

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 June 2013

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

**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### **Decision (including any steps ordered)**

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1. The complainant has requested information on the Department for Work and Pensions (DWP) Universal Credit Programme (UCP) including risk and issues registers and management plans and high level milestone schedules and information on the use of the Agile methodology to manage the project. The DWP identified three documents within the scope of the request but refused to provide these documents on the basis of section 36(2)(b) and (c).
2. The Commissioner accepted that the exemptions were engaged and after considering the public interest arguments determined the DWP correctly withheld the risk register. However, the Commissioner found the public interest arguments in favour of maintaining the exemptions did not outweigh the public interest in disclosure in relation to the issues register and the high level milestone schedule and these documents should be disclosed.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the issues register and high level milestone schedule.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 14 April 2012, the complainant wrote to the DWP and requested information in the following terms:

*"Please provide me with the following for the DWP Universal Credit Programme:*

*Risk Register / Risk Management Plan  
Issues Register / Issues Management plan  
High Level Milestone Schedule (Gantt Chart or similar)*

*Please confirm that the programme is employing a technique generally known as Agile.*

*Please advise if Agile or similar technique has ever been successful used by the DWP or its contractors to complete a programme as complex as the Universal Credit Programme.*

*If the technique has been successfully employed previously please advise on what programmes.*

*If this technique has not been used previously on a programme of this size and complexity please advise:*

*Who made the decision to use it given the huge inherent risk?  
Why has a technique that at best has a dubious reputation in IT projects felt suitable for a huge change programme?"*

6. The DWP responded on 15 May 2012 and confirmed it had identified three documents that constituted the Risk Register, Issues Register and Milestone Schedule as requested and these documents were being withheld on the basis of section 36(2)(b) and (c) of the FOIA. With regards to the information requested regarding Agile the DWP provided a link to the Government's Information and Communication Technology Strategy<sup>1</sup> containing information on the use of the Agile methodology.
7. On 15 May 2012 the complainant requested an internal review of this decision. In particular the complainant disagreed with the application of section 36 to withhold the documents and did not consider the DWP had adequately answered the questions asked about Agile.
8. DWP responded to the complainant on 20 June 2012 and addressed the complainant's concerns about its previous response about the use of the

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<sup>1</sup> <http://www.cabinetoffice.gov.uk/content/government-ict-strategy>

Agile methodology. DWP explained that the link provided contained details of the reasons for the Cabinet Office's decision to use Agile as the preferred project management methodology for Government but then went on to more specifically address the complainant's questions, providing confirmation that its suppliers and enterprises involved in delivering the UCP had experience in delivering Agile projects and programmes.

9. Following an internal review of the decision to withhold the three identified documents under section 36 the DWP wrote to the complainant on 10 August 2012 upholding its original decision.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 6 August 2012 to complain about the way his request for information had been handled. In particular the complainant disagreed that the section 36 exemption applied.
11. In addition to this, the Commissioner had concerns as to whether the DWP had adequately responded to the complainant's request for information on the use of Agile methodology. He therefore considers the scope of his investigation to be to determine if the exemption cited by the DWP provides a valid basis for refusing to disclose the risk registers, issues registers and milestone schedule and whether any further information is held with regards to Agile.

### **Background**

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12. Universal Credit is a new single payment scheme to replace substantial parts of the existing social security system. The DWP carried out a consultation exercise in relation to Universal Credit between July and October 2010 and the White Paper 'Universal Credit: welfare that works' was published in November 2010. Following this the Welfare Reform Bill was published on 16 February 2011 and the Welfare Reform Act received Royal Assent on 8 March 2012. This Act set out the framework for Universal Credit and draft secondary legislation was sent to the Social Security Advisory Committee in October 2012.
13. The request was made to the DWP on 14 April 2012, after the Welfare Reform Act had received Royal Assent but before the publication of the main scheme regulations on 10 December 2012 which contained many supporting regulations and an Impact Assessment.

