

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 August 2011

Public Authority: The Department of Work and Pensions
(the 'DWP')

Address: The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Summary

The complainant requested the geographical equivalent number(s) behind a 0845 number under the Freedom of Information Act 2000 ('the Act'). The public authority confirmed that it held the information, but that it would not provide it because it felt that section 36(2)(c) [disclosure would prejudice the effective conduct of public affairs] applied to the information. It maintained its position after conducting an internal review.

The Commissioner has concluded that the DWP correctly applied the exemption. While the Commissioner does not require the DWP to take any steps, he has determined that it breached section 17(1) in its handling of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The DWP is responsible for welfare and pension policy and is a key player in tackling child poverty. It is the biggest public service department in the UK and serves over 20 million customers. The DWP

has calculated that it received approximately 60 million inbound calls in the operational year 2009-10.

3. In 2008, the DWP's Executive Team agreed the following set of principles, which served as a guide to the way the department numbered its telephony services:
 - Calls to claim benefit should be free to the customer.
 - There should be consistency of approach across the department – both for clarity and equity.
 - The approach should make sense from a customer's point of view rather than be driven by product lines or organisational structure; and
 - It must be sustainable both for DWP's future business model and as the telephony market changes.
4. To implement these principles, the DWP decided to allocate 0800 – or in five instances 0808 – numbers to areas where benefits are claimed. 0800 and 0808 numbers may be free to call from landlines, although a charge will likely apply when telephoned from a mobile. For other areas of its business, the DWP chose to implement a telephony system based on 0845 numbers, although it continued to operate three 0870 numbers that were already in place. On a limited basis, the DWP also offers geographical telephone numbers for certain parts of its business, such as its International Pension centre.
5. For clarity it is important to note that all numbers with an 08x prefix are non-geographic numbers (NGN), meaning they are not attached to any particular location or assigned to a specific telephone line.
6. A number of organisations have highlighted the cost of calls to NGNs used by government agencies, with reference being made to the effect that the inflated cost-charges were having on customers. For example, in 'Hung Up', a report published by Leeds Citizens Advice Bureau in June 2009, it described the difficulties that individuals had encountered when attempting to call 08x numbers used by the DWP¹.
7. Similarly, in September 2009, the Social Security Advisory Committee (SSAC) published *'Telephony in DWP and HMRC: Call costs and equality of customer access'*², which returned to the SSAC's

¹The report can be found at the following link:
<http://www.leedscab.org.uk/forms/hungupreport.pdf>

² This report can be found at the following link:
<http://www.ssac.org.uk/pdf/occasional/SSAC-telephony-paper.pdf>

recommendations of 2007 in relation to the telephony systems used by DWP and HMRC. At paragraph 3 of the report, SSAC stated:

"A key issue that we explored in the 2007 paper was the cost of calls to non-geographic numbers. This issue merits a brief reconsideration, as it is central to many of our concerns about the increasing use of telephony for customer access. Government departments and agencies have been increasingly using non-geographic numbers (e.g. 0845, 0800 numbers) to deliver services because they offer a number of extra functions not offered by geographic numbers (01, 02 numbers). These extra functions include the fact that organisations can manage calls into their network through 'intelligent routing.' This means that calls from different types of customer can be routed to staff members through the use of a single telephone number. However, a major drawback to the use of non-geographic numbers is that they may cost more than the cost of an equivalent call to a standard rate geographic number, especially when called from a mobile phone. Even 0800 numbers that are free from a BT landline are chargeable from most mobile phones...However, it is worth noting that it is currently cheaper to call an 0845 number from a BT landline than to call a geographic number, if the number lasts longer than a few minutes."

8. Ofcom has conducted a consultation into Non- Geographic Phone Numbers. The DWP has provided its submissions as part of this process and they have been considered by the Commissioner, where relevant.³
9. Finally, the Commissioner has already considered a wider set of information (including the requested information) when it was sought at a slightly earlier date (case reference number: **FS50287131**⁴).

