

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

Decision notice

Date: 20 May 2024

Public Authority: Department for Education
Address: Sanctuary Buildings
Great Smith Street
London SW1P 3BT

Decision (including any steps ordered)

1. The Commissioner's decision is that the Department for Education (DfE) correctly applied regulation 12(4)(e) of the EIR to the requested information about Reinforced Autoclaved Aerated Concrete (RAAC) in schools and colleges. The information is internal communications and disclosing it wasn't in the public interest.
2. It's not necessary for DfE to take any corrective steps.

Request and response

3. The complainant made the following information request to DfE on 8 September 2023:

"1. The Observer ran a story regarding detailed submissions from civil servants given to Nadhim Zahawi / his office when he was education secretary regarding RAAC. There were at least five submissions in early 2022. I would like to request a copy of these and any other submissions.

2. Please can I also request the outcome of these submissions too.”
4. DfE’s final position was that the relevant information it holds is excepted from disclosure under regulation 12(4)(e) of the EIR. However, it had directed the complainant to where information about RAAC in state-funded education settings, including regular updates, is published.

Reasons for decision

5. This reasoning covers whether the requested information is excepted from disclosure under regulation 12(4)(e) of the EIR.
6. Under regulation 12(4)(e) of the EIR, a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. This exception covers all internal communications, and the sensitivity of the information isn’t a consideration for the exception to be engaged.
7. DfE has confirmed that the information it’s withholding, which it has provided to the Commissioner, comprises emails, often with attachments, that were internal and only sent between officials and ministerial private offices within the DfE. DfE has also confirmed that it’s the case that the information wasn’t shared outside the department, and therefore remains as purely internal communications.
8. The Commissioner is satisfied that the information within scope of the request that DfE is withholding can be categorised as internal communications and that DfE was therefore entitled to apply the exception under regulation 12(4)(e) to that information. He’s gone on to consider the associated public interest test.

Public interest test

9. In their request for an internal review the complainant argued that the RAAC crisis left thousands of children impacted in the first week of term, that the situation was ongoing and that it was still uncertain how the problems would be rectified in the long run. The complainant also noted that the information is also partly already in the public domain, so they believed it was well within the public interest to fully understand what the DfE knew about the crisis and how it could impact children's education. They considered the public must know how these critical decisions are made by civil servants and ministers.
10. In its submission to the Commissioner, DfE says it’s taken into account that considerations for disclosure add up to an argument that more openness about the process and delivery may lead to greater

accountability, an improved standard of public debate, and improved trust.

11. DfE says it recognises the public interest in releasing the information to be open and transparent, and to establish the public understanding of its approach to resolving the issue of RAAC in schools and colleges.
12. RAAC received substantial media coverage, and resolving this issue, and the approach taken by government, is, DfE says, of significant interest to those working within the education sector and the wider school and college community, including pupils and parents.
13. DfE has provided the following arguments against disclosing the information,
 - “RAAC was a ‘live’ issue at the time of the information in scope, at the time of the request and continues to be a ‘live’ issue at the time of writing. In September 2023, when the request was received, the department was undertaking rapid policy development as further evidence emerged about this significant safety issue across the country. Ministers were thoroughly involved in managing the department’s response at pace in order to ensure departmental capacity to support schools and colleges, their pupils, parents and local communities. This includes identifying settings with RAAC in their buildings, putting in place bespoke mitigation plans to keep any disruption to education to an absolute minimum and funding to remove RAAC for good from schools and colleges in England. This also involved establishing new operational structures, stakeholder management systems, communicating to schools and colleges across the country and extensive cross governmental working to ensure the expertise and funding would be in place.
 - A fundamental part of the department’s ability to consider the evidence relating to an issue prior to actions being taken to resolve an issue, is being allowed the space to do this without undue or premature scrutiny. It is vital that the department is allowed to consider urgent issues such as RAAC within a ‘safe space’ so as to allow us to consider, discuss and act upon the internal communications and the reports and briefings within them.
 - The withheld information relates to a period in 2022 when the department was delivering a significant programme to identify the scale of the RAAC issue in the education estate, including sending out the questionnaires, engaging with the construction industry and delivering technical surveys to confirm if RAAC was present.

