

F/T: 0300 244 4000  
E: dfmcse@gov.scot

22<sup>nd</sup> May 2018

Dear Colleague,

Thank you for your letter of 26 April 2018.

Your letter raises questions as to why we did not release all the information held in response to two FOI requests relating to the Children and Young People (Information Sharing) (Scotland) Bill. That has prompted me to instruct a further check that all information, no matter how minor, has been released. Further searches have identified several additional emails and these are provided at Annexes A and B to this letter and have also been provided to the individuals who made the FOI requests.

I acknowledge these emails, while essentially transactional in nature, should still have been provided to requesters previously and I apologise for that omission. As a result of this omission, the Permanent Secretary has written to the Information Commissioner in relation to these cases. I enclose a copy of her letter for your information. Nothing in this additional, transactional material changes the clear picture set out to the committee previously in my letter to the Committee on 15 March 2018. It confirms that the engagement between Scottish Government officials and stakeholders on issues relating to the Bill was taken forward in an entirely appropriate manner.

I would like to respond to the specific questions in your letter:

**1. *Why a telephone conversation of which there is no records and which could not have taken place continues to be relied upon as the source of information on which individuals were appearing before Committee?***

I understand this question to relate to information provided in my letter of 15 March 2018 to the Education and Skills Committee. Specifically, the information contained in Annex C to that letter on how my officials came to know details of organisations appearing before the Committee on 25<sup>th</sup> October.

Following my letter of 15 March, the Scottish Parliament's Committee Clerk Team Leader enquired with my officials about the phone call noted as having taken place on 6 October. As explained by my officials to the Clerk Team Leader, the Deputy Bill Team leader recalls receiving this information in a phone call from Committee Clerk. He was in the habit of

calling Clerks on a Friday. My officials contacted stakeholders from 9 October, as shown by emails previously released under FOI (<https://beta.gov.scot/publications/foi-18-02966/FOI-18-02966-%2002967-%2002968%20-%20related%20documents.pdf?inline=true>, and also set out in Annex C of my letter of 15 March). On that basis, the Deputy Bill Team Leader concluded that the most likely date on which the phone call he recalls took place was the preceding Friday, 6 October. However, my officials have indicated that they would be happy to be corrected on the precise date of the call should the Committee Clerk's records show something different.

## **2. Why a number of emails have been omitted from FOI/18/00444?**

As I set out above, there are a number of emails that should have been released in the response we gave to FOI/18/00444, which are now included at Annex A. These have been retrieved from the mailbox of a member of staff who has been on an extended period of unplanned absence.

Following my letter of 15 March to the Committee, the Committee Clerk Team Leader enquired with my officials about the emails included in Annex A to that letter (these emails show that my officials informed the Committee Clerk on 11 September of their intention to approach stakeholders in relation the Bill). The Committee Clerk Team Leader advised that they hold additional emails as part of the exchange that was sent between the clerk and Deputy Bill Team Leader over a period two days, although these emails were not shared with my officials.

In response to any FOI request, the Scottish Government provides information held on record at the time of the request. Transactional emails are not routinely saved and, as in this case, that can mean that different information is held by different organisations in relation to the same matter. To illustrate the point, the Scottish Government holds several emails initiated by Parliament officials, that were not released by the Parliament in its FOI release 2018-606119 of 15 May. These are included within the material at Annex A.

Some of the material held by the Government was also held by the Scottish Parliament and has been placed in the public domain in light of the Parliament's release of 15 May. The material in Annex A is the additional material that has been identified as relevant to the FOI that has not previously been released.

## **3. Why a number of emails have been omitted from FOI/17/02940?**

As explained in my letter of 15 March to the Committee, a small number of emails were not released in the initial response to FOI/17/02940 due to a member of staff being on an extended period of unplanned absence.

These emails were released once they were identified as falling within the request.

As a result of the further review I instructed, additional relevant material has been identified in the staff mailbox that was not previously disclosed. That material is now included at Annex B.

## **4. Why in a response to Question S5W-13186 you failed to disclose the engagement between Scottish Government Officials and Children in Scotland which took place on 31 October 2017 and the subsequent engagement between the organisation and special advisors on 3 November 2017?**

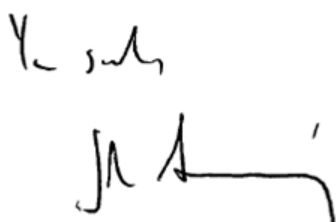
PQ S5W-13186 was one of a batch of questions asked at the same time, following up a Parliamentary answer about specific meetings with Scottish Government officials. The information provided in this PQ response therefore focused on meetings with officials.

