

Our reference: IRQ/2016/005

Date of response: 26 October 2016

Request for Review

Thank you for your request received on the 30 September 2016, for an internal review of the response to your request for information on Unicef's Child Rights Launchpad. This review takes each question listed in your original information request, and considers the extent to which the response was appropriate or if it should be substituted by a different decision.

This review response seeks to address your specific concern namely,

- that the information sent in the response was not what you were requesting;
- that you had asked five questions about consent, and whether the Commissioner had carried out a review of what information was being collected about children; and
- that the information sent did not answer any of these questions.

To take account of the points you have made, this review refers to the '*s60 Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002*', and a learning point in a recent '*Decisions round-up: 3 to 7 October 2016*' by the Scottish Information Commissioner.

1 Has the Commissioner carried out any review of this program before promoting it on their twitter feed?

<https://twitter.com/CYPCS/status/772714666523037696>

Review Decision

Following review of your request, we would like to substitute a different decision in response to this question.

- 1.1 We should have clarified with you as soon as possible if by 'review' you meant a 'formal assessment' of the Launchpad. This would have ensured we had a common understanding of the information you were looking for.
- 1.2 In direct response to your question, the Commissioner has not carried out 'any review' of the Launchpad. Therefore, the original response should have stated that recorded information is not held by the Commissioner on 'any review', i.e. 'formal assessment', of Unicef's Child Rights Launchpad.

- 1.3 As noted in our original response, the Commissioner has been represented by members of staff on the Unicef Reference Group and Advisory Group for development of the Launchpad, since October 2013. Our membership of the Advisory Group was to provide guidance and feedback, on the wording and scenarios used to illustrate and explain to children and young people about their human rights. As such, our focus was not on the way in which children and young people were expected to 'sign up' to have access to the resource. Thus, we were not aware up until your request, of the privacy implications of the Launchpad and the way it was operating.
- 1.4 Please note that the information we did provide in the original response *[FOI Response Information Held (Documents 1-36) and Presentations 1-4]* to this question did not form part of 'any review', i.e. 'formal assessment' of the Launchpad by the Commissioner. This information was provided merely to illustrate the extent of our involvement in the development of the Launchpad.

2 If the Commissioner hasn't looked into a scheme they are promoting. I'd like to know why? Given they are tasked with protecting kids rights, which includes privacy.

Review Decision

Following review of your request, we would like to substitute a different decision in response to this question.

- 2.1 The original response should have stated that recorded information is not held by the Commissioner, as to why he has not 'looked into' or undertaken a 'review' of the Launchpad.
- 2.2 Our original response should have explained to you why the information requested in response to this question is not held by the Commissioner. As outlined in item 1.3 above, the Commissioner had not 'looked into' or undertaken a 'review' of the Launchpad; as he was not aware of possible privacy implications, in terms of the way the Launchpad was being operated.

3 What options are open to children to refuse or opt out of the data gathering exercise?

Review Decision

Following review of your request, we would like to substitute a different decision in response to this question.

- 3.1 As stated in our original response, a limited amount of recorded information is held by the Commissioner on the options open to children to refuse or opt out of providing their personal data. The information held by the Commissioner at the time the request was made is contained in *'FOI Response Information Held (documents 24 and 28)'*, that accompanied the original response. Please note that the information that was provided in the original response, under 3.2 and 3.4 was based on information available in the public domain.
- 3.2 At the time the request was made the Commissioner was only able to provide a partial response to this question. The Launchpad is owned by Unicef UK; the Commissioner neither owns nor has he funded any part of the Launchpad. As such, the Commissioner is not the data controller of the Launchpad, and at the time the request was made was not able to comprehensively outline, *'the options open to children to refuse or opt out of the data gathering exercise'*, i.e. providing their personal data to Unicef UK.
- 3.3 Since receiving your request, the Commissioner has recognised the concern you raised under this question, and has written to Unicef UK to seek clarification on *'whether or not a child must provide personal data before they can use the Launchpad'*. The Commissioner has received a response from Unicef UK on this question. In summary, they have stated that:
- 'at present there are two possible options in which the Launchpad can be used within an educational setting.*
- Option One: Children and young people can create their own individual account. Under this option children are asked to enter their name, age (including their date and month of birth) and gender. This information is requested to personalise the resource for each child'.*
- Option Two: Adult Guides (educational professionals) can create a whole class account. Under this option no individual personal details are required for the resource to be used and accessed by children and young people.'*
- 3.4 A copy of the Commissioner's letter and the full response from Unicef UK is included in the attached document *'FOI Review information held, Documents 37-38'*. Please note that this information was not held by the Commissioner at the time the request was made, but produced since that date.
- 3.5 In our original response, we should have referred you to Unicef UK to seek a response to this question. If you wish to do so, contact details for Unicef UK are as follows: Anna Kettley, Transformation Director – UK Programmes, Unicef UK, 30a Great Sutton Street, London, EC1V 0DU Email: AKettley@unicef.org.uk

3.6 In accordance with our obligations under FOISA, we have disclosed as much information in response to this question as we hold.

