

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2012

Public Authority: Department for Work and Pensions

Address: 2nd Floor, The Adelphi
11 John Adam Street
London
WC2N 6HT

Decision (including any steps ordered)

1. The complainant has requested documents relating to the costings of the options in the Department for Work and Pensions ("DWP") Green Paper on state pension reform. The complainant also asked for a comparison of the costings with the current system and documents showing the potential impact of the plans. DWP withheld this information as it related to the formulation and development of government policy and the public interest favoured maintaining the exemption.
2. The Commissioner's decision is that DWP has correctly applied the exemption and the public interest in maintaining the exemption outweighs the public interest in disclosing information. The Commissioner requires no steps to be taken.

Request and response

3. On 8 April 2011, the complainant wrote to DWP and requested the following information:

"documents which set out the costings of the options in the Green Paper 'A State Pension for the 21st Century' Cm 8053 and comparisons of those costings with the present system.

I am also writing to ask for any documents which set out the impact of the plans on people who are expected to be recipients of the new state pension if the plans go ahead".

4. DWP responded on 28 April 2011. It stated that the information related to the formulation of government policy and was therefore exempt from disclosure (section 35(1)(a) of FOIA). DWP considered the public interest arguments in favour of disclosing and withholding the information and concluded the public interest favoured maintaining the exemption.
5. Following an internal review DWP wrote to the complainant on 31 May 2011. It stated that the costings formed an integral part of the formulation and development of government policy and the exemption is therefore engaged. DWP considered the public interest arguments again and concluded that the public interest favoured withholding the requested information.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular the complainant argued that the public interest favoured disclosure of the requested information for the following reasons:
 - Without the costings the credibility of the policy is called into question and this undermines trust in government policy;
 - The cost of the options is vital information in order to provide an informed response to the consultation.
7. The Commissioner considers the scope of his investigation to be the application of the exemption for information that relates to the formulation and development of government policy and determining where the balance of the public interest lies.

Reasons for decision

8. Section 35(1)(a) of the FOIA provides that information is exempt from disclosure if it relates to the formulation or development of government policy. This is a qualified exemption and is therefore subject to the public interest test.
9. The Commissioner has first considered whether the information in question relates to the formulation or development of government policy.
10. The Commissioner takes the view that the formulation of government policy comprises the early stages of the policy process where options are

generated, risks are identified and consultation occurs. Development may go beyond this stage to the processes involved in improving or altering already existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.

11. DWP has provided the Commissioner with a timeline to assist with determining at what stage in the policy process the pension reform programme was (and is) at.
 - May 2010 – government ask DWP to start looking at Pension Reform
 - July 2010 – first impact analysis and costs paper
 - August 2010 – revised impact analysis and costs paper
 - October 2010 – revised impact analysis and costs paper
 - February 2011 – revised impact analysis and costs paper
 - April 2011 – Green Paper '*A state pension for the 21st Century*' published
 - June 2011 – Consultation responses due in
 - July 2011 – Consultation responses summary published
12. The Commissioner, following the approach of the Tribunal has looked at whether the overall purpose and nature of the information supports the characterisation of relating to formulation or development of government policy.
13. The complainant's request for information was made on 8 April 2011. At this time DWPs consultation on the Green Paper was still live. The Commissioner's view is that whilst the policy is still in the process of being turned into legislation the policy formulation is still ongoing and he therefore considers that the withheld information relates to the formulation or development of government policy and the exemption is engaged.

The public interest test

14. This exemption is a qualified exemption which means the public interest test must be considered. The Commissioner has therefore gone on to consider whether in all the circumstances of the case the public interest

in maintaining the exemption outweighs the public interest in disclosing the information. The Tribunal¹ has set out 11 principles that should be used as a guide when weighing up the balance of the public interest in connection with this exemption. The Commissioner has considered the principles that are relevant to this case.

Public interest arguments in favour of disclosure

15. The following public interest arguments in favour of disclosure of the requested information have been recognised by DWP and the complainant:

- There is a public interest in transparency surrounding policy decisions;
- There is a public interest in promoting accountability in relation to decisions made by government;
- Disclosure may lead to better quality advice and improved decision making;
- There is a public interest in disclosing information which will increase public understanding and engagement which helps to ensure the quality and successful implementation of policy; and
- The public interest in openness, transparency and accountability is particularly acute in relation to matters of public finance.

Public interest arguments in favour of maintaining the exemption

16. DWP has provided a number of arguments in favour of maintaining the exemption and the Commissioner considers the following arguments to be relevant to the requested information:

Safe space

- There is a public interest in civil servants and ministers being able to formulate policy and debate 'live' issues away from public scrutiny. The costings of the proposed new state pension are a key part of the policy formulation as the government has committed to maintain cost neutrality. There is a need for officials to be able to consider the various ways in which this can be achieved without external comment or media involvement.