The engagement between Scottish Government officials and Children in Scotland that took place on 31 October 2017 was a phone call, rather than a meeting. The engagement with Children in Scotland on 3 November 2017 involved special advisors and did not include officials.

In my letter of 15 March, I subsequently provided the Committee with detailed information about contact with those organisations, including officials, special advisors and Ministers.

Finally, I would like to address the suggestion in your letter that there is an appearance of an attempt to unduly influence stakeholders who provided evidence to the Education and Skills Committee about the Children and Young (Information Sharing) (Scotland) Bill. There has been no such attempt. Moreover it is clear from the evidence stakeholders gave to the Committee that they were able to express their views freely, including raising questions and expressing reservations about the Bill and the draft illustrative Code of Practice where they felt it appropriate to do so. It is wholly appropriate for the Government to engage with stakeholders during the passage of legislation; indeed this is a fundamental part of our democratic process. This engagement provides the opportunity to shape legislation and policy which affects those stakeholders and crucially in respect of this Bill, the children and families whom they support.

I am copying this letter to the Convenor of the Education and Skills Committee.



JOHN SWINNEY

## Annex A

Emails retrieved from staff mailbox: FOI/18/00444 - communication between the Scottish Government - or representatives of - and the Education and Skills Committee.

**From:** [redacted]

**Sent:** 10 November 2017 17:05

**To:** Deputy First Minister and Cabinet Secretary for Education and Skills

**Cc:** [redacted]

**Subject:** Correspondence from the Education and Skills Committee

Dear [redacted]

Please find attached two letters from the Education and Skills Committee to the Cabinet Secretary. One relates to the Children and Young People (Information Sharing) (Scotland) Bill and the other relates to the Additional Support for Learning draft Code of Practice.

Many thanks and have a good weekend,

[redacted]

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**From:** [redacted] **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills

**Sent:** 06 November 2017 15:16

**To:** [redacted]

**Cc:** Deputy First Minister and Cabinet Secretary for Education and Skills; Education and Skills ([es.committee@parliament.scot](mailto:es.committee@parliament.scot)); [redacted] )

**Subject:** Correspondence from the Deputy First Minister

Dear [redacted] ,

Please find attached correspondence from the Deputy First Minister.

Regards

[redacted]

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**From:** [redacted]

**Sent:** 01 September 2017 18:57

**To:** [redacted]

**Cc:** [redacted]

**Subject:** Committee papers

Dear [redacted] and team

Please find attached a link to the Committee's papers for next week.

[http://www.parliament.scot/S5\\_Education/Meeting%20Papers/20170906ES.Committee\\_Papers.pdf](http://www.parliament.scot/S5_Education/Meeting%20Papers/20170906ES.Committee_Papers.pdf)

Thanks

**[redacted]**  
Assistant Clerk  
Education and Skills Committee  
(Telephone (Direct Dial): **[redacted]**)

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**From:** **[redacted]**  
**Sent:** 05 September 2017 15:30  
**To:** **[redacted]**  
**Subject:** RE: Official Report - Parliamentary Business : Scotti...

Hi **[redacted]**

I think they need to get a ticket - visitor services will be able to provide just call switchboard on 348 5000 and get put through to the tickets bit - there are always tickets available!

see you in the morning,

**[redacted]**

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**From:** **[redacted]**  
**Sent:** 17 November 2017 12:42  
**To:** Director for Children and Families  
**Cc:** **[redacted]**  
**Subject:** RE: named persons - information sharing  
**Sensitivity:** Confidential

Dear **[redacted]**

Many thanks for giving this further consideration and taking the time to respond within such a tight timescale. Your response is very helpful and I appreciate the points that you make. Whilst I do not plan to share any of this in detail with the committee, I will update them briefly in person during private session next wednesday with very general remarks on the considerations you mention.

Specifically I would plan to mention the potential timescale of September 2018, the necessary information (inc GDPR related) and engagement work required to produce an authoritative version of the code, and that extending stage 1 would create an extended a period of uncertainty including for practitioners and those required to engage in the development of the code.

Many thanks again,

**[redacted]**

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**From:** **[redacted]**

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



**On Behalf Of** [DirectorforChildrenandFamilies@gov.scot](mailto:DirectorforChildrenandFamilies@gov.scot)

**Sent:** Friday, November 17, 2017 12:26 PM

**To:** [redacted]

**Cc:** [redacted]

**Subject:** RE: named persons - information sharing

**Sensitivity:** Confidential

Hi [redacted],

Thank you for your email. I am happy to provide some clarification on the issues raised in your response.