4 Will parents of young children be informed about this scheme and be asked for their consent for their minor children to be signed up for a website that tracks their use and collects their replies? If not, then why not?

Review Decision

Following review of your request, we would like to substitute a different decision in response to this question.

4.1 Information is now held in response to this question. This information was not held by the Commissioner at the time the request was made, but has been produced because of the request.

4.2 As stated under item 3.2 above, the Launchpad is owned by Unicef UK; the Commissioner neither owns nor has he funded any part of the Launchpad. As such, the Commissioner is not the data controller of the Launchpad, and at the time the request was made, was not able to comprehensively outline if parents of young children would be informed about the scheme, and be asked for their consent for their children to be signed up to it.

4.3 Since receiving your request, the Commissioner has recognised the concern you raised under this question, and has written to Unicef UK to seek clarification on what their position is, in terms of children below the age of 12 consenting to providing their personal data. The Commissioner has received a response from Unicef UK to this question. In summary, they have stated:

'that within the DPA there is currently no obligation to obtain the consent of a parent before processing a child's personal data.

...we are confident that collecting a minimal amount of personal data in order to personalise the Launchpad experience and better tailor the resource to the age of the child is in the legitimate interests of Unicef as the data controller and, pursuant to paragraph 6 of schedule 2 of the Data Protection Act 1998, the processing is not prejudicial to the rights, freedoms or legitimate interests of the child. That is the condition which Unicef UK relies upon for the data processing'.

4.4 A copy of the Commissioner's letter and the full response from Unicef UK is included in the attached document 'FOI Review Information Held, Documents 37-38'. Please note that this information was not held by the Commissioner at the time the request was made, but produced since that date.

- 4.5 In our original response, we should have referred you to Unicef UK to seek a response to this question. Contact details are provided under 3.5.
- 4.6 In accordance with our obligations under FOISA, we have disclosed as much information in response to this question as we hold.

5 Has the Commissioner carried out any review to make sure this is compliant with not only the DPA but also Article 8 given the recent Supreme Court judgement re data gathering and sharing without consent?

Review Decision

Following review of your request, we would like to confirm our original decision in response to this question.

- 5.1 As previously stated in our original response to your question, the Commissioner has not carried out 'any review' i.e. 'formal assessment' to make sure the Launchpad is compliant with the Data Protection Act 1998 (DPA) and Article 8 of the ECHR. Thus, recorded information is not held by the Commissioner on any such review of the Launchpad.
- 5.2 As indicated in our original response to question one, the Commissioner had not undertaken a review of the Launchpad, as we were not aware up until your request, of the privacy implications of the Launchpad.
- 5.3 Considering the response from Unicef UK, the Commissioner as previously indicated, will write to the Information Commissioner's Office, to seek their advice on the extent to which they would consider the Launchpad to be compliant with the Data Protection Act 1998.
- 5.4 In our original response, we should have indicated that you had the option in the first instance of writing to Unicef UK, and lodging a formal complaint about the concerns raised, in terms of the Launchpad and its compliance with the Data Protection Act. Contact details for Unicef UK are provided under 3.5.
- 5.5 Further information about raising a concern with an organisation about how it handles personal information is available on the website of the Information Commissioner's Office.
<https://ico.org.uk/for-the-public/raising-concerns/>

Internal Review Appeal Process

If you are not satisfied with this review, you have the right to apply to the Scottish Information Commissioner for a decision, on whether your request for information has been dealt with in accordance with Part 1 of the Freedom of Information (Scotland) Act

2002. You must make this application to the Scottish Information Commissioner within six months of receiving this review decision. Your application must be in writing or any other recordable format (such as email). Please include the following information in your application: your name, an address for correspondence (this can be an email address), details of your original request (including copies of correspondence), and why you are unhappy with the way your request has been dealt with, by the Children and Young People's Commissioner Scotland.

If you are unhappy with the Scottish Information Commissioner's decision, you have a right of appeal to the Court of Session (but only on a point of law).

Contact details for the Commissioner are:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews,
Fife, KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
Email: enquiries@itspublicknowledge.info

Further information about making an appeal can be found on the website of the Scottish Information Commissioner

<http://www.itspublicknowledge.info/YourRights/UnhappyWithResponse.aspx>

Complaints Process

The Children and Young People's Commissioner Scotland is an independent public body, with the general function to promote and safeguard the rights of children and young people in Scotland. You may wish to consider making a complaint about how the Commissioner and his staff are fulfilling this remit. Further information about making a complaint can be found on the Commissioner's website:

<http://www.cypcs.org.uk/ufiles/Complaints.pdf>

Should you require any further assistance concerning this review response, please contact me on 0131 346 5350 or Gillian.Munro@cypcs.org.uk.

Yours sincerely
Gillian Munro
Information Officer