¹ DfES v the Information Commissioner & the Evening Standard (EA/2006/0006)

Chilling effect and impartiality of the civil service

- Experts and stakeholders may be reluctant to provide advice if it might be disclosed. The candour and quality of advice provided to government departments should not be compromised. Releasing information relating to the formulation of policy could result in officials and ministers less likely to challenge ideas and inhibit innovative policy formulation.
- The impartiality of the civil service should be protected. This could be undermined if early costings are routinely made public. Officials may come under pressure not to challenge ideas during the formulation of government policy.

Timing

- At the time of the request the policy was in the formulation stage. Whilst arguments in favour of withholding information under this exemption can diminish over time, particularly once decisions have been made and policies have been implemented, in this case the arguments are still relevant.

Section 35(2) statistical information

17. The Commissioner has concluded that policy decision related to the information had not been made at the time of the request. Therefore the Commissioner has not considered whether the information constitutes statistical information under section 35(2) of the Act. If information constitutes statistical information and the policy decision has been made a government department cannot rely on section 35(1)(a).

Balance of the public interest arguments

18. The Commissioner recognises there is a public interest in transparency, openness and accountability in relation to policy decisions taken by government. In this case he considers the public interest is quite strong due to the far reaching implications of the policy and any decisions taken, specifically given the large number of people who will be affected by pension reforms.
19. The Commissioner also considers there is a public interest in the public being informed on this issue to enable them to engage in debate and discussion. The government have maintained that any pension reforms will be introduced at no additional expense so the argument that having more information on how cost neutrality can be achieved allowing more informed debate is a valid argument. DWP have argued that the way in which any reform will be funded may change as the policy changes. However, the Commissioner has discounted this counter-argument as

the fact that the costings at the time of the request may not be accurate once the policy is finalised should not be a determining factor for withholding the information.

20. The Commissioner considers that at the time of the request the formulation and development of the policy was ongoing. The next stage in the development of new state pension policy would be the publishing of a White Paper and, with no date set as yet for this, the Commissioner is satisfied the formulation and development of policy to still be ongoing and live, meaning any arguments in favour of withholding the requested information have not diminished over time.
21. The Commissioner recognises that part of the reason for needing a 'safe space' is to allow free and frank discussion; the need for a safe space exists regardless of any impact on the candour of debate. The Commissioner has therefore gone on to consider the safe space arguments relevant to this request.
22. The Tribunal in the *DfES* case found that ministers and officials were entitled time and space to agree policies by exploring safe and radical options without the threat of media involvement or external scrutiny. Therefore, whilst the Commissioner has some concerns as to whether disclosure would affect the frankness of debate on this particular issue, the need for a safe space to debate policy and reach decisions without external comment is still a valid argument.
23. The Commissioner recognises the public interest in preserving a safe space for policy formulation and, as he is satisfied the policy is in the formulation stage, considers to release the information relating to this policy might erode the 'safe space'. As such he considers there is a strong public interest in maintaining a safe space to discuss and debate this policy and the proposed costings of any reform.
24. The Commissioner has considered the argument that disclosure may make experts and stakeholders less willing to contribute to discussions and provide advice. In particular when considering this, the Commissioner has looked at the Tribunal's view in the *DfES* case which stated that every decision is specific to the particular facts and circumstances under consideration. Whether there may be significant indirect and wider consequences from the particular disclosure must be considered case by case.
25. The Commissioner has therefore been very mindful of the contents of the withheld information in reaching a view on the potential chilling effects of disclosure and considered whether these chilling effects are specifically related to the information in question. The Commissioner is satisfied that this is the case but has considered whether disclosure

would affect the frankness and candour with which relevant parties would contribute to the process related to that policy or whether it is more likely to have a wider consequence of affecting the frankness of debate on other policy issues.

26. The Commissioner does not consider that disclosure of the withheld information would necessarily affect the quality of advice and discussions around this policy as discussions around costings will have to take place once the policy is being developed regardless of whether the information is disclosed. However, the Commissioner recognises this may affect the quality of advice provided by officials in other areas of policy development if they feel inhibited from engaging in free and frank discussions in a 'safe space'. Therefore whilst the Commissioner considers some weight should be given to this argument as disclosure may affect the frankness and candour with which officials and civil servants contribute to future policy debates on other issues, he has not attributed much weight to this argument as he is not convinced that disclosure of this information would specifically influence the quality of discussions about this particular policy.
27. Conversely, whilst disclosure may affect the quality of advice provided by officials in other future policy debates, the Commissioner recognises that disclosure of the requested information may lead to improved advice and better decision making with relation to this particular policy as more informed discussions could take place.
28. The Commissioner has carefully balanced the arguments for maintaining the exemption against the arguments in favour of disclosure. He considers that whilst there is a strong public interest in understanding how public money should be spent and understanding the decisions behind policies which will affect a large proportion of the population, there is also a very significant public interest in maintaining a safe space for this policy to be formulated and to ensure that free and frank discussions can take place. The Commissioner therefore finds that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Right of appeal

29. 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: 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

30. 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.
31. 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

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