

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

**Decision notice**

**Date:** 30 April 2024

**Public Authority:** Department for Education

**Address:** Sanctuary Buildings  
Great Smith Street, London, SW1P 3BT

**Decision (including any steps ordered)**

---

1. The complainant has requested DfE to disclose information relating to the use of reinforced autoclaved aerated concrete (RAAC) in educational settings between July to September 2023. DfE refused to disclose the requested information citing regulation 12(4)(e) of the EIR.
2. The Commissioner's decision is that DfE is entitled to refuse to disclose the requested information in accordance with regulation 12(4)(e) of the EIR. He does not require any further action to be taken.

**Request and response**

---

3. On 26 September 2023, the complainant wrote to DfE and requested information in the following terms:

"All reports, briefings, presentations, memos received by the Secretary of State for Education, the DfE's Chief Operating Officer and Director General, Operations and Infrastructure Group and the Estates, Security and People Deputy Director relating the use of reinforced autoclaved aerated concrete (RAAC) in educational settings. Dated from July to September 2023."

4. DfE responded on 25 October 2023. It refused to disclose the requested information citing regulation 12(4)(e) of the EIR.
5. The complainant requested an internal review on 25 October 2023. They disagreed with the application of the exception cited and stated that they consider it is in the public interest to disclose the requested information. They advised that the use of RAAC concrete in public buildings poses a clear and present threat to life, as well as serious financial implications for DfE. The complainant considers it is therefore of paramount importance that DfE discloses the requested information to reveal the level and extent of RAAC in educational settings.
6. DfE carried out an internal review and notified the complainant of its findings on 10 November 2023. It upheld its application of regulation 12(4)(e) of the EIR.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 20 November 2023 to complain about the way their request for information had been handled. As detailed in paragraph 5 above, they disagree with the application of the exception cited and believe it is in the public interest to disclose the requested information.
8. The Commissioner considers that the scope of his investigation is to establish whether or not DfE is entitled to rely on regulation 12(4)(e) of the EIR.

### **Background and context**

---

9. The DfE provided the following background to the request and issues faced in relation to RAAC:

“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. The useful life of such panels has been estimated to be around 30 years’ (SCOSS Alert, May 2019).

RAAC was used in schools, colleges and other building construction from the 1950s until the mid-1990s. It may therefore be found in any school and college building (educational and ancillary) that was either built or modified in this time period.

Where unsure of the date of construction and/or modification of buildings, it has been advised that buildings thought to be constructed between the mid-1930s and mid-1990s were assessed. This extension to include buildings constructed or modified between 1930 and the mid 1950s was because of the difficulty in distinguishing between buildings constructed in this time period.

In March 2022, the department sent a questionnaire to all Responsible Bodies (RBs), asking them to provide information on RAAC in schools and colleges. Following evidence of three new cases where RAAC has failed with no warning, in August 2023, the Department for Education (DfE) decided to take a more precautionary approach for education settings, so that all spaces with confirmed RAAC should close until mitigations are put in place.

The first surveys were carried out in September 2022, to verify RAAC was present and assess its level of risk. Critical cases were advised to take affected spaces out of use and were supported to implement mitigations.

All settings that informed the department in their questionnaire response that they have or suspected RAAC were fast-tracked for professional surveying.

RBs have now submitted responses to the questionnaires for all schools and colleges with blocks built in the target era.

Every school or college with confirmed RAAC has been assigned dedicated support from our team of caseworkers. Project delivery teams work with the setting to put in place a bespoke plan to mitigate the presence of RAAC in the setting and support face-to-face education.

The government is also funding the removal of RAAC present in schools and colleges.”

## **Reasons for decision**

---

### **Regulation 12(4)(e) – internal communications**

10. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the information is internal communications. This exception is then subject to the public interest test.

11. DfE confirmed that all the withheld information is internal communications within the department. None has been shared outside the department at any stage.
12. The Commissioner has received a large sample of the withheld information and notes himself that they are all communications, mostly with attachments, circulated within DfE only. He is therefore satisfied that regulation 12(4)(e) of the EIR applies.

### **Public interest test**

13. DfE said that it acknowledges that disclosure would provide more openness and transparency around the process and delivery and this may lead to greater accountability, improved standard of public debate and improved trust. It also said that disclosure would aid the public in understanding more closely DfE's approach to resolving the issue of RAAC in schools and colleges.
14. DfE confirmed that RAAC has received substantial media coverage and understands the resolution of this issue, and the approach taken by government, is of significant interest to those working within the education sector and the wider school and college community, including pupils and parents.
15. However, it considers the public interest rests in maintaining the exception. It stated that RAAC was and remains a live issue. Between July and September 2023 DfE was undertaking rapid policy development as further evidence emerged about this significant safety issue across the country. It argued that ministers were thoroughly involved in managing and setting up of DfE's emergency response at pace in order to build departmental capacity, identify settings with RAAC and put in place bespoke plans and funding to remove it for good. DfE said that this involved establishing new operational structures, stakeholder management systems, communicating to schools and college across the country and extensive cross government working to ensure the expertise and funding would be in place.
16. DfE advised that a fundamental part of its ability to consider the evidence relating to an issue to actions being taken to resolve an issue, is being allowed the space to do this without undue or premature scrutiny. It argued how it is vital that DfE is allowed to consider urgent issues such as RAAC within a 'safe space' so as to allow it to consider, discuss and act upon the internal communications and the reports and briefings within them.
17. DfE confirmed that it is clear that the request was received at the height of the RAAC issue, as it worked rapidly to counteract and resolve this. It

