opinion, and the Commissioner may decide that the section 36 exemption has not been properly applied if she finds that the opinion given is not reasonable.
62. Other than for information held by Parliament, section 36 is a qualified exemption. This means that even if the qualified person considers that disclosure would cause harm, or would be likely to cause harm, the public interest must still be considered.
63. To determine, first, whether DfE correctly applied the exemption under section 36(2)(b)(i), the Commissioner must consider the qualified person's opinion as well as the reasoning that informed the opinion. Therefore, in order to establish that the exemption has been applied correctly the Commissioner must:
  - ascertain who was the qualified person or persons
  - establish that an opinion was given by the qualified person
  - ascertain when the opinion was given; and
  - consider whether the opinion was reasonable.
64. In this case, the qualified person (QP) was Lord Agnew, at that time the Parliamentary Under Secretary of State for the School System. The Commissioner is satisfied that, in line with section 36(5) of the FOIA, it was appropriate for Lord Agnew to act as the QP.
65. For the second of the above criteria, the DfE provided the Commissioner with a copy of a 'DfE Submissions template – input/clearance checklist' document, and an associated Annex signed by Lord Agnew. This evidences that Lord Agnew confirmed that, in his opinion, disclosing the

requested information would be likely to have the effects set out under section 36(2), including section 36(2)(b)(i). The Commissioner is therefore satisfied that an opinion was given by the QP.

66. The request was submitted on 9 July 2019. The QP's opinion was given on 18 October 2019, and DfE refused the request on 21 October 2019. As such, the Commissioner is satisfied that the opinion was given at the appropriate time.
67. Finally, the Commissioner has considered the fourth of the criteria - whether the opinion given was reasonable. It is important to note that this is not determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold? This only requires that it is a reasonable opinion, and not necessarily the most reasonable opinion. The test of reasonableness is not meant to be a high hurdle and if the Commissioner accepts that the opinion is one that a reasonable person could hold, she must find that the exemption is engaged.
68. In order for the QP's opinion to be reasonable, it must be clear as to precisely how the envisioned prejudice may arise. In her published guidance on section 36 the Commissioner notes that it is in the public authority's interests to provide her with all the evidence and arguments that led to the opinion, in order to show that it was reasonable. If this is not done, then there is a greater risk that the Commissioner may find that the opinion is not reasonable.
69. In the DfE submissions document it provided to the Minister, DfE provided: a background to the request, the request, arguments for and against relying on the section 36(2) exemptions, including public interest arguments. These are broadly those that have been discussed in the section 30 and section 31 analyses.
70. The Commissioner is satisfied that the Minister had sufficient appropriate information about the request and the exemption in order to form an opinion on whether reliance on the provision under section 36(2), including section 36(2)(b)(i), was appropriate. For all the exemptions under section 36(2) that DfE has cited, the Commissioner notes that the QP's opinion was that inhibition and prejudice would be likely to occur, rather than would occur. 'Would' occur places a stronger evidential burden on a public authority.

### *Conclusion*

71. The Commissioner has noted the evidence at paragraph 69 and, since she is satisfied that the remaining points at paragraph 63 have also

been addressed, she must accept that the QP's opinion is one a reasonable person might hold. She therefore finds that DfE can rely on section 36(2)(b)(i) of the FOIA to withhold information within scope of the request.

72. The Commissioner's consideration of the public interest test associated with the section 36(2) exemptions follows the section 36(2)(c) analysis below.

**Section 36(2)(b)(ii) – inhibit the free and frank exchange of views**

73. DfE has confirmed that it has applied section 36(2)(b)(ii) to information it is withholding. Under this section, information held by a public authority is exempt information if, in the reasonable opinion of a qualified person, disclosing the information would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation.
74. For the reasons discussed under the section 36(2)(b)(i) analysis, the Commissioner accepts that the QP's opinion is one a reasonable person might hold. She therefore finds that DfE can rely on section 36(2)(b)(ii) of the FOIA to withhold information within scope of the request. The Commissioner has gone on to consider the associated public interest test.
75. The Commissioner's consideration of the public interest test associated with the section 36(2) exemptions follows the section 36(2)(c) analysis below.

