

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 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 use of evidence and modelling in the development of T Level qualifications. The Department for Education refused the request under section 35(1)(a) of the FOIA.
2. The Commissioner's decision is that the Department for Education has correctly applied the exemption and the public interest lies in withholding the information.

Request and response

3. On 17 December 2021 the complainant made a request to the Department for Education (DfE) for information in the following terms:

"The evidence and modelling on T Levels roll out and industry placement availability that has been developed to support internal advice to ministers in the development of the new T Level qualifications."
4. The DfE responded on 12 January 2022 and refused the request under section 35(1)(a). It upheld this position at internal review.

Reasons for decision

5. Section 35(1)(a) of FOIA allows for information to be withheld if it relates to the formulation or development of government policy.
6. The DfE considers that the evidence on T Level roll out and industry placement availability is part of the development of policy; however the complainant argues that policy on T Levels has already been developed and implemented.
7. T Levels are technical based qualifications developed in collaboration with employers and businesses and are equivalent to three A levels. They are focused on vocational skills and getting students into skilled employment.
8. The request followed comments by the, at the time, Education Secretary Nadhim Zahawi in November 2021 in which he stated he had seen evidence showing employers will offer industry work placements each year when T Levels are fully rolled out. It is that evidence that the complainant is seeking.
9. The Commissioner understands the first T Levels launched in September 2020 with seven more following in September 2021, and more launching in September 2022 and 2023. The complainant considers that policy on T Levels has already been implemented so cannot be being developed.
10. The Commissioner's view is that T Levels are still being rolled out; as such it stands to reason that the policy underpinning the implementation and roll out of T Levels will be under review. The DfE has advised it will be reviewing the support and infrastructure in place to ensure there are enough industry placements across the different sectors to meet demand. The DfE also intends to work with employers and colleges to consider any potential barriers for T Levels that may arise and identify suitable mitigations and policy solutions for them.
11. Whilst policy development cannot be ongoing indefinitely the Commissioner's view is that as the roll out is ongoing the policy remains 'live' in that it is constantly under review, subject to change, development and evolution.
12. As such the Commissioner considers that section 35(1)(a) has been correctly applied by the DfE.
13. Turning to the public interest in the information. The DfE accepts there is a general public interest in disclosure. Knowledge of the way Government works increases if the information on which decisions have been made is available. This can lead to public contribution to the policy making process becoming more effective. There is a general public interest in being able to see if Ministers are being briefed effectively on the key areas of policy the DfE is taking forward.

14. The complainant points to the fact that T Levels are a flagship new qualification that are costing significant amount of money to implement. They argue there is widespread concern over whether or not there will be enough industry placements for all T Level students in the future and that if the government has evidence to prove this then the public should be able to see this.
15. Balanced against this, the DfE argues it is in the public interest that the formulation of government policy and government decision making can proceed in a self-contained, 'safe' space to ensure it is done well, sheltered from external interference or distractions. Good government depends on good decision making and this needs to be based on the best advice available and a full consideration of the options. Without protecting the thinking space, and the ability for Ministers and senior officials to receive free and frank advice, there is likely to be a corrosive effect on the conduct of good government, with a risk that decision and policy making will become poorer as a result
16. The DfE believes that disclosure of the withheld information would be likely to intrude on the policymaking 'safe space' for T Levels and industry placements, as they continue to be rolled out, and lead to less fully informed decision and subsequent policy making.
17. Specifically, the release of modelling would have the effect of setting a public target for the number of T Level students in each year of roll out, something the DfE has taken a deliberate policy decision not to do. Such a target would be likely to lead to both providers and government prioritising T Level student numbers above other factors, for example the quality of courses being offered, which would be to the detriment of students studying these qualifications.

Balance of the public interest arguments

18. The purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well-considered or effective policies. In particular, it ensures a safe space to consider policy options in private.
19. The Commissioner accepts there is a general public interest in openness and transparency. He also accepts there is a more specific public interest in understanding the demand for T Levels and the opportunities available to those studying them when they are completed. This will extend to understanding how the DfE developed policy on specific areas and the information in this case would go some way to increasing the public's understanding of how the DfE determined its position.

20. The Commissioner is mindful there is no inherent or automatic public interest in withholding information that falls within the section 35 exemption. The relevance and weight of the public interest arguments will depend entirely on the content and sensitivity of the particular information in question and the effect its release would have in all the circumstances of the case. Once a policy decision has been finalised and the policy process is complete, the sensitivity of information relating to that policy will generally start to wane, and public interest arguments for protecting the policy process become weaker. If the request is made after the policy process is complete, that particular process can no longer be harmed.
21. The Commissioner gives weight to the argument that disclosure would harm the effectiveness of the policy itself as it continues to evolve and change and T Levels continue to be rolled out. The information reveals details that, according to the DfE, would lead to providers focusing on numbers rather than ensuring T Levels are of the highest quality. The Commissioner agrees this would clearly not be in the public interest as it would affect the underlying policy behind T Levels and potentially effect the roll outs coming over the next few years.
22. The safe space arguments therefore carry significant weight; there is a need for ministers and officials to be able to discuss and debate and consider evidence in a candid, free and frank manner. There is a public interest in preserving this safe space.
23. The policy on T Levels is still relatively new, in that at the time of the request there were more T Levels yet to be developed and rolled out than there were those already available. Any initial evidence and modelling would still be used to influence future roll outs and be discussed and evaluated alongside new emerging information and data. The Commissioner accepts this gives weight to the argument that it is not in the public interest to disclose information while the issues are still live and under review.
24. Taking all of the above into account, the Commissioner is satisfied that there remains a need for an appropriate degree of safe space within which to develop ideas and consider policy issues away from external interference and distraction and to protect the policy and the formulation/development process.
25. Therefore, the Commissioner 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

26. 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

27. 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.
28. 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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Information Commissioner's Office
Wycliffe House
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Wilmslow
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