

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 June 2012

**Public Authority:** Health and Social Care Board  
**Address:** Headquarters  
12-22 Linenhall Street  
Belfast  
BT2 8BS

#### Decision (including any steps ordered)

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1. The complainant has requested copies of the executive summaries of the case management reviews (CMRs) completed since 22 October 2010. The Health and Social Care Board (HSCB) advised the complainant that the main reason for withholding information was that individuals could be identified from it. However, it also cited the exemptions at sections 30, 31, 38, 40, 41 and 44.
2. The Commissioner's decision is that section 40(2) is engaged with respect to the requested information and that the information was therefore correctly withheld.

#### Request and response

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3. On 21 March 2011, the complainant wrote to the HSCB and requested information in the following terms:

*"Please send me copies of all the executive summaries of case management reviews completed since you released similar documentation to me last year when I worked at the Belfast Telegraph. The last reports were sent to me via email on October 22<sup>nd</sup>, 2010.*

*Please also tell me how many reviews are currently ongoing, when each review began and what stage each one is at."*

4. The HSCB responded on 21 July 2011. It confirmed that four executive summaries had been completed since 22 October 2010 and provided summaries of these which had been created for the purpose of the response. It also advised that a table had been sent to the complainant on 24 June 2011 detailing all CMRs. With regard to the full executive summaries, the HSCB advised that redacting the exempt information would result in the documents losing all context. It informed the complainant that the main reason for withholding the executive summaries was that individuals could be identified from them. However, the HSCB also specified that the exemptions at section 30, 31, 38, 40, 41 and 44 applied.
5. Following an internal review the HSCB wrote to the complainant on 30 September 2011. It maintained that the requested information was exempt, particularly as similar information had previously been disclosed in response to a request for information which had then been investigated by the Information Commissioner's Officer and assessed as a likely breach of the first principle of the Data Protection Act 1998 (the DPA).

### **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way her request for information had been handled. In particular the complainant was concerned that the HSCB had withheld the executive summaries in their entirety and that rewritten summaries of the executive summaries had been provided instead.
7. The Commissioner has considered the information that was provided in the form of the summaries of the executive summaries and notes that these contained some information from the executive summaries. With regard to three of the executive summaries, RCPC13, RCPC16 and RCPC 31, the conclusions and recommendations sections were directly copied in the newly created summaries with the exception of a very small amount of information in each. During the course of the Commissioner's investigation, the HSCB decided that the remaining information from the conclusions and recommendations could be disclosed. The Commissioner will therefore not consider the conclusions and recommendations sections of these three executive summaries in this decision notice.
8. With regard to the executive summary RCPC 40, the new summary did not contain the conclusions and recommendations sections in the same level of detail as the other three summaries. The Commissioner contacted the HSCB about this during his investigation and the HSCB agreed that much of the information could be disclosed. However, it

maintained that in relation to some points, section 40(2) applied and it therefore wished to withhold that information. Therefore, whilst the majority of the conclusions and recommendations sections of RCPC 40 are not considered in the decision notice, information within the following sections is considered; section 3.2.2, section 3.4.1, section 3.6.1, section 3.7.1, section 3.9.2. The detail of the information from these sections which is considered here is included in a confidential annex sent only to the HSCB.

9. The Commissioner considers that the scope of the case is to consider whether the HSCB was correct to withhold the information within the four executive summaries with the exception of the information highlighted above from the conclusions and recommendations sections.

## Reasons for decision

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10. Section 40 of the FOIA states that:

*“Any information to which a request for information relates is also exempt information if-*

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied.”*

11. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the data protection principles set out in schedule 1 of the Data Protection Act 1998 (“the DPA”).

## Is the withheld information personal data?

12. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
13. Each of the executive summaries is concerned with either the death or serious injury of a child. Each summary contains a large amount of information about the child and their family situation, as well as the engagement of the family with various health, education and social services. The Commissioner recognises that the information relating to the deceased individuals will not be their personal data. However, he notes that due to the unique nature of each of the situations which the

executive summaries consider, the remaining family members can be identified from the withheld information.