The Request

10. On 23 July 2010 the complainant requested the following information from the DWP:

³ These submissions can be found at the following link:

<http://stakeholders.ofcom.org.uk/binaries/consultations/ngnservices/responses/dept-work-pensions.pdf>

⁴ The Decision Notice for the connected case can be located at the following link:

http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs_50287131.ashx

- *I would now just like to make a simple freedom of information request for the actual geographical number (I.e. number beginning 01-) behind the following number: 0845 6036347.*
 - *Or confirmation that it is somehow a unique number with no geographical equivalent, making it unlike every other 0845- number in the UK.*
11. On 16 August 2010 the DWP wrote to the complainant. It implicitly confirmed that there was a geographical number behind 0845 6036347. It explained that it needed more time to make a determination on the public interest test, but did not explain which exemption it thought was engaged.
 12. On 1 September 2010 the DWP then issued its detailed response. It confirmed that the numbers were held. However, it explained that the information was being withheld by virtue of section 36(2)(c) [disclosure would prejudice, or would be likely to prejudice, the effective conduct of public affairs]. It explained why it believed that it would cause it prejudice and confirmed why it believed that the public interest favoured the maintenance of the exemption over the disclosure of the information.
 13. On 6 September 2010 the complainant requested an internal review. He said that he didn't think the provision of the numbers would lead to 'unmanaged access'. He explained that the provision of this information would enable jobseekers to use a number with a lower telephone rate and save money and that any other consequences can be managed. Furthermore he did not accept the prejudice and also disputed that the public interest lay in maintaining the exemption.
 14. On 22 September 2010 the DWP communicated the results of its internal review. It explained that it believed that the disclosure of the number would prejudice the effective conduct of public affairs. It therefore explained that it maintained its position and provided further detailed explanations. The Commissioner will discuss these arguments in greater detail in the analysis section of this Notice.

The Investigation

Scope of the case

15. On 7 December 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- He alleged that the DWP was wrong to withhold the information;
 - The DWP was wrong to say that providing an underlying geographical number undermines its call management / routing system; and
 - Some people would save money on the 0845 calls and this was a public benefit. It will save the poorest in society call charges.
16. On 7 February 2010 the complainant agreed that the scope of the Commissioner's investigation would be to determine:
1. *Whether section 36(2)(c) has been appropriately applied to the actual geographical number behind the number 0845 6036347, or whether this number can be provided to the public (the 'substantive issue');* and
 2. *To consider timeliness of the response.*
17. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. The Commissioner is not able to consider the merits of the DWP having a different telephony system. He must consider the operation of the exemption at the date of the request.

Chronology

18. On 28 January 2011 the Commissioner telephoned the DWP. He asked for a copy of the Qualified Person's opinion and the evidence that was considered to come to this opinion.
19. On 31 January 2011 the DWP provided the Commissioner with this information alongside a copy of Decision Notice **FS50287131**. The Commissioner wrote to the complainant on the same day. He provided the complainant with a copy of Decision Notice **FS50287131**, asked the complainant to confirm the scope of his investigation and explained that he considered that this case was analogous to the earlier case. He asked in light of the similarities whether the complainant wanted to withdraw this complaint, and if he did not to provide his arguments about why this case was different.
20. Between 31 January 2011 and 7 February 2011 the complainant and the Commissioner exchanged correspondence a number of times. The result was that the complainant agreed the scope of the case and provided his arguments about why this case was distinct from **FS50287131**. The complainant's arguments will be considered in the analysis section of this Decision Notice.

21. On 8 February 2011 the Commissioner wrote to the DWP to make detailed further enquiries. He concentrated his enquiries on ensuring that the DWP was relying on the same arguments as in the previous case and establishing whether the system had changed between the date of the previous request and the date of the current request. He also ensured that the DWP had the chance to address the complainant's novel arguments.
22. On 1 March 2011 the Commissioner received a detailed response. He will also consider the DWP's arguments in the analysis section below.
23. On 5 August 2011 the Commissioner sought further clarification from the DWP about one point. He received it on 9 August 2011.

