

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2014

Public Authority: Department for Work & Pensions
Address: Caxton House
4th Floor
6-12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

The complainant has requested information from the Department for Work and Pensions ("DWP") in relation to Atos Healthcare's WCA audio recording trial. The Commissioner's decision is that the DWP has correctly applied section 35(1)(a) of FOIA to the information it has withheld from the complainant. The Commissioner requires no steps to be taken.

Request and response

1. On 1 May 2012 the complainant wrote to the DWP and requested information in the following terms:

""On 28/04/2012 you made the Atos report on the WCA audio recording trial available at <http://www.dwp.gov.uk/docs/wca-recording...>

- 1) It was completed 11 months ago. What information is available to explain why its publication was withheld for so long and what additional work has taken place over this period?
- 2) As with the Harrington Review, it is customary for DWP to respond to such a report, particularly in commenting on

recommendations and any subsequent work that might be needed.
Where can it be found?

- 3) The decision to proceed would have require a risk analysis and impact assessment. Where can they be found?
 - 4) There are many references to improving the quality of assessments and this forms the primary objective, which can only be meaningfully judged if quantified. What measure has been established and what is the expectation – i.e. improve from what level to what level?
 - 5) Where is the documentation that would have been signed off pre-trial explaining the rationale employed and the limited scope of the trial? It would have recognised the potential to distort results, recommended steps to avoid and covered at the following areas and more:
 - a. Why only 500 offers – how is this statistically substantiated?
 - b. Claimant history (previous WCA experiences)
 - c. Physical or mental impairment
 - d. The content of the 'independent' telephone survey etc.
 - 6) The report identifies a number of questions that have to be answered prior to national roll-out. Where have the answers been recorded?
 - 7) It also refers to cost implications. Where have these been examined in detail with an assessment of value for money?"
2. The DWP wrote to the complainant on 1 June 2012, stating that it was considering the application of section 43(2) to some of the requested information but that it required more time to consider the public interest test. It hoped to have a response with the complainant by 29 June 2012. The complainant responded to that letter on 7 June 2012 stating that he was not happy with the delays incurred. The DWP treated this as a request for internal review.
 3. The DWP responded to the complainant on 14 June 2012, providing information in relation to his request. It withheld information in relation to part 7 of the request, citing section 43(2) of FOIA as a basis for non-disclosure.
 4. The complainant further wrote to the DWP on 4 July 2012, stating that he was not happy with the response he had received and seeking a further internal review.

5. The complainant complained to the Commissioner on 6 July 2012.
6. The DWP wrote to the complainant on 12 October 2012, apologising to the complainant for the delays incurred in responding to his original request and in carrying out an internal review. The reviewer upheld the original decision to apply section 43(2) of FOIA to the withheld information.
7. Following the Commissioner's intervention, the DWP wrote to the complainant on 2 October 2013 providing more detail in relation to its application of the exemption under section 43(2) of FOIA to the withheld information. It also stated that it now considered the withheld information to fall under the exemption as set out in section 35(1)(a) of FOIA – information relating to the formulation or development of government policy.

Scope of the case

8. The complainant contacted the Commissioner on 6 July 2012 to complain about the way his request for information had been handled. On 2 October 2013 the DWP provided its submissions to the Commissioner as to its application of both exemptions cited above.
9. The Commissioner has considered the DWP's handling of the request in general and has specifically considered its application of the above exemptions and the public interest test. He has firstly considered whether the exemption as set out in section 35(1) (a) was correctly applied to the withheld information.

Section 35 of FOIA

10. Section 35 of FOIA states that information held by a government department is exempt if it relates to the formulation or development of government policy. As this is a class based exemption, if the information relates to the formulation or development of government policy it falls under this exemption.
11. The Commissioner must consider whether the withheld information relates to the formulation and development of government policy.
12. It is the Commissioner's view that the term 'relates to' should be interpreted broadly to include any information which is concerned with the formulation or development of the policy in question. It does not have to be information specifically on the formulation or development of that policy.
13. The DWP considers that the withheld information would fall under Section 35(1)(a) of the FOIA exemption as the policy on audio

recording has not been formulised and the DWP requires a safe space for the further development of this policy. The DWP is undertaking a period of study to understand what the demand for audio recording is before it makes a formal decision on the long terms aspect of this policy. This study has been ongoing since the pilot concluded and once the DWP has enough information to make a formal decision, it will do so.

14. At the time of the original FOI request and currently, the policy on audio recording has not been formally agreed and therefore the information requested relates to policy which is still in development. The DWP still considers, as it did at the time of the original FOI request, that the withheld information in question would fall within the terms of Section 35(1)(a) of the FOIA.
15. The Commissioner accepts that the withheld information relates to the development of government policy, as the policy has not yet been finalised and implemented. He is therefore satisfied that the exemption under section 35(1)(a) of FOIA is engaged in relation to the withheld information and has gone on to consider the public interest in disclosure of that information as balanced against that in maintaining the exemption.

Public interest arguments in favour of disclosure of the withheld information

16. The DWP acknowledges that there is a strong public interest in disclosure of information in order to ensure openness and transparency in the way in which Government operates and in increase transparency and accountability of Ministers and public officials.
17. This in turn would increase public understanding of and trust in governmental decision-making processes -in particular, the effectiveness with which Government works in ensuring the successful delivery of major projects and programmes to time, scope and budget as part of the Department's key objectives.

Public interest arguments in favour of maintaining the exemption

18. FOIA acknowledges that good government depends on good decision making and therefore needs space in which to formulate policies based on the best advice available with full consideration of all the options. Ministers also need to be able to conduct rigorous and candid risk assessments of their policies and programmes including considerations of the pros and cons without there being premature disclosure which might close off other, better options.

19. The fact that this policy area is still undecided means that the DWP requires suitable space in order to work with its providers (in this case Atos Healthcare) to understand what the options are for the policy. For this reasons, as part of setting up the pilot, the DWP asked Atos Healthcare to provide it with an estimate of what it might cost, plus a possible deliverable solution, for a national roll out of audio recording. Atos Healthcare provided an idea of the potential costs, for information only. The DWP argues that, should these become publicly available, this could cause difficulties in negotiations with bidders, and may not lead to the best policy decisions.

Balance of public interest arguments

20. The Commissioner considers that there is always a strong public interest in openness and transparency regarding the decision-making processes within government bodies, which increases public understanding and informs public debate. There is also a strong public interest in the public having trust and confidence in government bodies successfully delivering projects on time and within scope and budget.
21. On the other hand, the Commissioner also acknowledges that government departments require a safe space in order to candidly discuss options and fully consider these based on the best advice available. Premature disclosure of information relating to the formulation or development of government policy may well restrict options, which could lead to the best possible policy decisions not being made. The Commissioner considers that there is a strong public interest in government departments being able to fully discuss all available options in a frank and candid manner, without fear of premature disclosure.
22. As the withheld information relates to a policy area which is still undecided and is being further developed before been formally agreed, the Commissioner is satisfied that, on balance, in all the circumstances of the case, the public interest would be best served by maintaining the exemption as set out at section 35(1)(a) of FOIA.

Right of appeal

23. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Rachael Cragg
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