## Reasons for decision

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### The risk register, issue register and milestone schedule

14. The Commissioner has first considered the DWP's decision to refuse to provide the risk register, issues register and milestone schedule on the basis of section 36(2)(b) and (c).
15. Section 36(2) of the FOIA states that:

*"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information –*

*(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."*
16. The exemptions listed in section 36(2) are qualified exemptions so are subject to the public interest test in section 2. However, before considering the public interest the Commissioner must first consider whether any of the exemptions are engaged.
17. For any of the exemptions listed at section 36(2) to apply the qualified person for the public authority must give their reasonable opinion that the exemption is engaged. The qualified person for the DWP is the Minister for Welfare Reform, Lord Freud. The DWP has provided the Commissioner with evidence to demonstrate that the opinion has been sought and provided. The Commissioner has next gone on to consider whether the opinion of the Minister was a reasonable one.
18. The Commissioner has recently issued guidance on section 36 of the FOIA. It states the following: *"The most relevant definition of 'reasonable' in the Shorter Oxford English Dictionary is 'In accordance with reason; not irrational or absurd'. If the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable."*<sup>2</sup>

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<sup>2</sup> Information Commissioner's section 36 FOIA guidance, [http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freed](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freed)

19. In order to determine whether any of the subsections of 36(2) is engaged the Commissioner will consider:
- whether the prejudice claimed relates to the specific subsection of section 36(2) that the Trust is relying upon;
  - the nature of the information and the timing of the request; and
  - the qualified person's knowledge of or involvement in the issue.
20. The DWP as background to the request explained that programme management and requests for programme management documents and supporting documents such as gateway reviews have been considered by government previously. The DWP stated that successive governments had taken the view that the release of such documents would undermine the necessary frankness and objectivity needed for effective programme management and providing advice to ministers.
21. The DWP referenced the decision of the Information Tribunal in the case of *Department of Health v ICO and Healey and Cecil*<sup>3</sup> in which a request to the Department of Health (DoH) for risk registers relating to the NHS modernisation programme resulted in a decision by the Tribunal that the transition risk register should be disclosed whilst the strategic risk register should be withheld on the basis of section 35(1)(a).
22. The Commissioner has taken account of that case when considering if the opinion provided by the qualified person in this case is a reasonable one. The exemptions listed at sections 35 and 36 of the FOIA are mutually exclusive, meaning that if one applies the other cannot and it is section 35 which needs to be first considered. Only if section 35 is not engaged will section 36 be considered in the alternative.
23. The DWP did consider section 35 and outlined the reasons it did not consider it applied in its initial submissions to the qualified person on 4 May 2012. In this submission the DWP explained that the documents in question are iterative documents used to actively manage risks, issues and progress but are only relevant at the time they are produced. As such the DWP considered the withheld information to be programme management information rather than information that impacted on policy. To clarify further, the documents contain information that

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[om of Information/Detailed specialist guides/section 36 prejudice to effective conduct of public affairs.ashx](#), November 2011, page 6.

<sup>3</sup> Case EA/2011/0286 and 0287

impacts on the departments set delivery dates, costs, capacity and capability but not on policy consideration.

24. The Commissioner does consider the 'formulation and development of government policy' to be quite wide-reaching and it is clear that at the time of the request, although the Welfare Reform Act had received Royal Assent, there was still ongoing policy development prior to implementation of the programme (which is due to begin rolling-out in April 2013). However, the specific information in question does not relate to the policy development but the management of the project to introduce Universal Credit. As such the Commissioner agrees with the DWP's reasoning that the information is operational and does not relate to the formulation or development of government *policy*. He has therefore gone on to consider whether the opinion provided by the qualified person in relation to the application of section 36(2) is a reasonable one.
25. In its submissions to the qualified person the DWP focused on the prejudicial effects set out in section 36(2). Firstly in relation to the likely inhibition to the free and frank provision of advice and exchange of views the DWP stated that it had considered the 'chilling effect' in relation to the programme documents, which it stated were not created to be records of decisions but to be tools for the management of activity. The DWP further explained that it considered the purpose of the risks and issues registers was to identify and record issues and risks to stimulate thinking and plan for migration whilst the milestones were used to enforce rigour in planning and transparency in delivery. These documents require candid input and are often worst case scenarios however the DWP was concerned that disclosure may prejudice the objectivity of these documents as the opinions expressed and advice given to create them may be more tailored for public consumption and lead to the production of more positive documents.
26. The DWP acknowledged that chilling effect arguments may not always carry significant weight but it considers that given the track record of public sector bodies delivering projects on time and within budget, any disclosure which may have an impact on successful delivery of the UCP must be taken seriously.
27. The DWP explained that should there be an inhibitory effect on the free and frank provision of advice or exchange of views, leading to less robust issues and risk registers and milestone schedules based on what is hoped to be true rather than what is known to be true, this would be likely to impact on the project delivery. This in turn would be likely to be prejudicial to the effective conduct of public affairs as the UCP represents a large scale reform with cost implications and if it is not

delivered on time and within budget this would be likely to have an impact on the effective conduct of public affairs.