In terms of timescale on the Code of Practice, considering our assessment of the nature of work that will be involved, the Scottish Government anticipates that development of a draft Code would take until September 2018. We would want the next iteration of the Code to be getting close to the definitive, authoritative version: an expectation that will require both detailed working, and a genuinely collaborative approach with partners, from whom we would be asking for a significant contribution of time and resource. In addition, we need to allow time for finalisation of the Data Protection Bill currently going through the Westminster Parliament, and for all bodies to digest the new GDPR that will commence in May 2018. Realistically, a draft Code prior to May 2018 would not be practical or helpful as it would not fully account for new legislation within the Data Protection Bill or GDPR. This timeframe also considers Parliamentary recess in July 2018.

Clearly conclusion of this work will take us well beyond the Stage 1 timetable. But the work has already begun to pursue this collaborative and thorough approach, with the appointment by the end of November of an independent chair for the GIRFEC Practice Development Panel with membership being appointed soon after. The Panel with wide stakeholder representation will marshal the development of the draft Code ensuring it meets their needs.

The Stage 1 decision is on the Bill's general principles, including whether there should be a code of practice. We think that the preliminary nature of every Stage 1 decision explains why it is unusual for draft regulations, codes, guidance and so on to be provided even in draft form during Stage 1. It is more usual for such things to be developed with stakeholders at a later stage, as part of the wider implementation of the legislation (and sometimes involving a separate Parliamentary vote, as we have now committed to in this case). Clearly, the Government hopes for a positive outcome when the Bill is considered by the whole Parliament at Stage 1, which would be a clear endorsement and encouragement to the sector of this collective approach. This would be of course without prejudice to further debates and decisions of the Parliament at Stages 2 and 3. Helpfully, these would be informed by the work of the Panel and others to produce a Code of Practice that would command authority and recognition in the sector. Conversely, any delay in the Stage 1 debate would leave this work overshadowed by uncertainty as to its value and support from Parliament.

I hope this is helpful.

[redacted]

[redacted]

Director for Children and Families  
Scottish Government

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



[redacted]

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**From:** [redacted]

**Sent:** 03 July 2017 10:08

**To:** [redacted]

**Subject:** Children and Young People (information Sharing) (Scotland) Bill: Call for evidence

Good morning

I hope everyone is well and had a nice weekend

The Committee has published its call for evidence on the Children and Young People (information Sharing) (Scotland) Bill today the link to the inquiry webpage follows.

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/105493.aspx>

and the link to the call for evidence page:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/105562.aspx>

Please pass this onto anyone who may wish to submit evidence.

Thank you

[redacted]

## Annex B

Email retrieved from staff mailbox FOI/17/02940 - Confirmation of contact between the Scottish Government and organisations or individuals providing evidence to the parliament's Education and Skills Committee

**From:** [redacted]  
**Sent:** 24 October 2017 19:10  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: Education and Skills Committee

Thanks [redacted], that's great.  
Plans have changed a bit and I'm now meeting [redacted] along with [redacted] on Thursday afternoon. If we could keep Tuesday at 1.30 pencilled in for a phone call that would be great, but if the meeting on Thursday clears up all/any queries I will let you know and we can cancel Tuesday.  
Best wishes  
[redacted]

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**From:** [redacted]  
**Sent:** Tuesday, 24 October 2017 17:00  
**To:** [redacted]  
**CC:** [redacted]  
**Subject:** RE: Education and Skills Committee

Hi Folks  
Yes I can be available at 1:30 next Tuesday, I will be in VQ , [redacted] if you cannot manage to meet here happy to have a teleconference.  
Cheers  
[redacted]

*[redacted]*

**[redacted] | Health Advisor | Children and Families | Better Life Chances unit | Getting it right team | Scottish Government**

**Victoria Quay, Room 1D (S) | Edinburgh | EH6 6QQ**

**Tel:** [redacted]  
**From:** [redacted]  
**Sent:** 24 October 2017 11:18  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: Education and Skills Committee  
**Importance:** High

Hi [redacted]

Thanks for your email. Great that you are meeting [redacted] with [redacted] on Thursday. We set that meeting up before we that you are giving evidence. [redacted] can start the conversation about your appearance at committee on Thursday. I can't be there unfortunately because I have other commitments in Edinburgh at that time.



