



## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Dated 5 June 2006

**Public Authority:** Department for Work and Pensions

**Address:** Richmond House  
79 Whitehall  
London  
SW1A 2NS

#### Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1).

In order to comply with its obligations under s.1(1) of the Act, the Department for Work and Pensions ("DWP") shall, within 30 days of the date of this Notice, communicate to the Complainant the information that he requested.

1. **Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner.**
  - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
  - 1.2 Where a complainant has made an application for a decision, unless:
    - a complainant has failed to exhaust a local complaints procedure, or
    - the application is frivolous or vexatious, or
    - the application has been subject to undue delay, or
    - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
  - 1.3 The Commissioner shall either notify the Complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the Complainant and the public authority.

## **2. The Complaint**

- 2.1 The Complainant has advised that on 18 November 2004 the following information was requested from the Public Authority:

*The timescale and anticipated publication date for the feasibility study being undertaken by [the DWP] to establish the full impact, costs and benefits of the introduction of identity cards.*

The request was made originally as a Parliamentary Question. At the time of asking the Parliamentary Question, the Act's right of access had not come into force. Following DWP's refusal of the request, the Complainant clarified, on 2 December 2004, that in fact he wanted a copy of the *feasibility study with all sensitive information removed*. At this time the Act's right of access had still not come into force. It should be noted that the Commissioner does not consider a Parliamentary Question to be a valid request for the purposes of the Act. However, in subsequent correspondence it became clear that both DWP and the Complainant were content for the request to be considered as if it had been made under the Act. The Commissioner is therefore prepared to consider the request as valid for the purposes of the Act. The alternative would be for the Complainant, who had already waited until 27 June 2005 for an internal review of his request to be carried out, to make a fresh request and to go back to the beginning of the process. The Complainant asked for the Commissioner to make a decision about the handling of his request on 11 July 2005.

## **3. Relevant Statutory Obligations under the Act**

### **Failure To Give Access**

**Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

## **4. Review of the case**

On 11 July 2005 the Complainant formally asked the Commissioner for a decision about the DWP's decision to refuse the request for information that he made to it. He also asked the Commissioner to consider whether the time taken by the DWP to conduct its internal review of his request was unacceptably long. The latter point has been addressed in correspondence and is not considered here.

The Commissioner began his investigation of the Complainant's case on 26 July 2005. This involved setting out the Complainant's concerns to the DWP and requesting a copy of the information that the Complainant had asked for access to.

The DWP was also invited to provide any additional information in support of its decision to withhold the information. On 27 September 2005 the DWP replied to the Commissioner's letter of 26 July, and provided a copy of the withheld information. The DWP also reiterated that although the Complainant's request was originally made as a Parliamentary Question, it was content to consider the complaint as valid for the purposes of the Act. The DWP also explained in general terms the rationale surrounding the use of Home Office cost / benefit templates, and reiterated many of the arguments it had already put to the Complainant in support of its decision to withhold the requested information.

The Commissioner has examined the information that the Complainant requested. It consists of three short reports and an appendix for their completion. In short, the DWP was asked to set out in the reports the benefits over time that the introduction of a national identity card scheme will bring to it, for example by reducing identity fraud. The reports also set out DWP's assumptions about the identity card scheme and any risks posed to DWP business by its introduction. Reports of this type are apparently completed by all Departments whose business may be affected by the introduction of identity cards or by similar governmental initiatives.

The Complainant has put forward what he considers to be strong public interest arguments in favour of the release of the requested information. He argues that:

- Given the scale, expense and constitutional implications of the identity card scheme there is a clear public interest case for disclosure of information which pertains to its architecture and implementation.
- The identity card scheme will incur costs running into several billions of pounds and therefore its impact in terms of savings for other government departments, such as the DWP, should be known.
- The identity card scheme will fundamentally alter the way in which people access public services.
- The identity card scheme will have considerable financial implications for every adult citizen

The DWP refused the Complainant's request on the following grounds:

S.35(1)(a) (formulation or development of government policy). DWP argued that disclosure would prejudice the government's ability to think and develop its policies without prejudice. The DWP also considered that the exemption at s.43(2) of the Act (prejudice to commercial interests) applied to some of the information.

The DWP put forward the following arguments against disclosure:

- Good government depends on good decision making and government therefore needs space in which to formulate policy based on the best advice available, with full consideration of all the options.

- Ministers and officials must be able to conduct rigorous and candid assessment of their policies and programmes including consideration of the pros and cons without there being premature disclosure which might close off discussion and the development of better options.
- Premature disclosure of the work undertaken could put the unrestrained and unprejudiced assessment of the programme at risk. It may limit discussions, discourage frank reporting of progress and undermine the identification of risks to delivery. This would put at risk the successful delivery of government policy and would be to the detriment of the effective conduct of public affairs.
- The process of refinement of plans and options must be unencumbered, free and frank if the Home Office is to decide on the most advantageous procurement route. There is a reasonable risk of the frankness and candour of discussions and considerations of options and plans to meet the Home Office's needs being compromised if the business cases are placed in the public domain at this stage of the procurement process. There is a risk that harm to frankness and candour of discussion and advice could compromise the ability of the public authority to achieve value for money, and thus compromise its commercial interests.
- The effect of releasing the information would be to reduce the value for money achieved and increase the cost of procurement to the Home Office, prejudicing its commercial interests.
- Disclosure of detailed plans and information detailing any potential bid requirements in advance of the formal tendering exercise would potentially favour some bidders over others, prejudicing the commercial interests of companies who wish to bid but are not aware of the requirements as early as another competitor.
- Whilst disclosure would meet the public interest in demonstrating that due consideration was being given to financial implications of the policy proposals, it would also prejudice the ability of the Home Office to achieve value for money in future procurement processes and could undermine its contract negotiations. Non-disclosure will protect the commercial interests of the Home Office in any future procurement process, ensuring that public money spent achieves the best value for money.
- Disclosure of the work undertaken to date could potentially enable bidding suppliers to establish a reasonable estimate of the expected component costs applying to the work on which they are bidding, prejudicing the ability of the Home Office to achieve value for money.