28. With regards to the risks and issues register, the DWP states that disclosure could subject the UCP to failure as time and resources would have to be spent on debating points and answering queries that would inevitably be raised by the public and the media if the documents were to be disclosed. This distraction from delivering the project aims would be likely to prejudice the effective conduct of public affairs as it represents a very real risk of the project not being delivered on time.
29. The timing of the request has also been considered and in particular the fact that the request was made at a point when draft secondary legislation had not been submitted regarding the UCP and the main scheme regulations had not been published and the initial roll-out of the programme was still some way off. The risk and issues registers and milestone schedules were constantly being updated and each version represents a snapshot of a period of time. Throughout the programme there would have been a need for a safe space for officials and senior staff to review these pieces of information to manage the programme and make decisions on the future direction of the project. This would have required the input of officials and a safe space in which to exchange views.
30. The DWP has provided sufficient evidence to illustrate that the Minister was provided with information explaining that he was required to form a reasonable opinion in relation to the application of section 36(2) of the FOIA to the information withheld by the DWP in this case. It is clear having reviewed this information the Minister formed the opinion that the disclosure of the withheld information would be likely to inhibit the free and frank provision of advice and exchange of views and the effective conduct of public affairs.
31. Having considered the points outlined above the Commissioner is satisfied that the opinion of the qualified person is a reasonable one. In places the Commissioner finds that there is some overlap in the arguments underpinning the opinion between sections 36(2)(b) and (c), when it is clear that the focus in (c) must be on *otherwise prejudice*, however the Commissioner accepts that the opinion does provide enough evidence to support the reasonableness under (b) and (c). Therefore, he considers that sections 36(2)(b)(i), (b)(ii) and (c) are engaged. He will now go on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

*Public interest arguments in favour of disclosure*

32. The DWP acknowledged the strong public interest in the disclosure of information which ensures transparency in the way in which government operates and in the increased transparency and accountability of Ministers and public officials leading to increased trust in governmental processes.
33. The UCP is likely to impact on the lives of millions of people and involves a substantial public expenditure cost and significant IT development component. As such it has attracted media attention and scrutiny and any disclosure is likely to aid the public understanding of the government's reforms and the associated risks and management of the project.
34. Both the DWP and the Commissioner acknowledge that the high profile nature of the UCP, the wide reaching implications and the challenge of delivery have prompted significant media attention. This would suggest there is a public interest in disclosure of any information surrounding the delivery of the programme.

*Public interest arguments in favour of maintaining the exemption*

35. When making a judgement about the weight of the public authority's arguments under section 36(2), the Commissioner will consider the severity, extent and frequency of prejudice to the effective conduct of public affairs.
36. The DWP argues that the registers and schedule and the constantly evolving nature of them, as well as the timing of the request and the media scrutiny around the programme are such that disclosure of the information would be likely to inhibit the free and frank provision of advice and the effective conduct of public affairs.
37. As a counter to the public interest in disclosure to increase transparency, the DWP argues this is a very high level, general argument which does not take account of the need to maintain a 'safe space' for decision-making and the ability to make robust decisions based on frank advice on government programmes.
38. The DWP explained that the three documents in question in this case contain the core information in relation to its ability to deliver the programme in a way which minimises the risk of outcomes which may not be in the public interest. These documents were intended for limited circulation with the DWP and not for public disclosure and maintaining the confidence in the limited use of these documents is crucial to ensuring officials feel they can talk about and advise on worst case scenarios.



39. In its submissions to the Commissioner, the DWP provided specific examples of the candour displayed in the risk register and this is detailed in the confidential annex. The DWP considers this sort of assessment of risk is crucial for the management of the programme and is therefore in the public interest and if these entries were to be disclosed risk entries will be written in the future with a view to publication. This in turn may mean that risks are not properly identified or mitigated against and the programme is not managed effectively.
40. The DWP has also drawn attention to the fact that the registers and to a lesser extent the milestone schedule is updated regularly, in some cases fortnightly. The DWP considers that the documents represent a 'shifting picture of the risk' and if particular versions of the document are disclosed then this would discourage contributors from expressing themselves in a way best designed to capture the attention of decision makers and those responsible for formulating mitigating measures.
41. Following on from this point, the DWP consider the entries on the registers and schedule to be time-specific, meaning that if the information was to be disclosed further disclosure would have to be made to demonstrate what has subsequently happened. The DWP is concerned that this would have the effect of placing the remaining risk management strategy of the programme in the public domain.
42. In its submissions the DWP explained that the registers and milestone schedule needed to be objective and based on worst case scenarios. This need to think about the potential risks and problems is essential to the programme management and the disclosure of the information may lead to a distorted public debate as attention from the press and the public would focus on the statements of risk rather than the mitigating action being put in place. The DWP believes it would need to divert substantial resources to addressing these issues and redressing any distortion to the debate which disclosure may bring about.
43. The DWP has also made specific reference to some of the entries on the risk register and the potential that disclosure may actually have the effect of making these risks more likely to happen which the DWP argues would be likely to prejudice the effective conduct of public affairs by jeopardising the management of the UCP. This is discussed further in the confidential annex.