I also have commitments next Tuesday at 1.30 pm (at the National 3<sup>rd</sup> Sector Programme Advisory Group meeting) but my colleague **[redacted]** may be free at that time. I will ask **[redacted]** to confirm with you whether he is able to meet you at that time.

Yours  
**[redacted]**

**[redacted]** | Third Sector Implementation Adviser  
Getting it right for every child Team | Children and Families Directorate | Scottish  
Government  
**[redacted]** Area 1D South, Victoria Quay, Edinburgh EH6 6QQ

**From:** **[redacted]**  
**Sent:** 24 October 2017 10:41  
**To:** **[redacted]**  
**Subject:** Re: Education and Skills Committee

Hi **[redacted]**

Sorry I missed your call - I'm involved with our staff conference all day.

I'm giving evidence alongside **[redacted]**, who is meeting the bill team on Thursday morning. Unfortunately I can't make that meeting, but she and I are meeting on Thursday afternoon so she can fill me in.

It would be useful if we could stick half an hour in the diary after that, in case **[redacted]**. and I have outstanding questions after our planning meeting. Might you be around at 1.30 next Tuesday? Sorry to be so fixed on a time, but my diary between now and the committee next Wed is ridiculous.

Thanks  
**[redacted]**

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**From:** **[redacted]**  
**Sent:** Tuesday, 24 October 2017 10:26  
**To:** **[redacted]**  
**CC:** **[redacted]**  
**Subject:** Education and Skills Committee

Hi **[redacted]**,

Hope all is well with you. I called your mobile number and left a message this morning. I understand that you may be giving evidence at committee next Wednesday. The GIRFEC and Bill teams are offering to meet with a number of stakeholders prior to giving evidence to help them prepare for their appearance at committee. It would be great if you could give me a call to discuss whether you and any colleagues who may be appearing with you would like to meet with us before next Wednesday. I will be free this afternoon if you are able to call. Please use the landline number below or **[redacted]**.

Yours

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
www.gov.scot



[redacted]

**From:** [redacted]  
**Sent:** 02 November 2017 13:10  
**To:** [redacted]  
**Subject:** Info Sharing Bill

Hi [redacted].

I hoped we could have a wee chat following on from yesterday's evidence session. Are you free for a call this afternoon?

[redacted]

[redacted]  
Policy and Participation Officer  
Glasgow regional Office  
2 Green Wynd | Glasgow | G40 2TD  
[redacted]

**From:** [redacted]  
**Sent:** 03 November 2017 09:55  
**To:** [redacted]  
**Subject:** RE: Speaking tomorrow

Hi [redacted]

Conf Call details below

[redacted]

- Participant Code – [redacted]

Speak to you later

[redacted]

**From:** [redacted]  
**Sent:** 03 November 2017 09:42  
**To:** [redacted]  
**Subject:** RE: Speaking tomorrow

Yes happy to speak then. Just let me know what number to call

**From:** [redacted]  
**Sent:** 03 November 2017 09:35  
**To:** [redacted]  
**Subject:** RE: Speaking tomorrow

Hi [redacted]

Can we do 12.30 instead then? [redacted] won't be available after 3pm, im afraid.

Does that suit?

Thanks

[redacted]

**From:** [redacted]

**Sent:** 02 November 2017 20:24

**To:** [redacted]

**Subject:** Speaking tomorrow

Hi [redacted]

Good to speak earlier. I'm just on my way back to Edinburgh now after a lovely day with my step-granny for her 90<sup>th</sup>.

I was wondering if there is any flexibility with the time for our call tomorrow? I wasn't really thinking earlier but I volunteer at a club for elderly people on a Friday from 1pm to 3pm and it would be great not to miss it if possible. If 1pm is the only time that works for you and [redacted] I'll make myself available but thought I'd check.

Speak tomorrow

[redacted]

[redacted]

Bill Team Leader

Children and Young People (Information Sharing) (Scotland) Bill

Area 1D South: Victoria Quay

[redacted]

**From:** [redacted]

**Sent:** 03 November 2017 15:15

**To:** [redacted]

**Subject:** FW: URGENT: The Why

Thanks – suggested amendment incorporated in text below but overall happy with as it is.  
[redacted]

**From:** [redacted]

**Sent:** 03 November 2017 14:41

**To:** [redacted]

**Subject:** URGENT: The Why

[redacted]

Good to talk earlier. This is the text on 'the why' which is currently in the DFM's draft speech and draft letter. Grateful for any thoughts you might have.

