

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 10 August 2023

**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 a list of schools where reinforced autoclaved aerated concrete (RAAC) had been used in their buildings and its whereabouts. The Department for Education (DfE) refused to provide the requested information, citing regulation 12(4)(d) of the EIR – material still in the course of completion.
2. The Commissioner's decision is that the DfE was correct to cite this exception and that the public interest lies in maintaining it.
3. The Commissioner does not require further steps.

## Request and response

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4. On 4 April 2023 (received on 5 April 2023), the complainant wrote to the DfE and requested information in the following terms:

"I would like a list of every school that has reinforced autoclaved aerated concrete in their buildings and the details of whereabouts in the school the RAAC is used."

5. The DfE responded on 2 May 2023 and refused to provide the requested information citing regulation 12(4)(d) of the EIR.
6. On 5 May 2023 the complainant made a request for an internal review.
7. The DfE provided an internal review on 5 June 2023 in which it maintained its original position.

## Background

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8. The DfE explained to the Commissioner that -

"RAAC is a lightweight form of concrete. The Standing Committee on Structural Safety (SCOSS) has noted that: 'Although called "concrete", RAAC is very different from traditional concrete and, because of the way in which it was made, much weaker.'"

RAAC was used from the 1950s-mid 1990s. The DfE states that, "It may therefore be found in any school and college building (educational and ancillary) that was either built or modified in this time period". This time period can extend to the 1930s-mid 1950s "because of the difficulty in distinguishing between buildings constructed in this time period".

9. The public authority goes on to say:

"A number of building owners have already taken steps to identify RAAC. For those that have not, government has provided and published guidance<sup>1</sup> which explains how an RB (e.g. a local authority, academy trust, diocese, or governing body) can carry out an initial check to determine whether further advice/action is

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<sup>1</sup> <https://www.gov.uk/government/publications/reinforced-autoclaved-aerated-concrete-estates-guidance>

necessary.

RBs have been asked to complete the departmental RAAC survey<sup>2</sup> to understand their awareness of this construction material and whether it has/may have a presence within their school estate.”

## Scope of the case

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10. The complainant contacted the Commissioner on 6 June 2023 to complain about the way their request for information had been handled.
11. The Commissioner considers that the scope of his investigation is to consider whether the DfT has applied regulation 12(4)(d) correctly.

## Reasons for decision

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### **Regulation 12(4)(d) – material in the course of completion, unfinished documents, and incomplete data**

12. The Commissioner’s guidance<sup>3</sup> states that the exception can be split into three possible limbs:
  - “Information which is, or which relates to:
    - material which is still in the course of completion;
    - unfinished documents; or
    - incomplete data.”
13. If the requested information falls within the above bullet points, the exception is engaged. There is no need to consider any adverse effect, however adverse effects regarding disclosure can be considered under the public interest considerations.
14. The DfE has provided the withheld information to the Commissioner and confirmed that the survey is not complete. Those that have responded will require specialist surveyors commissioned by the DfE to

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<sup>2</sup> <https://dfe-capital2.microsoftcrmportals.com/>

<sup>3</sup> [Regulation 12\(4\)\(d\) - Material in the course of completion, unfinished documents, and incomplete data \(Environmental Information Regulations\) | ICO](#)

establish that RAAC is present. At the time the request was made, the withheld information was 'live', is still 'live' and "no final list of 'every school' containing RAAC has been compiled. The DfE is still waiting for schools to respond in order for the data to be complete. Schools can be added to or removed from the list after the specialist surveyors have ascertained whether the schools that report RAAC are correct. The DfE explains that in a number of cases where schools believe there is RAAC, this has been found not to be the case.

15. The Commissioner accepts that the data is still in the process of being compiled as the survey was not complete. The survey was unfinished at the time of the request and remains unfinished. The exception is engaged.

### **Public interest test**

16. The Commissioner nevertheless needs to consider whether the public interest lies in disclosure or non-disclosure.

### **Public interest factors in favour of disclosing the requested information**

17. The complainant questions that their request "would create too much work" and "divert too many resources" for the DfE by needing to go through the survey answers. Their argument rests on the "huge public interest in knowing which schools are built with RAAC due to it being past its life span".
18. The DfE took into account considerations about openness concerning the process and its delivery, accountability, and "an improved standard of public debate".
19. It recognises that there is public interest in the release of the information in order to be transparent and "establish the public understanding of the potential risk the presence of RAAC may have on those using school buildings".
20. The DfE also acknowledges,  
"significant media interest in the issue of the condition of the school estate, both in local press, e.g. the temporary closure of Hockley

School<sup>4</sup>, to national coverage e.g. in the Guardian<sup>5</sup>, Schools Week,<sup>6</sup> the BBC<sup>7</sup> and the recently published National Audit Office (NAO) 'Condition of school buildings' report<sup>8</sup>.