*Balance of the public interest arguments*

44. The Commissioner is also mindful of previous decisions such as the Department of Health case noted above, where the Tribunal ordered disclosure of the transition register but agreed the strategic register could be withheld. He is also aware that risk registers have been

disclosed by other public authorities in the past such as the one related to the expansion of Heathrow airport and others in the NHS. However, the Commissioner must consider the individual circumstances of this case when making a decision on where the balance of the public interest lies.

45. The DWP has mentioned the need to maintain a 'safe space' in its responses to the complainant and its submissions to the Commissioner. The Commissioner generally considers safe space arguments to be applicable to arguments regarding the formulation and development of policy and the need to debate issues and make decisions away from public scrutiny. The DWP has argued that disclosure would have increased scrutiny at a time when the UCP was still in the process of being finalised and draft secondary legislation being submitted for approval.
46. The Commissioner does accept that there is some likelihood that disclosure would therefore impact on the DWP's ability to deliver its aims on time and within budget as the increased scrutiny would divert resources from the Programme to dealing with enquiries. However, the Commissioner notes that there is no specific evidence to suggest that in previous cases where risk registers and other information have been disclosed there has been any impact on the ability to deliver projects within their stated aims. For the reasons above, even though the withheld information in this case relates to operational project management and not decision making in regards to policy development, the Commissioner does recognise there is significant weight to the 'safe space' arguments put forward by the DWP.
47. With regards to the 'chilling effect' argued by the DWP, the Commissioner would generally give some weight to the argument that disclosing information that is being used to influence decisions, whether on the formulation and development of policy, or in this case, on the management of a project, could affect the frankness and candour with which relevant parties would continue to contribute to discussions on how to mitigate risks and keep the project moving on time. The weight that can be given is stronger when it can demonstrate that the information clearly relates to a matter which is still effectively "live".
48. The Commissioner does acknowledge that, specifically in the case of the risk register, there is a large amount of information and detail setting out a wide variety of potential risks, ways to mitigate these risks, actions taken, future actions, details of meetings and workshops about the risks and ownership of the risks. This register relies on the candour of contributors and the need to deal in worst case scenarios. The

Commissioner is mindful of decisions of the Information Tribunal<sup>4</sup> where broad arguments that disclosure would affect the frankness and candour with which officials would contribute to gateway reviews and risk registers were rejected. However the Commissioner also accepts the need to consider the specific impacts of disclosure in each case. As such the Commissioner does consider that there is some validity to the 'chilling effect' arguments in this case in relation to the risk register as it is very detailed in comparison to other cases, and there is a possibility that disclosure would be likely to directly impact on how the UCP risks are recorded and detailed in the risk register for the rest of the project.

49. However, despite the Commissioner accepting there is weight to the 'chilling effect' argument in respect of the risk register he does not consider this to be the case with the issues register or the milestone schedule. Throughout its submissions, both to the qualified person and the Commissioner, the DWP made specific reference to the risk register and used examples of entries in the risk register to demonstrate the potential prejudice that may occur if it was disclosed. The risk register, unlike the registers considered in previous cases, does contain a large amount of very detailed information intended for candid and frank discussions and planning.
50. The issues register contains limited information and unlike the risk register is based on current issues within DWP which may have an impact on the programme. However, the information is not particularly detailed and the Commissioner is not clear on how a significant 'chilling effect' would be likely to result from disclosing this information and the DWP have not specifically explained this in its correspondence with the Commissioner.
51. With regards to the milestone schedule, the DWP accepts that the information is not the same as that included in the registers and whereas the information in the risk register in particular is based on worst case scenarios and what the DWP term 'imaginative pessimism', the information in the milestone schedule is intended to be a plan to assist with delivery of the project on time. The DWP argues that disclosure of the milestone schedule may result in a risk to delivery of the milestones and an inhibition on the frankness and candour of the process. Although the Commissioner accepts there may be some validity to the argument that disclosure of the risk register may have an impact on the level of detail included in future iterations of the risk register, he does not accept that there would be any inhibition to the process of producing the milestone schedules. Milestone schedules are intended to

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<sup>4</sup> Office of Government Commerce v Information Commissioner [EA/2006/0068 & EA/2006/80]

be used to ensure projects proceed to timescales and possible issues with meeting deadlines are identified early. The Commissioner does not consider that disclosure would lead to any change in the way these schedules are created and does not therefore accept there would be any 'chilling effect' should the milestone schedule be disclosed.