**Section 36(2)(c) – otherwise prejudice the effective conduct of public affairs**

76. DfE has confirmed that it has also applied section 36(2)(c) to information it is withholding. Under this section, information held by a public authority is exempt information if, in the reasonable opinion of a qualified person, disclosing the information would, or would be likely to, otherwise prejudice the effective conduct of public affairs.
77. A public authority may apply both the section 36(2)(b) exemptions and the section 36(2)(c) exemption to information. However, section 36(2)(c) can only apply in instances when the envisioned inhibition or prejudice to the effective conduct of public affairs does not concern the giving or receiving of advice or the exchange of views which are covered by 36(2)(b)(i) and (ii).
78. Section 36(2)(c) is concerned with the effects of making the disputed information public. Prejudice to the effective conduct of public affairs

could refer to an adverse effect on the public authority's ability to offer an effective public service or to meet its wider objectives or purpose, but the effect does not have to be on the authority in question; it could be an effect on other bodies or the wider public sector. It may refer to the disruptive effects of disclosure, for example the diversion of resources in managing the effect of disclosure.

79. In the DfE submissions template discussed above, the QP is advised that disclosing the report would be likely to lead to a backlash from parents and press. Parents could become concerned, rightly or wrongly, and avoid sending their child to the listed schools and trusts and there may be a demand for good leaders to resign over mistakes made by others within a particular trust. Such a loss of confidence would be likely to stall trusts' recovery.
80. The QP is also advised that the Concern Reports contain information about third party whistleblower(s) and ongoing investigations into financial and governance concerns that ESFA's Provider Management Oversight Team was undertaking. Publishing that information could open up the whistleblower(s) to personal attack and undermine the investigation. This is particularly so where criminal activity is suspected; publishing the report would give the potential perpetrators the opportunity to destroy incriminating evidence.
81. Finally, the QP is advised that any safeguarding concerns would also be published if the information was disclosed. Public knowledge of these concerns could compromise the department and other agencies' work to resolve those safeguarding concerns. This could be by alerting individuals suspected of criminal activity or by creating panic among parents and in the press about a particular school or individual that could hamper ongoing work. It could also potentially lead to accusations of libel against those undertaking the work, distracting them from resolving the issues at hand.
82. The Commissioner is satisfied that the above effects are sufficiently distinct from those envisioned under section 36(2)(b)(i) and (ii). For the reasons discussed under the section 36(2)(b)(i) analysis, the Commissioner again accepts that the QP's opinion is one a reasonable person might hold. She therefore finds that DfE can rely on section 36(2)(b)(c) of the FOIA to withhold information within scope of the request. The Commissioner has gone on to consider the public interest test associated with the section 36(2) exemptions.



## **Public interest test**

### *Arguments in favour of disclosing the information*

83. The Commissioner has noted the complainant's and DfE's arguments for disclosure which have been discussed above.

### *Arguments in favour of maintaining the exemption*

84. In addition to DfE's arguments that have been discussed in the section 36(2)(b) analyses, DfE says that disclosing the information would be likely to prejudice the effective conduct of public affairs now and in the future. This is because it would remove the space within which officials are able to discuss options and outcomes freely and frankly. This would make it more difficult for the department to work collaboratively and cohesively with schools to deliver its core business.

### *Balance of the public interest*

85. As above, the Commissioner does not consider that the complainant's argument is a strong one. In the absence of any evidence to the contrary, the Commissioner considers that the public can be confident in the general process by which concerns about academies are identified and managed.
86. The Commissioner is satisfied that there is significantly more public interest in DfE being able to conduct its affairs effectively and efficiently. It can do this through those involved in the process of investigating and managing concerns raised about academies having confidence that their views and advice will not be put in the public domain. The requested reports cover the period from January 2019 up to the date of the request in July 2019. The Commissioner has noted that, as such, the concerns about academies being explored were still very much 'live'. Disclosing the Concerns Reports would therefore be more likely to inhibit advice and views and otherwise prejudice the investigations if they were disclosed at that time. As such the Commissioner finds that the public interest favoured maintaining the section 36(2)(b)(i), section 36(2)(b)(ii) and section 36(2)(c) exemptions.
87. The Commissioner has found that the requested information engages the exemptions under section 30, 31 and 36 and that the public interest favoured maintaining these exemptions. It has therefore not been necessary for the Commissioner to consider whether the exemptions under section 41 and 42 are engaged.

## Right of appeal

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88. 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: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

89. 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.
90. 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

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**