Analysis

Exemption

Section 36(2)(c) – prejudice to the effective conduct of public affairs

24. Section 36(2)(c) provides that information is exempt if in the reasonable opinion of the qualified person, disclosure of the information would, or would be likely to, prejudice the effective conduct of public affairs. It is a qualified exemption, so subject to a public interest test. The Commissioner will first consider whether the exemption is engaged and, if so, will move on to consider where the balance of public interest lies.

Is the exemption engaged?

25. In section 36(2)(c) cases, the Commissioner's role, when considering if the exemption is engaged, is to decide whether the qualified person's opinion that the disclosure would, or would be likely to, prejudice the conduct of public affairs is a reasonable one.
26. In *McIntyre v the Information Commissioner* (EA/2007/0068), the Information Tribunal noted that no definition of 'public affairs' was given in the Act. However, The Tribunal commented that this category of exemption was:

"intended to apply to those cases where it would be necessary in the interests of good government to withhold information, but which are not covered by another specific exemption, and where the disclosure would prejudice the public authority's ability to offer an effective public service or to meet its wider objectives or

purposes due to the disruption caused by the disclosure or the diversion of resources in managing the impact of the disclosure."

27. The Commissioner notes that a new opinion had to be sought from that considered in **FS50287131**. It is good practice to provide a separate opinion in respect to each request and it was essential in this case because the administration had changed between the two cases. It is also important that the Commissioner is satisfied that the actual information in question is considered and that the DWP is not seeking to apply a blanket approach to these kind of requests.
28. In order to establish that the opinion of the Qualified Person was reasonable and that the exemption has been engaged the Commissioner must:
 - ascertain who the qualified person is;
 - establish that an opinion was given;
 - ascertain when the opinion was given; and
 - consider whether the opinion was objectively reasonable and reasonably arrived at.
29. The 'qualified person' in the case of government departments is a Minister of the Crown. The Commissioner has established that the Qualified Person was Lord Freud, the Minister for Welfare Reform. He is the Minister with responsibility for freedom of information at the DWP.
30. The next two criteria can be dealt with swiftly. The Commissioner has established that an opinion was given by Lord Freud on 31 August 2010. This was in response to a submission being put to him on 20 August 2010. In this submission officials explained the way its telephones were set up, explained the potential prejudice disclosure would lead to and advised that, in their view, the information held should be considered exempt from disclosure by virtue of section 36(2)(c). It explained the impact, risk and financial implications the disclosure of the information would have. It also confirmed that the Minister could decide that the application of the exemption was not appropriate, if he felt this was so. Finally, it explained that the Commissioner was currently (at that time) considering **FS50287131** and previous Ministers have provided such an opinion.
31. The last criterion noted in paragraph 27 requires detailed analysis. In the case of *Guardian & Brooke v Information Commissioner & the BBC* [EA/2006/0011 and 0013] ('Guardian & Brooke'), the Information Tribunal stated that "in order to satisfy the subsection the opinion must be both reasonable in substance and reasonably arrived at".

(paragraph 64). The Commissioner will consider each of these requirements in order:

Reasonable in substance

32. In relation to the issue of whether the opinion was reasonable in substance, the Tribunal indicated in *Guardian & Brooke* that “the opinion must be objectively reasonable” (paragraph 60).
33. In order to determine whether the opinion was objectively reasonable, it is important to understand what the qualified person meant when he gave his opinion. There are two possible limbs of the exemption on which the reasonable opinion could have been sought:
 - where disclosure “would prejudice” the effective conduct of public affairs; and
 - where disclosure “would be likely to prejudice” the effective conduct of public affairs.
34. The DWP has explained in its internal review response that it was relying on the higher threshold that disclosure ‘would prejudice’ the effective conduct of public affairs. This means that the opinion was given on the basis that the prejudice would be more probable than not. The Commissioner has considered whether the opinion was a reasonable on the basis of this threshold.
35. In agreeing with the submission presented to him, the Minister has effectively put forward his opinion that section 36(2)(c) is engaged for the following reasons:
 1. By providing its underlying geographical numbers (UGNs), the DWP would receive a higher number of misdirected calls as callers would: miss out on some of the Interactive Response messages; calls would not go through the post code recognition systems; and (when introduced – the pilot is occurring this year) would avoid the DWP’s automated identity and verification process. This would result in a higher volume of misdirected calls, the handling of which has a cost to the DWP (and the tax payer) of approximately £2.19 per call⁵;
 2. It is necessary for customers to be directed to individual claim handlers who have the experience to answer those calls. The provision of the local numbers would mean that the DWP would lose