52. Balanced against all of this, the Commissioner does find there is a very strong public interest in disclosure of the information given the significant changes to the benefits system the UCP is intended to bring. The project may materially affect a significant percentage of the population and it is an important public interest matter for a number of reasons:

- The project represents a significant change to how welfare provision is apportioned, managed and delivered;
- Changes to welfare provision can impact on the most vulnerable members of society;
- The track record of governments not delivering on large projects with significant IT components;
- The project will represent a significant outlay of public money. The government have made clear their intention for the project to ultimately save money for the taxpayer;
- The project involves other parts of the public sector, such as local authorities and the project could impact on the delivery of local services as well

53. There has been widespread debate amongst the public and campaign groups and industry bodies, as well as media commentary, about whether the project is within budget and on schedule. Disclosure of any information, particularly that which shows how the project is being managed, would significantly aid public understanding of risks related to the programme and how it is being managed to keep to schedule.

54. In the case of the issues log and milestone schedule, as the Commissioner does not accept the chilling effect arguments carry much weight he has concluded the public interest in maintaining the section 36(2)(b)(i) and (ii) exemptions does not outweigh that in disclosure.

55. He also finds that the arguments under section 36(2)(c), about how disclosure of these documents would be likely to otherwise prejudice the effective conduct of public affairs, are also not as strong and the public interest in maintaining the exemption does not outweigh that in disclosure

56. The Commissioner therefore requires the DWP to disclose the issues log and the milestone information.
57. The Commissioner recognises that the decision regarding the risk register is finely balanced but as he has accepted the validity of both the safe space arguments and the chilling effect arguments in relation to this, these arguments combined with the sensitivity and depth of some of the information in the register do slightly outweigh the public interest in disclosure. The Commissioner therefore finds that the public interest in maintaining the section 36(2)(b)(i) and (ii) outweighs the public interest in disclosure. The Commissioner has also reached the same conclusion under section 36(2)(c) for the risk register.
58. In conclusion the Commissioner requires the DWP to disclose the issue log and milestone schedule but not the risk register which has been correctly withheld.

### **Information on the Agile methodology**

59. The complainant did submit a number of questions to the DWP about its use of the Agile methodology in relation to the Universal Credit programme. Despite the complainant specifically addressing his concern at the response provided by the DWP to this part of his request, this was not addressed during the internal review. The Commissioner specifically wrote to the DWP about this and asked it to confirm what information, if any, it held to answer the questions asked by the complainant and what information had been provided as this was not clear from the correspondence the Commissioner has seen.
60. The DWP explained that in response to the first question:

*"Please advise if Agile or similar technique has ever been successfully used by the DWP or its contractors to complete a programme as complex as the Universal Credit Programme."*

The DWP provided general information on the suppliers it worked with but stated no information was held on the suppliers' work for other clients or the methodologies employed. DWP has acknowledged it did not clearly inform the complainant that it had not used Agile before in any programmes as complex as Universal Credit but considered it had implied this.

61. Taking into account the above, the Commissioner is satisfied that the DWP has adequately answered this part of the complainant's request in that it informed the complainant it did not hold information on its supplier's use of Agile. The Commissioner does accept that the DWP could have been clearer in explaining to the complainant that it had not used the Agile methodology before and therefore no information was

held but in any event this part of the request has been responded to and no information is held.

62. The second part of the request for information on Agile was for:

*If this technique has not been used previously on a programme of this size and complexity please advise:*

*Who made the decision to use it given the huge inherent risk?*

*Why has a technique that at best has a dubious reputation in IT projects felt suitable for a huge change programme?"*

The Commissioner had concerns that this part of the request had not been responded to adequately by the DWP and had not been addressed by the DWP when conducting the internal review. The DWP considered its response to the complainant of 20 June answered this part of his request as it explained the decision to use Agile was made by the Universal Credit Programme Board and provided a link to the Government's ICT strategy which explains the adoption of Agile for project management.

63. The Commissioner, having reviewed the information in the ICT strategy, accepts that this does contain information on the reasons for the adoption of Agile methodology and therefore satisfies the request.
64. On this basis, the Commissioner does not require the DWP to take any further action in respect of the part of the request relating to the Agile methodology.

## Right of appeal

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65. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

66. 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.
67. 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 .....**

**Steve Wood**  
**Head of Policy Delivery**  
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**Water Lane**  
**Wilmslow**  
**Cheshire**  
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