



Department of Health & Social Care

Freedom of Information Team
Department of Health and Social Care
39 Victoria Street
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www.gov.uk/dhsc

Mr Gabriel Kanter-Webber
[request-660164-](#)
367cf668@whatdotheyknow.com

21 August 2020

Annex A: DHSC's response to initial request dated 3 June 2020
Annex B: Request for internal review dated 3 June 2020

Dear Mr Kanter-Webber,

FREEDOM OF INFORMATION ACT (FOIA): INTERNAL REVIEW CASE REFERENCE IR 1218242

You originally wrote to the Department of Health and Social Care (DHSC) on 22 April requesting information about *The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020*. We responded to you on 3 June (our ref: FOI- 1218242), withholding the requested information under section 35(1)(a) of the FOIA (formulation or development of government policy). A copy of our response, including the full text of your request, is at Annex A.

You subsequently emailed DHSC on 3 June requesting an internal review into the handling of your original request. A copy of your email is at Annex B.

The purpose of an internal review is to assess how your FOI request was handled in the first instance and to determine whether the decision given to you was correct. This is an independent review as I was not involved in the original decision. I apologise for the delay in responding, which I appreciate has fallen short of expectations.

I have undertaken discussions with the team that has responsibility for your request, and we have taken the opportunity to consider it again.

Conclusion

After careful consideration of the subject matter and the public interest arguments put forward by the Department, I have concluded that the response you received was compliant with the requirements of the FOIA and I uphold DHSC's decision to withhold the requested information under section 35(1)(a).

The review is now complete.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

<https://ico.org.uk/concerns>

You may find it useful to refer to the Information Commissioner's guidance on communicating effectively and politely with public authorities at:

<https://ico.org.uk/your-data-matters/official-information>

Yours sincerely,

Charlene Carter
Casework Manager
Freedom of Information Team
FreedomofInformation@dhsc.gov.uk

Annex A: DHSC's response to initial request

Mr Gabriel Kanter-Webber
request-660164-367cf668@whatdotheyknow.com

03/06/2020

Dear Mr Kanter-Webber,

Freedom of Information Request Reference FOI-1218242

Thank you for your request dated 22 April, in which you asked the Department of Health and Social Care (DHSC):

*"Dear Department of Health and Social Care,
The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020 were, in part, intended to clarify that under regulation 6(1), the prohibition applies both to leaving the place where a person is living without reasonable excuse, and also to staying outside that place without reasonable excuse.
Please disclose an electronic copy of all recorded information you hold regarding this particular amendment.
Yours faithfully,"*

Your request has been handled under the Freedom of Information Act (FOIA).

I can confirm that the DHSC holds information relevant to your request.

However, we consider that this information is exempt under Section 35(1)(a) of the FOIA, which provides protection for the information that relates to the formulation or development of Government policy. Section 35 is a qualified exemption and requires consideration of the public interest test.

The DHSC recognises the general public interest in making this information available for the sake of greater transparency and openness.

However, the DHSC takes the view that the section 35 exemption is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formulation and development, including the exploration of all options.

Civil servants and subject experts need to be able to engage in the free and frank discussion of all the policy options internally, to expose their merits and demerits and their possible implications as appropriate. Their candour in doing so will be affected by their assessment of whether the content of such discussion will be disclosed. Premature disclosure of information protected under section 35 could prejudice good working relationships and the neutrality of civil servants.

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be submitted within two months of the date of this letter and sent to FreedomOfInformation@dhsc.gov.uk, or to the address at the top of this letter.

Please remember to quote the reference number above in any future communication.

If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner's Office (ICO). Generally, the ICO cannot make a decision unless you

have already appealed our original response and received our internal review decision. You should raise your concerns with the ICO within three months of your last meaningful contact with us.

The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

<https://ico.org.uk/concerns/>

Annex B: Request for internal review

From: G Kanter-Webber request-660164-367cf668@whatdotheyknow.com
Sent: 03 June 2020 09:05
To: FreedomofInformation freedomofinformation@dhsc.gov.uk
Subject: Re: Freedom of Information request - Lockdown amendment

Dear Department of Health and Social Care,

Please conduct an internal review. There are two factors, in particular, which strongly tip the balance of the public interest in favour of disclosure:

1. The lockdown regulations are by far the most restrictive piece of legislation ever enacted in this country, interfering with virtually every human right in the European Convention. The specific amendment about which my request is enquiring made them yet more restrictive. The importance in transparency about how decisions are reached is therefore increased.

2. The amendment was passed using an urgent procedure (albeit there is no clarity what the urgency was) without Parliamentary debate or scrutiny. Had it been debated in Parliament, the reasoning behind each provision would have been fully explained and explored. As it is, this didn't happen, so the public interest in the disclosure of the reasoning - outside Parliament - is therefore increased.

Yours faithfully
G Kanter-Webber

PS: we both know that you're going to maintain your refusal without even really thinking it over, so my preference would be that you do so speedily so that we can then progress the matter towards the ICO and the Tribunal.