⁵ See paragraph 69 below. This figure has been calculated by multiplying the budgeting figure of cost per customer minute of the Department by the Average time taken by a call.

control of the ability to distribute the work itself and this would benefit neither the customers nor the DWP;

3. It is also necessary on an overall basis for customers to be directed to the next available claim handler who can help them. It is necessary for the DWP to be able to reallocate work in accordance with capacity and demand; while also coping with potential emergencies. It has set up its system to manage these situations and also enable calls to be routed to offices all over the country in order to minimise the wait. The circumvention of the system would lead to poorer service to all customers – it would harm continuity, effectiveness and the ability to meet customer service levels. The DWP illustrated the benefits in the bad weather in December 2009 where it still managed to answer the calls it received despite a number of its offices being closed;
 4. The DWP is also able to route calls to identified business areas and prevent them going to other areas. In such a situation, it may be that a customer calling a UGN that had been rerouted would receive a message explaining the line was unobtainable or a call would ring off. This would not be in the customer's interests and would lead to confusion for vulnerable members of society;
 5. By means of an example, 0845 6036347 has 22 underlying delivery numbers which are routed to differing contact centres. This is a variable number depending on the volume of calls received and this reveals the extent of the potential problems outlined above;
 6. The system also allows the DWP to gather management information and comply with the requirements of the Data Protection Act. Both things would be undermined by the circumvention of the system and this would make the DWP less efficient and less able to meet its obligations. For example, it would prevent the DWP from gathering a reliable record of the volume of calls, waiting times, time taken and its overall performance; and
 7. For the reasons above, it concluded that there would be incalculable indirect costs associated with the large scale use of non-geographic numbers, which would severely compromise the DWP's business operation, as well as its reputation.
36. The Commissioner has also considered the complainant's counterarguments. It is important to note that disclosure of information under the Act should be regarded as disclosure to the world at large. This is in line with the Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011

and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that, "*Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions*" (paragraph 52).⁶ The motivations of the complainant are therefore irrelevant.

37. The complainant's responses to the arguments about the prejudice outlined by the DWP have three main elements:

1. the arguments raised are misconceived because they imply that the DWP is able to control the number of calls that it receives and this is not so;
2. the DWP should not be allowed to rely on a system that functions ineffectively and
3. the prejudice of getting round the automated system was not certain because the system could be adjusted to enable the Interactive Voice Response (IVR) to appear automatically when the UGNs are dialled. He explained that this should counter the problems that have been mentioned. He provided an example of the International Pensions Centre where this was achieved by the DWP.

38. In response to the first argument, the DWP appreciates that it cannot control the number of calls that it receives. However, it can currently control the distribution of them and ensure that they are directed to appropriate people who can deal with them. The Commissioner accepts that this is so and has placed little weight on this argument.

39. The second and third arguments are connected. The complainant argues strongly that the disclosure of the local numbers would simply offer customers with more choice. The DWP could adapt its system so that the UGNs link to the IVR system and thus he believes it would experience no prejudice at all from the disclosure of the local numbers.

40. The Commissioner has told the complainant that he is required to consider the validity of the qualified person's view at the time of the request (23 July 2010). The prejudice has to be considered against the potential of actual difficulties that would have been experienced at the time, if the information was disclosed. It follows that the possibility of adjusting the system to manage the effect of the disclosure can be

⁶This decision can be located at the following link:
http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_info_comm.pdf.

considered when considering the public interest test, but is not relevant when considering whether there is prejudice.