### **Public interest factors in favour of maintaining the exception**

21. The DfE contends that there is nevertheless a greater public interest,

"in ensuring that we are certain that responses stating that there is a presence of RAAC are accurate, so as not to cause unnecessary alarm to those attending/working within these schools, and so that the department can base any interventions and policy decisions on fully validated data and information when addressing this issue".

Its view is that releasing "incomplete and unvalidated information" or where the "presence of RAAC is of no risk to those at the school e.g. RAAC being present in an unused store room, access to which is restricted or prohibited" is likely to generate concerns.

22. RBs/schools reporting the potential presence of RAAC in their estate risk a "potential negative impact" when some of these may prove not to have RAAC. The consequence being the "possibility of RBs being more reticent in responding to the current RAAC questionnaire, [which] would be detrimental to the exercise and the department's understanding of the extent of the presence of RAAC". This is the so-called "chilling effect".

23. Disclosure has the potential to reduce the number of schools taking part which would weaken the DfE's "ability to fully understand the breadth and severity of the issue". The DfE states that good policy is based on "thorough research, validation of returns and the resulting evidence base" in order to "shape the final policies to address this issue". Reducing the impact of the exercise is not in the public interest.

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<sup>4</sup> <https://www.echo-news.co.uk/news/23578019.hockley-school-forced-temporarily-close-safety-issue/>

<sup>5</sup> <https://www.theguardian.com/education/2023/jun/28/almost-600-schools-in-england-undergoing-urgent-structural-checks#:~:text=RAAC%2C%20which%20is%20a%20lightweight,ageing%20school%20estate%20in%20England.>

<sup>6</sup> <https://schoolsweek.co.uk/700k-pupils-in-school-buildings-needing-major-repair-work/>

<sup>7</sup> [Estimated 700,000 pupils in unsafe or ageing schools in England, says watchdog - BBC News](#)

<sup>8</sup> [Condition of school buildings - National Audit Office \(NAO\) report](#)

24. The association of RBs and their schools with the withheld information could cause reputational damage with parents and teachers because of the perceived risk. Parents might be reluctant to send their children to these schools and schools might have problems recruiting staff due to safety concerns. Any resulting disruption is not in the interests of pupils, parents or the school community and, therefore not in the public interest.
25. RBs/schools are at risk of increased questions and engagement from the media, parents and staff. This would be based on unverified data which the DfE argues could delay plans to address the issue, if RAAC is present. The DfE also considers that it would be unfair to release detrimental information about some schools when the presence of RAAC has not been investigated and verified or otherwise.
26. The DfE argues that the release of the information would affect the 'safe space' it needs to develop its thinking and to progress the exercise, taking account of the fact that the list contains "non-finalised or fully verified lists of schools" that may contain RAAC.
27. The DfE explained to the Commissioner that it has been transparent when it has responded to information requests "regarding schools that have temporarily/permanently closed due to issues with the condition of their estate". It provided examples of parliamentary questions (UIN 140337<sup>9</sup>) where the minister addresses the question of such closures, advice being provided to schools on RAAC (UIN 190163<sup>10</sup>) and school closures related to RAAC (UIN 190162<sup>11</sup>) (see footnote).
28. Finally, the DfE adds that, where RAAC has been confirmed by the specialist surveyors, it provides "rapid support to schools on the advice of specialist structural engineers".

### **Balance of the public interest**

29. The Commissioner acknowledges that the complainant has presented a strong public interest for disclosure as safety concerns for school communities are clearly of great importance. The fact that this is environmental information also carries weight with the presumption in favour of disclosure.

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<sup>9</sup> [Written questions and answers - Written questions, answers and statements - UK Parliament](#)

<sup>10</sup> [Written questions and answers - Written questions, answers and statements - UK Parliament](#)

30. The Commissioner's guidance<sup>12</sup> says that just because incomplete or unfinished information might give a misleading or inaccurate impression this does not carry much weight because a disclosure can be placed in context. In this instance, the information is changing all the time as RBs add information online. Much of that information can only be contextualised by the proviso that (unless a specialist surveyor has been brought in) the presence of RAAC cannot be verified. The potentially detrimental effects of disclosure on individual RBs/schools and the survey as a whole tips the balance of public interest against disclosure whilst there remains a significant degree of uncertainty as to the facts.

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<sup>12</sup> [Regulation 12\(4\)\(d\) - Material in the course of completion, unfinished documents, and incomplete data \(Environmental Information Regulations\) | ICO](#)

## Right of appeal

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31. 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)

32. 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.
33. 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 .....**

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