## **5. The Commissioner's Decision**

### **Section 35**

The original Identity Card Bill was announced in the Queen's Speech of November 2004. The Act of 2006 has now been enacted. It is arguable whether Government policy on identity cards was still being formulated or developed when this request was made. Moreover, some of the requested information could be characterised as

statistical (falling within section 35(2)). It is arguable, therefore, whether the exemption at s.35(1) of the Act is engaged in relation to all or some of the requested information.

However, government policy develops at both macro and micro levels and, in this case, the Commissioner is willing to accept that the requested information does fall within the exemption at s.35(1) of the Act.

Section 35 is a qualified exemption which means that the information must be disclosed unless, in all the circumstances of the case, the public interest in maintaining the exemption is greater than the public interest in disclosing the information. Section 35(4) also applies which means that regard must be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking. The Commissioner is satisfied that the information which has been requested in this case includes factual information.

The Commissioner has carefully considered the public interest arguments for maintaining the section 35 exemption as articulated by the DWP and set out above.

However, there is clearly also a strong public interest in the public knowing whether the introduction of identity cards will bring benefits to the DWP, and to other government departments, and if so what those benefits will be. This will facilitate informed public debate of the identity card issue. It will allow the public to make a more accurate assessment of whether the significant costs of the scheme are justified by the benefits it is likely to deliver in areas such as the prevention of benefit fraud. It will also allow the public to judge whether the Government's presentation of the identity card issue corresponds with advice it has received from its departments about the likely benefits of introducing a national identity card scheme.

Public debate about the introduction of identity cards is still strong, in relation, for example, to compulsion to carry a card and the possible inclusion of a biometric on it. If there is to be meaningful debate about the pros and cons of identity cards, the public must have access to information about the possible benefits that identity cards will bring to bodies such as the DWP. This is particularly the case as reduction of benefit fraud has been a significant and recurring part of the debate surrounding the introduction of identity cards.

The Commissioner has examined the requested information and can see no information that would put the work of the DWP or any other government department at risk. It is clear that some of the information – both factual and predicted – will have provided informed background for decision-making. Although the requested documents contain projected information about the level and nature of benefit fraud, the information contained in them would not help anyone to commit benefit fraud or to engage in other illegal activity. Releasing the information would, though, allow the public to gain a better understanding of how effective the DWP is being in protecting the public purse by its prevention of benefit fraud, and to assess the likely future impact of identity cards on fraud prevention.

The DWP has argued that disclosure of the requested information would prejudice the government's ability to think and develop its policies without prejudice. The Commissioner does not accept that the officials responsible for gathering and collating the requested information would cease to perform their duties on the grounds that the information may be disclosed. Government departments, such as the DWP, are expected to provide accurate information when they are asked to do so. The Commissioner does not accept that the release of the requested information will result in government departments failing to provide information, or in their providing incomplete or inaccurate information to other government departments. Civil servants would be in breach of their duty, and would damage their integrity as servants of the Crown, should they deliberately withhold relevant information or provide information other than the best they believe they can give. It is a matter for the bodies concerned, including DWP, to ensure that their officials continue to perform their duties according to the required ethical standard, including the completion of reports such as those falling within the Complainant's request.

The Commissioner does not dismiss the public interest arguments for maintaining the exemption at s.35(1) of the Act. However, he is required to balance the competing public interests in all the circumstances of the case. **His decision is that the public interest in disclosing the information outweighs the public interest in maintaining the exemption.**

### **Section 43**

The DWP also argues that the release of the requested information would prejudice the Home Office's commercial interests. The Commissioner has examined the requested information in detail. He is not convinced that the commercial interests of the Home Office would, or would be likely to, be prejudiced by its release. The information does reveal the possible effect of the introduction of identity cards on the operation of the benefit system.

Technology suppliers could use this information to make their own products more attractive once a formal tendering exercise in relation to identity cards and systems connected with their use is launched. However, release of the information is likely to result in the Home Office obtaining better, rather than worse, value for public money, because suppliers will be able to tailor their systems to the needs of major identity card-users such as the DWP.

When identity cards, readers and the systems that will support their use are being procured, the Home Office will presumably go through a formal tendering exercise. At this point the Home Office will provide detailed specifications for the technology / systems it requires. Tender submissions will be considered and contracts awarded. The release of the requested information would not prevent the Home Office considering the various tenders it receives and awarding contracts to those that offer best value for money. All technology suppliers with a serious interest in contracts connected with the identity card scheme will no doubt be keeping a close eye on the government's release of information concerning the card's design and use. The Commissioner is not convinced that the release of the requested information in advance of any formal tendering exercise would prejudice that exercise by favouring some bidders over others.

The DWP has not demonstrated that release of the requested information would, or would be likely to, prejudice the commercial interests of the Home Office or of any other party. **The Commissioner's decision is, therefore, that the exemption at s.43 of the Act is not engaged in respect of the requested information.**

**The Commissioner's overall decision in this case is therefore that, for the reasons set out above, the Public Authority has not dealt with the Complainant's request in accordance with the requirements of Part I of the Act.**

**6. Action Required**

In order to comply with its obligations under s.1(1) of the Act, the Department for Work and Pensions shall, within 30 days of the date of this Notice, communicate to the Complainant the information that he requested.

**7. Right of Appeal**

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 5th day of June 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

**Wycliffe House  
Water Lane  
Wilmslow Cheshire SK9 5AF**