



Department of Health & Social Care

Freedom of Information Team
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

www.gov.uk/dhsc

Mr Kieran Collins
request-720971-439a9b9e@whatdotheyknow

12 February 2021

Annex A: DHSC's response to initial request dated 26 January 2020
Annex B: Request for internal review dated 3 February 2021

Dear Mr Collins,

FREEDOM OF INFORMATION ACT (FOIA): INTERNAL REVIEW CASE REFERENCE IR 1295911

You originally wrote to the Department of Health and Social Care (DHSC) on 22 January requesting information regarding face coverings. We responded to you on 26 January (our ref: FOI-1295911), withholding 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 February 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 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, 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>

Yours sincerely,

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

Annex A: DHSC's response to initial request

Mr Kieran Collins
request-720971-439a9b9e@whatdotheyknow.com

26 January 2021

Dear Mr Collins,

Freedom of Information Request Reference FOI-1295991

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

*"Under the Freedom of Information Act 2000, I am requesting documents that contain the following information: * Any document that provides descriptions, analysis, research, commentary, insights, or predictions about how the requirements in The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020, as well as any amending regulations to these two Regulations, will or have impacted the lives of disabled people * Any document that provides descriptions, analysis, research, commentary, insights, or predictions about how Government/Departmental advertising campaigns on face coverings have or will affect disabled people's lives"*

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

DHSC holds information relevant to your request. However, we are withholding this information under Section 35(1)(a) of the FOIA, which states that authorities may withhold information that relates to the development of Government policy.

The information you are seeking is contained in an Equality Impact Assessment (EIA), which was conducted by DHSC in adherence to our Public Sector Equality Duty (PSED). The policy to which this EIA relates remains under development, in line with continually updated scientific evidence.

Section 35 is a qualified exemption and as such requires consideration of the public interest test. DHSC recognises the general public interest in transparency of Government, particularly surrounding the COVID-19 pandemic.

However, the purpose of the exemption at Section 35 is to protect the internal deliberative process. The exemption is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formation and development, including the exploration of all options and the taking of difficult decisions. Premature disclosure of information protected under Section 35 could prejudice good working relationships, the perception of civil servants' neutrality and, ultimately, the quality of Government. Therefore, DHSC considers that the public interest in withholding this information outweighs that in its release.

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

Kieran Collins request-720971-439a9b9e@whatdotheyknow.com

03 February 2021

Dear Department of Health and Social Care,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Department of Health and Social Care's handling of my FOI request 'Research/Analysis of Face Covering Laws on Disabled People'. This is reference number FOI-1295991.

You have refused my request on the grounds of Section 35(1)(a), stating that authorities may withhold information that relates to the development of Government policy. You also state that the purpose of the exemption at Section 35 is to protect the internal deliberative process. The exemption is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formation and development, including the exploration of all options and the taking of difficult decisions. Premature disclosure of information protected under Section 35 could prejudice good working relationships, the perception of civil servants' neutrality, and, ultimately, the quality of Government. Therefore, DHSC considers that the public interest in withholding this information outweighs that in its release.

While I appreciate and understand the exemption, I believe that your judgment that the public interest in withholding the information outweighs that in its release is not the correct one to reach.

Disabled people have been facing abuse and many have reported fear about going to shops or using public transport because they cannot use face coverings. There have also been many people that have called for or praised stricter enforcement of the rules (including the Health Secretary at his press conference of 12 January 2021). It is very much a live and very important public issue, and it has had a profound impact on the lives of disabled people.

This is a high-profile issue, one that affects the lives of a lot of disabled (as well as non-disabled people). The release of any Equality Impact Assessment or any other document you have in your possession is essential to understanding how the lives and experiences of disabled people have been considered, considering the debate around the issue and the abuse disabled people have faced, and also may help understanding of the policy from those who are currently against it. The quality of government would actually, therefore, be improved by releasing these documents, as people would better understand and appreciate government policy. To be blunt, the lives of disabled people, and how they have been impacted matters more than trying to protect internal deliberations.

As you may be aware, the Welsh Government proactively makes available its Equality Impact Assessments publically. While this may not encompass all documents related to the Welsh Government's policy, and it may be changed to be public-facing, it is an example of how these documents can be released without prejudicing internal deliberations, and how there is a large public interest in their release. These are available at the following link: <https://gov.wales/impact-assessments-coronavirus>. Specifically, Annex E and various other parts of the 24 July review refers to the equality considerations going into making the wearing of face coverings compulsory.

Similarly, the Scottish Government has also done so with its restrictions, which includes information about face coverings: <https://www.gov.scot/publications/covid-19-equality-fairer-scotland-impact-assessment-evidence-gathered-scotlands-route-map-through-out-crisis-phase-3-measures/>

As both the Welsh and Scottish Governments have published similar documents, I do not see how the public interest in withholding the document(s) is more than those in releasing them, though I do appreciate they may not be exactly the same as what I am seeking. It seems doubtful that release of this information could compromise the neutrality of civil servants, considering similar evidence has been published elsewhere. This reason is in addition to the abuse and fear that many disabled people are facing, and the high-profile public debate on face coverings and exemptions, which shows it is an important issue impacting a lot of people. All of these factors should lead to the conclusion that releasing the documents is in the public interest, despite any internal discussions that may be prejudiced.

As well as that, you state the policy remains under development. The exemption regime for disabled people has not been changed since the introduction of the Regulations in June and July of 2020, despite multiple amendments to change other things, such as Fixed Penalty Notices or expanding the range of venues where they must be worn. It does not seem believable that after 7-8 months, including 2 national lockdowns, that changes to the policy are still being considered and need to be protected. There is still no indication it will change, including from when the Health Secretary addressed the issue of supermarkets and face coverings in early January at his press conference. Therefore, there should be no discussions that need protection, and no indication that the release would be premature. Even if changes were being contemplated, the public interest in releasing them outweighs that in withholding them. It is a very specific issue that will fade away after the COVID-19 pandemic, but it is one that matters to the lives of disabled people now.

In summary:

- * It seems unlikely that what I am asking for is still being actively considered, considering the many months without change to the exemption regime, despite other amendments and stricter rules. Even more recently, there is no indication of any change
- * The public interest in releasing outweighs that of withholding, as it is a live and important issue, so it would be useful to understand what went into the Government's decisions to do what it did. This could even help understanding of the policy, and would make disabled people feel better that their experiences have been understood and considered.
- * The neutrality of civil servants, the quality of government or working relationships either should not be affected, will be positively impacted on, or the public interest in this specific case outweighs that of those considerations

If anything needs clarifying, let me know. I apologise if anything in this email seems accusatory or hostile, that is not my intent, and I respect you are all doing the best you can, even if we disagree about this.

Yours sincerely,

Kieran Collins