

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 October 2022

**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 the analysis conducted by the Child Safeguarding Practice Review Panel and referred to within its 2020 annual report.
2. The Department for Education ('DfE') refused to provide the information, citing section 36(2)(c) (prejudice to the effective conduct of public affairs).
3. The Commissioner's decision is that the withheld information engages section 36(2)(c) and that the public interest favours maintaining the exemption.
4. The Commissioner does not require the public authority to take any further steps.

#### **Request and response**

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5. On 6 December 2021 the complainant wrote to the DfE and requested the following information:

"This is a Freedom of Information Act request. Please provide a copy of the analysis (draft and/or final report) conducted by the Child Safeguarding Practice Review Panel of 48 incidents where children became looked after as a result of abuse or neglect (drawn from 89 cases where a looked after child had died or suffered serious harm). A summary of key findings from this analysis was reported in the Panel's annual report 2020 (page 24), published in May 2021."

6. The DfE responded on 22 February 2022. It stated that the requested information was exempt under section 36(2)(c).
7. The complainant requested an internal review on 28 February 2022.
8. The DfE provided the outcome to its internal review on 4 April 2022. It upheld its original position.
9. The DfE has explained that 'The analysis of Looked after Children undertaken by the Child Safeguarding Practice Review Panel (the Panel), was part of an internal scoping exercise to help the Panel to decide whether further work should be initiated. This was not a National Review.' The Commissioner understands that the document being withheld is the scoping document.

## **Reasons for decision**

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10. Section 36(2)(c) of FOIA states that:

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under this Act would, or would be likely to inhibit-

- would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

11. Section 36 is a unique exemption which relies upon the opinion of the public authority's 'qualified person' in order to be engaged. The DfE referenced the qualified person's opinion, provided by a Minister since the DfE is a central government department, in its refusal notice of 22 February 2022.
12. With section 36, the Commissioner does not necessarily need to agree with the opinion of the qualified person in order for the exemption to be engaged. He needs only satisfy himself that the qualified person's opinion is an opinion that a reasonable person could hold.
13. In both the DfE's refusal notice and internal review outcome, it explained that the scoping document 'was provided to the Department by the Child Safeguarding Practice Review Panel in the strictest confidence. Releasing the report in response to an FOI request is likely to damage the trust and working relationship between the Department and the Panel going forward. It is also likely that the Panel would be less willing to share certain information with us in the future for fear of it being released. This could also have an adverse effect on any future working relationships, if it was felt the department could not be trusted with information shared in confidence.'

14. The Commissioner is satisfied that the above is an opinion that a reasonable person could hold and therefore section 36(2)(c) is engaged. As section 36 is a qualified exemption, the Commissioner now needs to go onto consider whether the public interest lies in disclosure or in maintaining the exemption.
15. On the one hand, the DfE acknowledges that disclosure 'would provide an insight into the practice themes the Panel see in rapid reviews and would demonstrate how the Panel analyse the evidence submitted to them (in confidence by Safeguarding Partners) and their response to the issues identified i.e., whether a National Review is required.'
16. However, the Commissioner remains mindful that a summary of the withheld information has been reproduced in the Panel's 2020 annual report.<sup>1</sup> The Commissioner must consider to what extent this summary meets the public interest in the requested information.
17. In its internal review outcome, the DfE explained that the scoping document 'includes information from rapid reviews which are submitted by local Safeguarding Partnerships following a serious incident notification, to establish further facts of the cases and identify initial learning. Rapid reviews are shared in confidence and only with the Panel and include highly sensitive and personal information about children who may still be living. By sharing the scoping document, its content regarding relevant incidents may lead to the child subject to the rapid review, being identified by professions (including the Directors of Children's Services), relatives or the press. That is why the document when shared with the Secretary of State for the judicial review purposes, it was done so under the strictest of confidence with the caveat of not to share wider. Releasing the document could make sensitive and personal information available.'
18. The DfE has also explained to the complainant that 'Local Child Safeguarding Practice Reviews (LCSPRs) identify local learning and should be published on the relevant Safeguarding Partnership website within 6 months of initiation. Learning should be implemented quickly across local areas and beyond, where necessary. Where a case or cases raise complex or national importance, the Panel may undertake a

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<sup>1</sup> Page 24, [The Child Safeguarding Annual Report 2020 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

National Review. They have undertaken three<sup>2</sup> so far (see Annex) and are currently undertaking a further two.'

19. Ultimately, the Commissioner is satisfied that the DfE has proactively published information about the Panel's scoping exercise and has provided the complainant with as much contextual information as possible, without jeopardising the free flow of information between the DfE, the Panel and local authorities.
20. The Commissioner agrees with the DfE that disclosure would be likely to damage the relationship between the DfE and the panel, and potentially local authorities which would be likely to prejudice the effective conduct of public affairs.
21. The Commissioner has therefore decided that the public interest lies in maintaining the exemption. He does not require the DfE to take any further steps in relation to this case.

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<sup>2</sup> [Safeguarding children at risk from criminal exploitation - GOV.UK \(www.gov.uk\)](http://www.gov.uk); [Safeguarding children at risk from sudden unexpected infant death - GOV.UK \(www.gov.uk\)](http://www.gov.uk); [Safeguarding children under 1 year old from non-accidental injury - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## Right of appeal

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22. 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: 0203 936 8963

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)

23. 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.
24. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**