

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2022

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the Independent Review of Children's Social Care – Call for Ideas. The Department for Education (DfE) provided some information, withheld some information under section 21 FOIA as it considers it was already accessible to the applicant and confirmed that some of the requested information would not be published until Spring 2022. At internal review DfE confirmed that the information which it planned to publish in Spring 2022 was being withheld under section 22 FOIA.
2. The Commissioner considers that DfE were correct to apply 22 FOIA in this case at the time of the request. However the Commissioner also notes that the information which was withheld under section 22 FOIA was published in May 2022. The Commissioner does however consider that DfE breached section 17(1) FOIA in the handling of this request.
3. The Commissioner does not require DfE to take any remedial steps.

Request and response

4. On 30 December 2022 the complainant wrote to DfE and requested information in the following terms:

- "1) Please provide me details including full text of my submission 2021-12-19 - The Independent Review of Children's Social Care - Call for Ideas Response which was submitted as part of your review procedure of Independent Review of Children's Social Care as directed for review Health and Social Care Act 2012 2012 CHAPTER 7 (8)(1) ad Children Act 1989 1989 CHAPTER 41 and Children Act 1989 CHAPTER 41.
- 2) Can you please indicate the location online of your hard copy evidence as collected in the evidence base as part of this consultation, The independent Review of Children's Social statutory review in which you stated a call for evidence was made? Provide a url to hard copy evidence online in regard to this consultation The Independent Review of Children's Social and statutory review ?
- i) Provide a url to hard copy evidence online in regard to this consultation The Independent Review of Children's Social and statutory review?
- ii) Provide the total number of public responses in this consultation The Independent Review of Children's Social Act 2013 statutory review?
- iii) Provide the total number of business responses in this consultation The Independent Review of Children's Social and statutory review?
- 3) Please provide as part of this request the place of this submission in full review.
- 4) Please provide contact correspondence and procedures in regard to amplifying submission as sent to me as part of this consultation in respect to The Independent Review of Children's Social Care
- 5) Provide the total number of business responses in this consultation The Independent Review of Children's Social and statutory review?
- 6) If there is no hard copy evidence from his consultation statutory review of closed material procedure in the The Independent Review of Children's Social and statutory review or state no hard copy evidence was collected please state?"
5. DfE responded on 26 January 2021. It provided information in response to part 1 of the request. In relation to request 2 and 3 it provided some information including the number of responses received, provided links to where information was publicly accessible and confirmed that submissions and the final report would be published in Spring 2022. In

relation to part 4 it provided some information and applied section 21 FOIA as some information was already accessible to the applicant. For part 5 it referred to its response to part 2(iii) and finally in relation to part 6 it confirmed all submissions had been made electronically.

6. On 30 January 2022 the complainant requested an internal review. On 2 March 2022 the DfE provided the internal review. It upheld its application of section 21 FOIA where it considered information was reasonably accessible to the applicant. It confirmed it was applying section 22 FOIA (information intended for future publication) to parts 2(i) and 3 of the request.

Scope of the case

7. The complainant contacted the Commissioner on 5 March 2022 to complain about the way his request for information had been handled. He disputed that DfE would publish the information which it has said it intends to publish in Spring 2022 as he has argued it would be a criminal offence to do so.
8. The Commissioner's investigation has focussed on whether DfE is entitled to rely on section 22(1) of the FOIA to withhold the information requested at part 2(i) and (3), and the balance of the public interest.

Reasons for decision

9. Section 22(1) of the FOIA says 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 (a).
10. Section 22 is a qualified exemption which means it is subject to the public interest test.
11. In this case DfE has clearly explained in its responses to the complainant that it intended to publish the submissions made to the Independent

Review of Children's Social Care - Call for Ideas alongside its final report in Spring 2022.

12. The Commissioner is aware that the submissions and report was published in May 2022:

<https://childrensocialcare.independent-review.uk/wp-content/uploads/2022/05/Call-for-ideas.pdf>

13. The Commissioner considers that the submissions/responses were clearly held by DfE and at the time the request was made DfE intended to publish this information in Spring 2022 as communicated to the complainant.
14. DfE explained that there are reasonable grounds to maintain the orderly publication of information as planned as early piecemeal disclosure of some information without the wider context from the review's work would be likely to create unnecessary disruption to the planned release of the review's final report.
15. The Commissioner therefore also accepts that in all the circumstances it was reasonable to withhold the information under section 22 FOIA until the planned publication date.
16. As the Commissioner is satisfied the exemption was applied correctly in this case he has gone on to consider the balance of the public interest test.

Public interest test

Public interest in disclosing the information

17. DfE recognises the general public interest in openness and transparency, and the fact that this in turn increases public trust and understanding of Government workings and policies.

Public interest in maintaining the exemption

18. DfE reiterated that there are reasonable grounds to maintain the orderly publication of information as planned. Early piecemeal disclosure of some information without the wider context from the review's work would be likely to create unnecessary disruption to the planned release of the review's final report, which would not be in the public interest.

Balance of the public interest

19. The Commissioner considers that there is a strong public interest in DfE being able to publish the submissions made to the Independent Review of Children's Social Care - Call for Ideas alongside its final report in line with its planned timetable. This will ensure that DfE has had the time it needs to consider how best to publish the information alongside any wider context to minimise any disruption to the planned release.
20. Whilst the Commissioner accepts there is a general public interest in openness and transparency, without any strong countervailing arguments, the Commissioner considers that the balance of the public interest favours maintaining the exemption in this case.

Section 17 – refusal of request

21. Under section 17(1) of the FOIA a public authority that is relying on an exemption to withhold information must, in its refusal notice, state that fact, specify the exemption in question and why the exemption applies.
22. In this case, DfE's initial refusal notice failed to state that it was relying upon section 22 FOIA in relation to parts of the request. The Commissioner therefore finds that DfE's refusal of the request breached section 17(1) of the FOIA.

Right of appeal

23. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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.....

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF