

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2022

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

Decision (including any steps ordered)

1. The complainant has requested information on the Department for Education's (DfE) policy on face coverings in classrooms. The DfE refused the request under section 35(1)(a) of the FOIA.
2. The Commissioner's decision is that the DfE has correctly applied the exemption and the public interest lies in withholding the information.

Request and response

3. On 9 February 2022 the complainant made a request to the Department for Education for information in the following terms:

"Please provide the information requested of you in ICO decision notice reference IC-72508-Q4B0."
4. The information request referred to in [IC-72508-Q4B0](#) was for:

"1. Any risk assessment made on the advice published 26.08.2020 regarding face coverings in schools. By this, I am referring to a risk/benefit assessment of the advice to wear face coverings, which would include some analysis of the potential detrimental outcomes posed by wearing of those within schools from the viewpoints of physical and mental health and social/communication issues for those the guidelines apply to as a collective."

2. Given the government guidance published 22nd Oct 2018 on the gov.uk which was updated last on 17th June 2020 (as of today, 2pm, 23rd September 2020), the status of COVID-19 is provided: 'As of 19th March 2020, COVID-19 is no longer considered to be a high consequence infectious disease. Furthermore, it also states, amongst other information: "The advisory Committee on Dangerous Pathogens (ACDP) is also of the opinion that COVID-19 should no longer be classified as an HCID' Given this, please provide details of the rationale behind the decisions made, which form current recommendations."
5. The DfE refused the request under section 35(1)(a), as it did in the earlier cited case that resulted in the decision notice. It upheld this position at internal review.

Reasons for decision

6. Section 35(1)(a) of the FOIA allows for information to be withheld if it relates to the formulation or development of government policy.
7. The Commissioner is not intending to repeat the arguments in IC-72508-Q4B0 as to why the information engages the exemption as this position has not changed – the information is still the same and the DfE's policy on face coverings remains a 'live' policy issue in that it is constantly under review and under development.
8. The complainant has pointed to more recent developments which have removed the need for face coverings to be worn in classrooms. He asked the DfE to prove that the policy was still in development. The Commissioner's view is that the fact the policy has again changed recently proves that it has remained under review and 'live' and is therefore still being developed. The last advice from the DfE was on 27 January and the request was made on 9 February – it is reasonable to conclude that the advice to remove any requirement to wear face coverings in classrooms would have still been under review at the time of the request to ascertain if there were any adverse consequences from this change in policy.
9. This position is supported by the views of the [First Tier Tribunal](#) following an appeal of the earlier cited decision notice. The Tribunal noted at paragraph 34 that:

"The request concerns information, which relates to the formulation of government policy in relation to the use of face coverings in schools. On the evidence before us, this was (and remains although hopefully, perhaps not for much longer) a live issue. We were presented with clear and cogent evidence that this is an area in which the policy has

changed at least 8 times (and continues to change) in response to the scientific evidence and circumstances of the pandemic. The department's submissions to the Commissioner provide detailed background and context that support the conclusion that this is a live and fast changing area of policy development."

10. Turning to the public interest in the information the Commissioner again refers to the Tribunal decision, in particular comments at paragraphs 28 -30 on the application of the public interest test. The Tribunal concluded that the public interest test had been properly applied and neither the DfE or the complainant has advanced any different arguments in this case.
11. Therefore, the Commissioner again concludes that the public interest favours withholding the information and section 35(1)(a) provides a basis for withholding the requested information.

Right of appeal

12. 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

13. 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.
14. 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

Jill Hulley
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