14. The complainant recognises that when considered in full, the executive summaries will contain personal data. However, she is of the view that removing the identifiable information from the executive summaries would allow for them to be disclosed to her without disclosing personal data as they will have been rendered anonymous. The complainant suggested that the removal of names, geographical information and dates of birth would provide sufficient anonymity and protect family members.
15. In the past, the complainant has requested and been provided with executive summaries of CMRs. In its initial response to the request considered here, the HSCB recognised that it had previously disclosed executive summaries with redactions. However, it informed the complainant that as a result of the disclosure of one of these executive summaries, an individual complained to the ICO about the unfair disclosure of their personal data within it. The ICO investigated this matter and made the assessment that in not redacting the report appropriately, it was unlikely that the HSCB had complied with the first data protection principle.
16. The Commissioner has considered this assessment and notes that the information relating to the individual was sparse as it did not refer to them by their name or their initials, or provide a date of birth. However due to the distinctive circumstances of the event considered in the executive summary and the level of detail that was provided, the individual was identifiable by their association with the family concerned, who were identifiable from the information despite the redactions that had been made.
17. The HSCB advised the Commissioner that it was as a result of this assessment that it decided to create summaries of the executive summaries to provide to the complainant. The Commissioner notes that the FOIA does not provide for creating information in response to a request for information. However, he recognises that HSCB was attempting to provide a helpful response to the requester in the circumstances, particularly as she had previously had access to similar information in response to earlier requests.
18. In the course of the investigation, the Commissioner considered whether the executive summaries could be anonymised by removing personal data. He asked the HSCB to reconsider each executive summary with a view to redacting the personal data from them. The Commissioner then considered whether the families in each case could be identified from the executive summaries in their redacted form. In doing so he noted

that each executive summary related to a unique and individual event which would have been noteworthy in the community in which it occurred. Further to this, the descriptions of each family and the discussion of their interaction with the relevant services both prior to and immediately after the event is also highly likely to render the family identifiable, particularly to those in their local community.

19. In addition to this, in her internal review request, the complainant informed the HSCB that she had been able to identify the individual and their family in one of the cases from the summary of the executive summary. The Commissioner therefore considers it likely that the provision of any information additional to the short summary of the events given in the summaries of the executive summaries would identify the families and others relevant individuals.
20. The Information Commissioner is satisfied that the withheld information in its entirety falls within the definition of personal data as set out in the DPA because it 'relates to' identifiable living individuals. He is also satisfied that the information could not be redacted in a meaningful way so as to render the executive summaries anonymous.

### **Would disclosure contravene any of the data protection principles?**

21. The data protection principles are set out in schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data must be processed fairly and lawfully. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations**

22. The withheld information in this case relates to the death or serious injury of children in four cases which the HSCB deemed required a CMR. As highlighted above, each of the four executive summaries contain detailed, and in many instances, sensitive personal data about family members and other relevant individuals.
23. The HSCB has explained that the purpose of the CMR is to establish whether lessons can be learnt and to make recommendations in respect of the agencies involved. Chapter 10 of 'Cooperating to Safeguard Children' (DHSSPS 2003) contains guidelines for conducting CMRs. It recognises that there is a need to maintain confidentiality for the children, their families and other relevant individuals. It also notes that whilst those conducting CMRs should be prepared to publish some

information to relevant stakeholders, such information should be suitably anonymised to protect the confidentiality of the relevant family members and others. The Commissioner therefore considers it likely that those to whom the executive summaries relate will have an expectation that their personal data will be protected.

24. The Commissioner recognises the need for sensitivity to relevant family members and other individuals in such difficult circumstances as the loss of, or serious injury to, a child. He therefore considers that reasonable expectations of those individuals will be greatly affected by the sensitive and distressing nature of the information.
25. The Commissioner has also considered the reaction of individuals to the disclosure by the HSCB of their personal data in previous executive summaries. As explained above, an individual whose personal data was contained in an executive summary which was considered to be anonymous complained to the ICO that their personal data had been processed unfairly. This resulted in a compliance unlikely assessment against the HSCB. Clearly in this case it was not within the individual's reasonable expectations for information which could identify them to be disclosed to the world at large by the HSCB.
26. The HSCB also informed the Commissioner that as a result of the disclosure of executive summaries previously, a number of complaints were received from families and relatives. This again would indicate that it was not in their reasonable expectations for their information to be disclosed. The Commissioner notes that these complaints were received in relation to executive summaries which had been redacted in an attempt to anonymise the information by way of removing names, significant dates and localities.