41. However, the Commissioner has considered the apparent anomaly of the International Pensions Centre. The DWP explained that it had calibrated its international service lines to allow customers to call geographic numbers at first instance. It has done this because BT was unable to guarantee that overseas callers would be able to access 0845 numbers and it is necessary to ensure that it offers a complete service. It explained that reverting to the local numbers may be technically possible but would involve further expenditure to achieve this outcome, without in its view bringing any real benefits to its customers.
42. The Commissioner has also asked for and considered how the current system is routed and how the number that is subject to the request operates. He has decided that at the date of the request (23 July 2010) it was objectively reasonable for the qualified person to determine that the disclosure of the telephone number(s) requested would prejudice the effective conduct of public affairs. This is because he is satisfied that the seven adverse effects identified in paragraph 35 would have occurred to the system as it was calibrated then. Accordingly, the qualified person's opinion was be reasonable in substance for the purposes of section 36(2)(c).

Reasonably arrived at

43. In determining whether an opinion had been reasonably arrived at, the Tribunal in *Guardian & Brooke* confirmed that the qualified person must form an opinion in good faith and not on a capricious or prejudiced basis. The qualified person should only take into account issues relevant to the requested information and that the process of reaching a reasonable opinion should be supported by evidence, although the evidence will vary from case to case and that conclusions about the future are necessarily hypothetical. The Commissioner has therefore gone on to consider whether the qualified person's was reasonably arrived at.
44. As noted above, the Commissioner has examined the submission put before the qualified person. He has noted the main arguments in paragraph 35 above. The Commissioner's view is that the evidence considered when coming to an opinion is an important factor in considering whether that opinion is reasonably arrived at. From the evidence considered in this case, the Commissioner is satisfied that the qualified person appears to have taken into account relevant considerations and does not appear to have been influenced by

irrelevant ones. This strongly supports the contention that the qualified person's opinion was reasonably arrived at.

45. The DWP has also indicated that it would be concerned about the potential of the disclosure of the numbers behind one number being a precedent. If it was, this would in its view lead to the problems and costs noted in paragraph 35 being magnified.
46. In this case there was no benefit attached to providing the actual withheld information to the qualified person. Rather, the Commissioner accepts that the qualified person would have been in an appropriate position to offer his opinion based on the submissions put before him.
47. Finally, the Commissioner has analysed the complainant's arguments that it would not be reasonable to say that an opinion was reasonably arrived at, when he could be responsible for offering a more equitable public service which would enable the information to be disclosed proactively. The Commissioner considers that the DWP's policy on its telephone system has been carefully calibrated to offer the best possible service at minimal costs (balancing the costs to the applicants and general costs to the public). The Commissioner does not consider that the complainant's arguments are strong enough to conclude the opinion not reasonably arrived at. Overall, then the Commissioner has therefore found that the qualified person's opinion was reasonably arrived at.
48. The Commissioner has concluded that the opinion of the qualified person appears to be both reasonable in substance and reasonably arrived at, and he therefore accepts that the exemption found in section 36(2)(c) is engaged.

The Public Interest Test

49. Section 36(2)(c) is a qualified exemption. That is, once the exemption is engaged, the release of the information is subject to the public interest test. The test involves balancing factors for and against disclosure to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
50. The Commissioner will commence his analysis by considering those factors that favour disclosure. He will then consider those that favour the maintenance of the exemption, before concluding where he considers the balance lies.

Public interest arguments in favour of disclosing the requested information

51. As referred to at paragraphs 6 to 8, the Commissioner is aware of the criticism of the use of 08x prefix numbers by public bodies. In his decision involving NHS Direct (**FS50010888**)⁷, the Commissioner similarly considered whether it would be appropriate to disclose the geographic telephone number associated with that body. At paragraph 58 of his decision, the Commissioner recognised that:

"...there is a public interest in the public being able to access public services in a cost effective manner and as cheaply as possible. He has noted Ofcom's concerns⁸ about the use of 0845 numbers by public bodies and that it believes that public bodies should consider carefully whether it is appropriate to use 084 and 087 numbers in place of Freephone or ordinary geographic numbers. Ofcom believes that, at present, it is inappropriate for public bodies to use 084 or 087 numbers exclusively (i.e. without at a minimum giving equal prominence to a geographic alternative) when dealing with people on low incomes or other vulnerable groups."