The department was also supporting education settings to implement mitigations in cases where engineers had assessed the RAAC as critical where it was advised to take affected spaces out of use. It also includes the then Secretary of State's response to these measures.

- The information clearly sets out the limits of the department's knowledge of the extent of RAAC within the education estate as the identification programme was ongoing at the time. This was a significant operational programme as the school estate is very disparate – there are over 22,000 schools and colleges in England, with over 64,000 individual blocks. At the time the submissions were being shared with the Secretary of State, the department was working hard to identify RAAC within the education estate and support affected education settings, so officials could provide advice to ministers on how to address RAAC in the education estate.
- It is clear that the request was received at the height of the RAAC response in September 2023 as the department worked rapidly to support education settings. The department had taken precautionary action in August 2023 to change the approach for education settings following evidence of three new cases where RAAC has failed with no warning, so that all spaces with confirmed RAAC should close be taken out of use until mitigations are put in place. The department was working with over a hundred education settings to support them to put in place mitigations and minimise any disruption to education as well as delivering a significant programme of technical surveys in order to rapidly confirm if RAAC is present in any school or college that advised us they suspect they might have. It was vital that we could consider all options available to us and the sector in responding to RAAC, without premature and unnecessary scrutiny of the department's previous considerations whilst addressing this. What was, and remains, vital, is the department's ability to, without distraction, ensure the safety of pupils, staff and the wider educational community, and allow us to act on the evidence and information provided within the withheld internal communications to enable schools to continue to provide face-to-face education for all pupils and to ensure pupils are taught in the safest possible environment.
- It is incredibly important that the department is allowed, within a safe environment, to internally communicate and discuss the evidence, findings and options available, prior to any 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.”

Balance of the public interest

14. The Commissioner is conscious of the fact that regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure.
15. With regard to the ministerial submissions and email correspondence, the Commissioner accepts that a public authority needs a ‘safe space’ to develop ideas, debate live issues, and reach decisions away from external interference and distraction.
16. However, he doesn’t consider that safe space arguments automatically carry much weight in principle. The weight accorded to such arguments depends on the circumstances of the specific case, including the timing of the request, whether the issue is still live, and the content and sensitivity of the information in question.
17. At the time of the request in September 2023 the matter of RAAC in schools and colleges was a live issue, and it remains live at this point. The ‘safe space’ public interest argument carries more weight when a situation is live and ongoing. In this case, the officials and ministers would need that space to focus on discussing and responding to the unfolding RAAC concern, away from the external distraction that disclosing the requested information was likely to have generated.
18. The Commissioner has next considered the content and sensitivity of the withheld information.
19. DfE says it considers that the content of the communications is “extremely sensitive.” DfE has discussed the content in more detail but has asked the Commissioner not to reproduce that discussion in this notice. However, the Commissioner agrees that the content of the communications is sensitive as it concerns a live and serious situation.
20. The Commissioner recognises that the problem of RAAC in schools and colleges has caused a great deal of concern and upheaval, nationally. As such there’s a strong public interest in transparency about how DfE was handling the problem from 2022. However, the Commissioner has noted that DfE pro-actively publishes information about its response, and regular updates. The Commissioner considers that addresses the public interest to an adequate degree. The Commissioner considers that there’s greater public interest in this case in DfE being able to focus on

managing the problem effectively and with pace, away from the external distraction that might be generated from disclosing the information.

21. On balance the Commissioner considers that the public interest favours maintaining the regulation 12(4)(e) exception. This is in line with his decision in IC-272718-B6D6¹.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4029556/ico-272718-b6d6.pdf>

Right of appeal

22. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF