

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2014

Public Authority: Department for Work and Pensions
Address: Caxton House
6 – 12 Tothill Street, London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information relating to the Department for Work & Pensions' (DWP) Twitter accounts.
2. The Commissioner's decision is that DWP has incorrectly applied section 21 of the FOIA to the withheld information.
3. The Commissioner requires the DWP to provide the requested information to the complainant.
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

5. On 17 January 2014, the complainant wrote to the DWP and requested information in the following terms:

"Please email me a list of all current DWP twitter accounts, you have not published them at <https://twitter.com/DWPdigital/lists> because they can only be viewed when logged into a twitter account and this restriction does not remove any Freedom of Information Act duty to disclose to me in such a format and means I find accessible."

6. DWP responded on 5 February 2014 and refused to provide the requested information citing section 21 of the FOIA as its basis for doing so.
7. Following an internal review DWP wrote to the complainant on 11 February 2014 and maintained its original position

Scope of the case

8. The complainant contacted the Commissioner on 11 February 2014 to complain about the way her request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if DWP has correctly applied section 21 of the FOIA to the requested information.

Reasons for decision

10. Section 21(1) of FOIA states that:

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

11. This means that where a complainant is reasonably able to obtain the information from another source then the information is exempt from disclosure under FOIA.

Is the information reasonably accessible?

12. The first matter for the Commissioner to consider is whether the information is **reasonably** accessible. The DWP's response to the complainant stated:

"Section 21 of the Freedom of Information Act allows us to direct you to information already publicly available through other means. As this information is already available to anybody who registers with Twitter at no cost, it is therefore exempt."

We have considered the public interest test and note that we can see no public interest in releasing information which can only be used via Twitter when it is already freely available to everybody using Twitter."

13. The complainant's request for internal review stated:

"As your decision states that any information that can only be seen with a Twitter account is the same as such public information being published in the "Public domain", which is incorrect.

I therefore consider your refusal to be unlawful as there is nothing in the Freedom of Information Act that requires anyone to have a Twitter account or other social media account to view or obtain public information. It is a unlawful hindrance to restrict access to information through your use of twitter."

14. In its response to the Commissioner, DWP maintained its position and stated:

"Section 21 of the Act clearly states that "Information which is reasonably accessible to the applicant is exempt information". It does not state that this information must be publicly available; simply that it must be accessible.

Section 21 effectively confirms that the Freedom of Information Act does not provide alternative means of access to information which is already freely available, either through commercial publishing operations or through existing publicly funded provision. The Act's rights are designed to supplement, and not to duplicate, the usual flow of information to the public through the commercial electronic and print media, and through existing library and archive services.

The Act recognises that information about whether a public authority holds published information is something about which there is a right to be told. However, this is separate from the question of how an applicant can be expected to access the information itself."

15. DWP further stated that the complainant had argued that it had not published such a list. The DWP stance is that this information has been published and that it is accessible to anyone via twitter.
16. DWP considered that the test is whether this information is reasonably accessible 'to the applicant'. In other words, can the **person** who has made the request for information reasonably obtain it by other means?
17. It went on to explain that DWP is moving to a digital by default engagement strategy with its customers and the wider public. The general public can claim benefits and access a range of services digitally. Additionally citizens can communicate with the department on a regular basis via social media, such as 'Facebook' and 'Twitter' which have become popular methods of engagement for citizens to access information and provide their views. More on this aspect can be found

here: <https://www.gov.uk/government/organisations/department-for-workpensions/about/social-media-use#official-dwp-twitter-accounts>

18. Taking into account the accessibility of the information DWP's stance remains that registration to such media fora is not a barrier to gain access to the information. Registration is free of charge and there is no requirement for bank account/payment details to be provided. The Act allows for information available via an online paid service to be treated as reasonably accessible to a member of the general public and therefore a simple registration requiring such information would also fall to be exempt under section 21.
19. In summary the DWP considers that the information sought is freely available to him or anybody who wishes to register and use Twitter. It also took into account that the complainant is a member of 'What Do They Know', which requires a person to register an account. It had therefore concluded that he would have no difficulty in registering for a twitter account. Finally, DWP stated it was not aware of any particular personal circumstances that may need to be taken into account when deciding whether access to the information is reasonable.
20. In order to assess the "reasonableness" the Commissioner went through the steps required to access Twitter.
21. The first step is selecting a username. There is then a prompt to add some biographical information. Twitter then makes suggestions of popular users to 'follow'.
22. In addition to setting up an account, users must also abide by the terms and conditions which include:
 - *"The Services may include advertisements, which may be targeted to the Content or information on the Services, queries made through the Services, or other information. The types and extent of advertising by Twitter on the Services are subject to change. In consideration for Twitter granting you access to and use of the Services, you agree that Twitter and its third party providers and partners may place such advertising on the Services or in connection with the display of Content or information from the Services whether submitted by you or others.*
 - *You understand that through your use of the Services you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States and/or other countries for storage, processing and use by Twitter. As part of providing you the Services, we may need to provide you with certain communications, such as service*

announcements and administrative messages. These communications are considered part of the Services and your Twitter account, which you may not be able to opt- out from receiving.

23. Furthermore, Twitter's privacy policy states:

- *Log Data: Our servers automatically record information ("Log Data") created by your use of the Services. Log Data may include information such as your IP address, browser type, operating system, the referring web page, pages visited, location, your mobile carrier, device and application IDs, search terms, and cookie information. We receive Log Data when you interact with our Services, for example, when you visit our websites, sign into our Services, interact with our email notifications, use your Twitter account to authenticate to a third-party website or application, or visit a third-party website that includes a Twitter button or widget. Twitter uses Log Data to provide our Services and to measure, customize, and improve them. If not already done earlier, for example, as provided below for Widget Data, we will either delete Log Data or remove any common account identifiers, such as your username, full IP address, or email address, after 18 months.*
- *Third-Parties: Twitter uses a variety of third-party services to help provide our Services, such as hosting our various blogs and wikis, and to help us understand the use of our Services, such as Google Analytics. These third-party service providers may collect information sent by your browser as part of a web page request, such as cookies or your IP address. Third-party ad partners may share information with us, like a browser cookie ID or cryptographic hash of a common account identifier (such as an email address), to help us measure ad quality and tailor ads. For example, this allows us to display ads about things you may have already shown interest in. If you prefer, you can turn off tailored ads in your privacy settings so that your account is not matched to information shared by ad partners for tailoring ads. Learn more about this setting and your additional Do Not Track browser option here.*

24. The terms and conditions, and privacy policy are extensive. As the Commissioner is also the regulator of the Data Protection Act and the Privacy and Electronic Communications Regulations he has more than a passing interest in organisations privacy and marketing policies.

25. After considering the steps involved in setting up a Twitter account, and the obligation by the user to allow their personal data to be collected, stored and shared as indicated above it is the Commissioner's decision that it is **unreasonable** to expect a member of the public to set up an account in order to access the information.

26. Therefore the Commissioner considers that DWP has incorrectly applied section 21 and that DWP should provide the information to the complainant as requested.

Other matters

27. The Commissioner notes that DWP stated they had considered the public interest in the information. Section 21 is an absolute exemption and therefore no public interest consideration is required.

Right of appeal

28. 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

29. 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.
30. 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

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