52. The Commissioner understands that, by the very nature of the functions it provides, a significant proportion of the users of the DWP's services will come from a disadvantaged background. The Commissioner therefore considers that there is a cogent case for arguing that the potentially lowest cost telephone numbers used by the DWP should be made available, thereby ensuring that the services offered by the DWP are readily accessible. As referred to in paragraph 4, even 0800 and 0808 numbers may effect a charge when called from a mobile telephone.

53. The Commissioner is also mindful that Ofcom has highlighted the allocation of 0300 numbers by public bodies as a potentially cheaper alternative to, for example, 0845 and 0870 numbers. In 'Hung Up', a main recommendation of the Leeds Citizen Advice Bureau was that:

"The DWP, the Home Office, HMRC and NHS Direct should commit to replacing their 0845/0870 numbers with 0300 numbers, by the end of 2009."

⁷ http://www.ico.gov.uk/~media/documents/decisionnotices/2007/FS_500108885.ashx

⁸ For example, in *Telephone Numbering – Safeguarding the future of numbers*, Ofcom identified the problems of call charges associated with 08x numbers and highlighted the allocation of 0300 numbers as a cheaper option for consumers. A summary document can be found at:

<http://stakeholders.ofcom.org.uk/consultations/numberingreview/statement/summary/>

54. By failing to transfer at least its 0845 and 0870 numbers to a 0300 prefix, the Commissioner understands that an argument exists which suggests that the DWP has not shown a proper commitment to improving its accessibility to users. In a similar vein, the SSAC has questioned why the DWP has not advocated the more widespread use of 0800 numbers. By default then, there are legitimate grounds for considering that the DWP's UGNs should be released on the basis that it has not taken up a more customer-focused telephony system.
55. From a customer perspective, the Commissioner would also agree with the complainant that there may be occasions where a direct number to a service, rather than via a routing system, will be more time effective. For example, where a user knows which department would be able to address a query, it is likely that the routing process will only serve to delay the query being responded to.
56. As noted above, the complainant has particularly asked the Commissioner to consider the ease of potentially mitigating the prejudice by reconfiguring its system. The Commissioner considers that this adds some weight to the public interest factors that favour disclosure and reduces to some extent the weight of the factors that favour the maintenance of the exemption.
57. Finally, the Commissioner has considered the following more general public interest factors that also favour disclosure:
 - the public interest in ensuring transparency in the activities of public authorities; and
 - the public interest in ensuring that members of the public are able to contact appropriate staff within the DWP.
58. The Commissioner notes that transparency is the fundamental objective of the Act. He therefore accepts that this is another public interest factor that favours disclosure. This is relevant in this case because the Commissioner is aware that a significant criticism of 08x numbers stems from the public confusion over how calls are charged, particularly with reference to calls from mobile telephones. In contrast, the public is more familiar with the charging regime associated with landline numbers. This would therefore serve to add weight to arguments for the disclosure of the withheld information.
59. The Commissioner has considered the accountability arguments against the information that has been requested. He finds that it is appropriate to consider the Information Tribunal's view about accountability in *Cabinet Office v Lamb and the Information Commissioner* [EA/2008/0024 & 0029] which explained 'Disclosure

under FOIA should be regarded as a means of promoting accountability in its own right and a way of supporting the other mechanisms of scrutiny, for example, providing a flow of information which a free press could use'. This indicates that even though the telephone numbers on their own add little to the public understanding of how the DWP operates, their disclosure may facilitate or support scrutiny by allowing individuals to contact specified places of service. He therefore finds that the arguments about accountability should be given some weight in this case.

Public interest arguments in favour of maintaining the exemption

60. In providing its public interest arguments, the DWP has drawn a distinction between customer service/cost issues and issues connected with the business management of the department.
61. From the viewpoint of a customer, the DWP has explained that BT allocates a range of UGNs to each of the NGNs. However, these ranges are unlikely to be located in the same geographical area that the NGN number is directed to. As an example, the DWP stated that contact centres in Derby and Newcastle have UGN relating to Oxfordshire and the Scottish Islands respectively. The DWP has therefore contended that:

"As there are no DWP Contact Centres located in these areas, there is no benefit from a call charge perspective in releasing them. 0845 numbers are charged, in most instances, at a local rate, which provides a standard charging regime across all DWP customers."