### **Consequences of disclosure**

27. The HSCB has advised that the disclosure of the executive summaries would cause distress to the family members and other relevant individuals. It explained to the Commissioner that in response to previous disclosures under the FOIA, families have experienced unwelcome contact from journalists at their homes asking for comments about alleged abuse. The resulting stories in the media have led to crowds gathering outside the homes of the families. The HSCB stated that Trusts have raised concerns about the mental wellbeing of some family members as a result of these actions. This is particularly with regard to the mental health of vulnerable younger siblings who have struggled to deal with newspaper articles detailing events from which they were able to identify their brother or sister.



28. The Information Commissioner considers that a consequence of disclosure would be that distress would be caused to the families and other individuals who could be identified from the executive summaries. This is strongly linked to the fact that they would have a reasonable expectation of privacy that their personal data in relation to such distressing events would not be disclosed under the FOIA.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

29. The complainant provided the HSCB with arguments in favour of upholding the public's legitimate reasons for disclosure. She argued that as the consequences of failures in child protection services can be devastating, the HSCB must show to the public that the matter has been investigated fully and that lessons have been learnt. She suggests that it is in the public interest that the recommendations about the child protection system are disclosed so that they are known about and the public can be sure that they are taken on board.
30. With regard to the application of section 40(2), the complainant has argued that if the reports are anonymised, then they would not contain personal data. She suggested that the removal of names, addresses and geographical locations would be sufficient to render the information anonymous. However, she acknowledges that she was able to identify one of the families involved from the summary of the executive summary, and that in this case, such anonymisation would not be possible. She further argues that it is still in the public interest to disclose the executive summary of this case as the recommendations that were disclosed raised concerns about the way the case was handled by medical personnel and social services.
31. Finally, the complainant strongly relies on the fact that Tim Loughton MP Parliamentary Under Secretary of State for Children and Families wrote to all chief executives, heads of children services and lead members for children in England, directing that executive summaries of serious case reviews should be published, suitably anonymised by redacting personal data. She suggests that this shows that anonymisation is possible and that the public interest is in disclosure.
32. The direction to publish executive summaries of serious case reviews was an amendment to the statutory guidance *Working Together to Safeguard Children* made on 10 June 2010. However, the Commissioner notes that this guidance only applies in England. He also notes that the direction to publish executive summaries stated that it is *vitaly important* that they are *appropriately redacted and anonymised to protect the privacy and welfare of vulnerable children and their families*.

Further to this, it also recognises the need to prepare executive summaries in a form suitable for publication.

33. The Commissioner appreciates that the principles of openness and transparency are strong in demonstrating that child protection services are functioning well and that improvements are made where failings have been identified. He acknowledges that in England, the decision has been taken to publish executive summaries, but considers that the direction to do so clearly states that the information should be suitably anonymised. However, in this case it is not possible to redact the executive summaries in such a way as to render them anonymous without also rendering them useless. Further to this, the Commissioner draws attention to the fact that the requirement to publish executive summaries does not apply in Northern Ireland as it does in England. It is therefore necessary to consider whether it would be unfair to disclose personal data in these cases without reference to any such requirement.
34. The Information Commissioner does not consider that the reasonable expectation of confidentiality held by the families and relevant individuals is outweighed by any legitimate public interest in disclosure, and accepts that disclosure of their personal data contained in the executive summaries would be unfair and unnecessary in the circumstances. The Commissioner therefore considers that the exemption at section 40(2) is engaged and that the HSCB was correct not to disclose the withheld information.



## Right of appeal

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35. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

36. 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.
37. 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**  
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**Cheshire**  
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