stated that it was vital that it could consider all options available to it and the sector when addressing this issue, without premature and unnecessary scrutiny of its considerations whilst addressing this. It advised that what is and remains vital, is its ability to (without distraction) ensure the safety of pupils, staff and the wider educational community, and allow it to act on evidence and information provided within the withheld internal communications to enable schools to, wherever possible, provide face to face education and to ensure pupils are taught in the safest possible environment.

18. It commented that the withheld information played a crucial role in allowing DfE to address the issue. The withheld information culminated in the release of official guidance published by DfE, including guidance in identifying RAAC<sup>1</sup> and guidance for RBs and school settings once RAAC had been confirmed<sup>2</sup>, both published September 2023. There followed the release of further guidance on the installation of temporary buildings<sup>3</sup>, published in October 2023.
19. DfE stated how it is incredibly important that it is allowed, within a safe environment, to internally communicate and discuss the evidence, findings and options available, prior to actions being taken or guidance being published, to support ministers in their decision making. The ability for officials to share free and frank advice with ministers is always crucial, particularly when dealing with a significant safety risk to children and staff across the country and when far reaching decisions, which will impact the education of hundreds of thousands of pupils, need to be made at speed.
20. It said it is concerned that the disclosure of such internal communications at such a crucial time and whilst the matter is still very much live and under consideration, could potentially lead to the dilution of the severity of issues and risks being discussed, for the fear of publication. DfE argued that given that RAAC could potentially, in the worse cases, be a threat to the life of pupils and the wider school community, it is obviously essential that officials can be free frank and candid in these communications. It provided examples of this from the

---

<sup>1</sup> [Reinforced autoclaved aerated concrete: identification guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/reinforced-autoclaved-aerated-concrete-identification-guidance)

<sup>2</sup> [Reinforced autoclaved aerated concrete: guidance for responsible bodies and education settings with confirmed RAAC - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/reinforced-autoclaved-aerated-concrete-guidance-for-responsible-bodies-and-education-settings-with-confirmed-raac)

<sup>3</sup> [Installing temporary buildings on school sites with RAAC - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/installing-temporary-buildings-on-school-sites-with-raac)

contents of the withheld information. But for obvious reasons, these examples cannot be included within this notice.

21. DfE advised how disclosure would also lead to key partners not wishing to engage as fully and openly with DfE due to concerns that the details of conversations undertaken 'in confidence' could go into the public domain. It argued that it is vital that DfE can continue to openly engage with such partners to seek this 'soft intelligence' when looking to resolve issues such as RAAC, and to reduce this engagement would not be in the public interest.
22. DfE said it is especially important and crucial to have the necessary safe space when working at pace to resolve a significant and high-impact issue such as RAAC. This is a prime example. It is in the public interest to develop and provide evidence based guidance and recommendations for key partners to follow to ensure that the safety of those on the school and college estate is prioritised, as is the education of all pupils. It said it is not in the public interest for DfE and those key partners to be using limited resources and capacity to field unnecessary questions and concerns raised due to the disclosure of 'working' information that had fed, all or in part, into the provision of the published finalised guidance and recommendations that should be followed.
23. The Commissioner acknowledges there are significant public interest arguments in favour of disclosure. The withheld information relates to the significant issue of RAAC in the school and college estate and it is recognised that this is causing much alarm and concern within the education community and general public. The matter raises significant safety concerns so there is a need to act with speed and in the most effective way possible to ensure the safety of schools, staff and pupils and the delivery of education. The matter has attracted significant media coverage and there is a public interest in knowing exactly how this matter is being addressed and what options the government is considering.
24. However, the timing of the request plays a significant part in the Commissioner's decision over the balance of the public interest and where this best lies. At the time of the request DfE was working hard and at speed to try and evaluate the scale of the issue and to consider what should be done about it. It required the safe space in order to do that and to discuss openly, candidly and potentially controversially what options were available. It needed to act fast and effectively to form the government's key advice and guidance for all its key partners, so as to ensure that they were following and adhering to the most appropriate support and advice, so as to safeguard the education of its pupils and their overall safety whilst in school. Disclosure at the time of the request would have hindered this process and diluted the discussions and

considerations that was required. Disclosure would have also placed into the public domain 'working' documents, which did not provide the government established position or guidance. Disclosure would have resulted in resources and time being diverted to managing questions and queries and key partners potentially acting on advice and guidance which was not formed and the most appropriate.

25. Disclosure would also have discouraged key partners from openly and candidly engaging with DfE over the issue for the fear of premature public scrutiny.
26. Although there are clear and significant public interest arguments in favour of disclosure, the Commissioner considers in this case due to the timing of the request and the subject matter being live, the public interest rests in maintaining the exception.

## **Right of appeal**

---

27. 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)

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water, Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**