62. The Commissioner accepts that the release of the UGN numbers may not, in all circumstances, benefit financially the customers of the DWP. However, the Commissioner does not accept that this point, if considered in isolation, would serve to strengthen the DWP's application of section 36.
63. The Commissioner, however, lends more weight to the DWP's argument that the release of the UGNs would mean that any customer calling these numbers would bypass important recorded information contained in the IVR message.
64. The IVR gives a consistent Department wide greeting, and includes important announcements such as office closure details. The IVR will also inform the customer of the possibility that the call may be recorded and monitored, notice of which is an Ofcom requirement. Finally, the IVR will give the customer a number of options, allowing the customer to select the appropriate one for themselves.

65. The Commissioner has no doubt that, given the breadth of the services offered by the DWP, the ability of the IVR to direct a customer to the appropriate department in a structured manner will, in many cases, be of considerable assistance to that customer. The IVR may also offer information that will not be readily provided if a UGN was called.
66. This issue of administrating calls also feeds in to the DWP's broader argument concerning the public interest in the DWP having effective business management control of its telephony service.
67. The advantages of intelligent routing are widely recognised, as demonstrated in the quotation taken from the SSAC at paragraph 7. The use of a NGN allows calls to the DWP to be routed to the next available agent within the contact centre, or in the case of the DWP's virtual operation, across its network, regardless of where the customer is calling from. This function of NGNs means that the business has the ability to move work around, dependent on demand and capacity within the business. The Commissioner accepts that this factor adds considerable weight to the public interest that favours the maintenance of the exemption. The evidence that it enabled the DWP to function despite the difficult weather in December 2009 shows that it has real and direct benefits to customers and the public.
68. Similarly, the Commissioner accepts that the bypassing of NGNs would deprive the DWP of call management information which can be used in the planning and allocation of staff resources. The Commissioner accepts that in a climate where public authorities are required to do more with less money, such information is vital and this adds further weight to the public interest that favours the maintenance of the exemption.
69. By placing the UGNs in the public domain, the Commissioner considers it reasonable to conclude that a greater number of callers would avoid using the NGNS. Accordingly, the Commissioner would accept the DWP's assertion that:
- "...there is the possibility that the customer would either not have their call answered or wait a significant time for it to be so, and incur higher call charges as a result. It would result in misrouted calls and additional transfers of calls, impacting on customer service and the Department's internal targets."*
70. As part of its submissions presented to the qualified person, referred to at paragraph 14, the DWP cited the cost to the department of a misdirected call. The Commissioner has also been informed that the DWP undertook an extensive snapshot analysis of the cost of inappropriate calls within the Jobcentre Plus virtual network.

71. In the week of the study, it was estimated that 3.7% or 20,089 of the calls received were incorrectly directed. Based on the average that an inappropriate call lasted 3 minutes and 25 seconds, the DWP calculated that the cost to the department per inappropriate call was £2.19. Having no reason to question the veracity of this analysis, and bearing in mind the likelihood that the number of misdirected calls would increase if the UGNs were published, the Commissioner considers that the cost to the department through disclosure with the system staying the same would be considerable.
72. The Commissioner recognises that there is considerable resistance to the use of 08x prefix numbers, particularly 0845 and 0870 numbers, given the potential of higher call charges. However, the Commissioner does not consider that this public interest would offset the likelihood that the release of the UGNs would lead to a deterioration of the DWP's ability to effectively handle calls; the result of which would clearly negatively affect the caller experience.
73. In forming this view, the Commissioner has acknowledged the steps that the DWP has taken to ensure that at least some parts of its service operate on a 0800 number, a freephone number from landlines. The Commissioner has also taken into account the fact that the DWP does not make any money from the 0845 numbers and has explained to Ofcom that its preference would be for Ofcom to ensure that 0845 numbers are charged the same as local calls. It has also confirmed to the Commissioner that it has placed the system under continuous review and will carefully consider the recommendations that result from Ofcom's consultation.