Thanks

[redacted]

[redacted]

Bill Team Leader

Children and Young People (Information Sharing) (Scotland) Bill

Area 1D South: Victoria Quay

[redacted]

The availability of a named person for every child and young person, and the coordination of a child's plan for those children and young people that need them, will remove barriers which currently deny children and young people, and their parents, access to the support and guidance they are entitled to. They will ensure that children and young people and parents are offered help before wellbeing needs become crises.

Put plainly, without this Bill to address the Supreme Court judgment, the legislation to make available named persons and child's plan, which sit at the very heart of the Getting It Right For Every Child Approach, cannot be commenced. Without this Bill, two entitlements for families are put at risk; both of which arose from families themselves asking for improvements in the support they need and want.

We also know from intensive engagement with stakeholders between September and December 2016 that this Bill is required. They told us that following the Supreme Court judgement, many practitioners and families have questions and concerns about information sharing. Without this legislation, there continues to be potential for issues with information sharing as identified by the Supreme Court judgment, including the risk of unnecessary information sharing. I am determined that this Bill will ensure everyone working to support children, young people and families in Scotland will not only do so within the requirements of the law, but will also feel confident in fulfilling our collective ambition to get it right for every child.

We also know that this Bill is needed because Care Inspectorate reports and engagement with stakeholders tell us that approaches to sharing information below the threshold of risk of significant harm to a child are still inconsistent. The status quo is not good enough. The Care Inspectorate report on joint inspections of services for children and young people from 2014 to 2016 underlines the need for improvement in joint working and effective information sharing. None of Partnership Areas or Health Boards inspected were assessed as providing an excellent service in terms of providing help and support at an early stage, assessing and responding to risks and needs, or planning for individual children and young people.

Too many children and families continue to struggle to navigate services and too many children and young people do not get early access to support which could help them to succeed. Relying on the good practice of some and hoping that others catch up will not deliver for every child and young person in Scotland.

That is why the duty consider which is at the heart this Bill is necessary. For the first time, relevant authorities and named person service providers will be required by law to consider the information they hold and whether the sharing of such information could support, promote or safeguard the wellbeing of a child or young person. It also provides professionals with a focus to consider the consequences for wellbeing of not sharing information when

consent to share is not granted. As one health visitor put it, 'it will make all those professionals in schools and GPs who don't currently share information think about what I do and whether they hold information that could support the work I do with children and families'.

This Bill ensures that the benefits of good practice already delivered in some places become the standard for a coherent and consistent approach for all families, regardless of where they live.

**From:** [redacted]

**Sent:** 06 November 2017 16:25

**To:** [redacted]

**Cc:** [redacted]

**Subject:** Re: Children and Young People (Information Sharing) (Scotland) Bill - Correspondence from the Deputy First Minister to the Education and Skills Committee

Thanks [redacted] - I appreciate this very much. Am I able to share it with any of my Chief Executive Colleagues who are working hard to get support for the Bill?

[redacted]

Chief Executive  
Aberlour Child Care Trust

On 6 Nov 2017, at 15:40, [redacted] wrote:

[redacted]

Please find attached a letter which the Deputy First Minister has just sent to the Education and Skills Committee in advance of giving evidence to them on Wednesday on the Children and Young People (Information Sharing) (Scotland) Bill.

As you will see, this sets out the Deputy First Ministers thinking in terms of next steps and the work and support which will be required to effectively implement Parts 4 and 5 of the 2014 Act successfully.

Please let me know if you have any questions at this stage.

Regards

[redacted]

[redacted] Bill Team Leader  
Children and Young People (Information Sharing) (Scotland) Bill  
Area 1D South: Victoria Quay  
[redacted]

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**From:** [redacted]

**Sent:** 07 November 2017 10:59

**To:** [redacted]

**Subject:** EIS

Just on my way back from very good (but pretty worrying) conversation with **[redacted]** and **[redacted]**. **[redacted/redacted]**, would be good to talk to you about this. Not sure if wider catch up sorted yet but I'll get in touch when I'm in the office in about half an hour

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From; **[redacted]**  
Sent: Mon 06/11/2017 18:07  
To: **[redacted]**  
Cc: **[redacted]**

Hi **[redacted]**

Yes that's fine. The Committee have put the letter on their website so it is in the public domain now.

Regards

**[redacted]**

Bill Team Leader  
Children and Young People (Information Sharing) (Scotland) Bill  
Area 1D South: Victoria Quay  
Tel: **[redacted]**  
BB: **[redacted]**

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**Entry in calendar of [redacted]**

26 October 2017, 1.30pm  
*Title of calendar appointment* Aberlour Meeting