Balance of the public interest arguments

74. When considering the balance of the public interest arguments, the Commissioner is mindful that the public interest test as set out in the Act relates to what is in the best interests of the public as a whole, as opposed to interested individuals or groups.
75. In this case the Commissioner considers that there is some weight to the public interest arguments on both sides. As demonstrated, the Commissioner considers that there is a strong public interest in the release of the UGNs, principally based on the possibility that these numbers may offer a lower cost alternative to the NGNs operated by the DWP.
76. However, the Commissioner would also take the view that the use of the 0845 prefix numbers are an integral part of the DWP's ability to manage the significant volume of calls it receives. The Commissioner has therefore placed great weight on the fact that the release of the

UGNs would likely lead to the deterioration of the DWP's telephony service. Given the negative impact this would have, for both customers and the department itself, the Commissioner has concluded that the public interest favours maintaining the section 36 exemption.

77. For the avoidance of doubt, when coming to this decision the Commissioner has considered the complainant's comments that the system could be adapted to mitigate the negative impact. While this may be possible, it would still cost the DWP money and he does not consider that the arguments about the potential for change alters the balance of public interest to such an extent to favour disclosure.
78. It follows that the Commissioner is satisfied that the disputed information was correctly withheld by the DWP and upholds the application of section 36(2)(c). This is consistent with his earlier decision in **FS50287131**.

Procedural Requirements

Section 17(1)

79. Section 17(1) requires that, where a DWP wishes to rely on any exemption from part II of the Act, it should issue a notice specifying the exemption and stating why the exemption would apply. In accordance with section 10(1) of the Act, this notice must be issued within 20 working days of receipt of the request. The DWP failed to issue such a refusal notice within 20 working days.
80. By failing to issue an appropriate refusal notice within the statutory time limit, the Commissioner finds the DWP in breach of section 17(1) of the Act.
81. As noted in the chronology it did issue a holding letter, but this holding letter failed to specify the exemption that was being considered and was issued before the qualified person had given any opinion. The Commissioner has chosen to make further comments about the process of issuing holding letters in the Other Matters Section of this Notice.

The Decision

82. The Commissioner's decision is that the DWP correctly withheld the requested information under section 36(2)(c) of the Act.

83. However, the Commissioner has also decided that the DWP breached section 17(1) of the Act by failing to issue an appropriate refusal notice within 20 working days of receipt of the request.

Steps Required

84. The Commissioner requires no steps to be taken.

Other matters

85. Where, upon receipt of a request, the application of an exemption that is subject to a public interest test is being considered, section 17(3) allows that a public authority may require an extension to the 20 working day period for response. However, in the case of the section 36 exemption, the Commissioner considers that the extension cannot be claimed until the qualified person has given their opinion that information is exempt.
86. The Commissioner notes that the DWP informed the complainant on 16 August 2010 that it required extra time to consider the public interest test associated with an exemption. However, the Commissioner understands that the DWP only received confirmation that the qualified person agreed to the application of section 36(2)(c) on 31 August 2010. The Commissioner has taken the view that the DWP did not legitimately extend the 20 working day deadline as it could not have known that an exemption was engaged when it issued its holding response.

Right of Appeal

87. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

88. 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.

89. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 23rd day of August 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1 - General Right of 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."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Section 17 - Refusal of Request

Section 17(1) provides that –

A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

Section 17(2) provides that –

Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - 1. that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - 2. that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

Section 17(3) provides that -

A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (c) that, in all the circumstances of the case , the public interest in maintaining the exclusion of the duty to confirm or deny outweighs

the public interest in disclosing whether the authority holds the information, or

- (d) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 36 - Prejudice to the effective conduct of public affairs

Section 36(1) provides that –

This section applies to-

(a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and

(b) information which is held by any other public authority.

Section 36(2) provides that -

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(a) would, or would be likely to, prejudice-

(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or

(ii) the work of the Executive Committee of the Northern Ireland Assembly, or

(iii) the work of the executive committee of the National Assembly for Wales,

(b) would, or would be likely to, inhibit-

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.