

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

## **Decision notice**

**Date:** 22 February 2021

**Public Authority:** The 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 regarding the employment commencement dates and departures of specified Directors within the Department for Work and Pensions (DWP).
2. The Commissioner's decision is that DWP is entitled to rely on section 14(1) to refuse to comply with the request. The Commissioner finds, however, that DWP has breached section 17(5) by failing to issue a refusal notice stating section 14(1) within the statutory time for compliance.
3. No steps are required.

## Request and response

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4. On 27 October 2019, the complainant wrote to DWP and requested information in the following terms:

*"I am writing under Freedom of Information legislation to formally request that you please supply me with a list of the official dates (days, months, years) between which **Susan Park** occupied the post of **Director General DWP Operations**, clearly indicating her official commencement and departure dates from that Office. Please also indicate any formal reason that may be publicly available for her departure from the post (retirement, departmental transfer, termination of employment, etc.)*

*Please also provide the names of **her immediate predecessor in that same post (Direct General DWP Operations)** with the dates of his or her commencement and departure from that post.*

*We also request the names of **all subsequent successors in that post to date, whether as acting/interim or permanent appointments**, and the dates on which these people commenced and departed from this post.*

*We presume that as public servants the simple facts of the dates of Susan Park's incumbency in this post, and that of her predecessor and successor(s) can be made available to a member of the public under a formal FOI request.*

*We have previously written to the Private Office of the Director General DWP Operations (our letter dated 15<sup>th</sup> July 2019) with a formal request for this information, but we have not received any acknowledgement of, or detailed answer to, our request.*

*As my request relates to an ongoing legal dispute, your prompt attention and swift response would be very much appreciated."*

5. On 15 November 2019, DWP provided its response. DWP confirmed that it held the requested information and was relying on section 21 as the information is in the public domain and therefore is reasonably

accessible to the complainant. DWP provided links<sup>1</sup> to the biographies and announcements of appointment relating to four directors.

6. On 19 November 2019, the complainant wrote to the DWP and requested an internal review. He disputed that DWP had provided him with all of the information falling within the scope of the request, in particular, that he had not been provided with the specific dates of employment for the individuals. The complainant raised his concerns that DWP's response was "*false, inaccurate and/or possibly deliberately misleading*" and raised suspicions that DWP were trying to hide the dates of the Director named in his request.
7. On 18 December 2019, DWP provided the outcome of its internal review of the handling of the request. DWP confirmed that it was satisfied that the month and year of each individual's time in post is clearly set out in the linked webpages. DWP explained that there are a number of reasons why more specific dates are not included within the biography data published on GOV.UK. DWP explained that these may include some cross-over of roles for a brief period and periods of annual leave which would be exempt as it is the personal data of the specified individuals.
8. DWP confirmed that it considered that the request was vexatious in nature and provided the confusing statement that it therefore considered that it should "*dismiss*" the complainant's request for internal review<sup>2</sup>.
9. DWP noted that the request had been made in relation to a legal dispute. DWP explained that as most legal disputes would be against the Secretary of State and not individual civil servants, it did not believe

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<sup>1</sup> <https://www.gov.uk/government/news/susan-park-appointed-as-director-general-universal-credit-operations>

<https://www.gov.uk/government/people/susan-park>

<https://www.gov.uk/government/people/andrew-rhodes>

<https://www.gov.uk/government/news/andrew-rhodes-appointed-director-general-dwp-operations>

<https://www.gov.uk/government/people/john-paul-marks>

<https://www.gov.uk/government/people/emma-haddad>

<sup>2</sup> DWP confirmed during the Commissioner's investigation that this statement was intended to communicate that it did not uphold the complainant's internal review request.

that the requested information would assist the complainant in his stated aims. DWP also stated that the complainant had made a number of allegations of impropriety in the handling of the request.

10. The internal review contained a number of confusing statements including that the request had been handled correctly despite the internal review going on to confirm that not all of the requested information was included in the links provided. DWP also made the following contradictory statement:

*"Requests under the Freedom of Information Act are purpose blind; we can take into account whether the information requested would further your stated aim".*

11. On 23 December 2019, the complainant contacted DWP again to dispute its position. He disputed that this request could be considered vexatious and questioned DWP's motives in relying on section 14 and not providing the entirety of the request information.
12. On 20 January 2020, DWP provided a response to the complainant's correspondence. DWP stated that it believed that the information provided in the links gave *"sufficient"* information about the individuals' employment dates.
13. DWP confirmed that it considered the request was vexatious because it was trivial, within the meaning of the Act. DWP stated that when determining whether to treat a request as vexatious, it is permitted to take into account whether this request will help to achieve any stated aims for making the request. DWP confirmed that as legal action for any action or omission would be taken against the Secretary of State, not individual employees, it did not believe that knowing the exact dates of employment would assist the complainant's decision about taking legal action.
14. DWP confirmed that it would not continue to correspond on this matter and advised the complainant of the Commissioner's contact details.
15. On 7 February 2020, the complainant wrote again to DWP. He stated that DWP had one further opportunity to provide the requested information or a genuine explanation of why the request is considered vexatious. The complainant disputed that the request was trivial and confirmed *"that this information was very important in having a direct bearing on possible legal action that we may or may not bring against the DWP, or against specific officers of the DWP"*.
16. The complainant explained that the *"possible legal action will be based on who, precisely, was in post as Director General DWP Operations during a number of specific occasions"*.

17. The complainant explained that following a subject access request, they were aware of discrepancies regarding who was in the named job role during the above referenced occasions when the complainant had corresponded with DWP.
18. The complainant asked if DWP had referred to legal action against the Secretary of State because it was aware of misconduct in office and asked DWP to provide evidence of this misconduct so that he could take it to the police.
19. The complainant disputed that he indicated that he intends to bring a legal action against Susan Park as he does not know if she was Director at the time and even if she was, she may not be the subject of the legal action.
20. In relation to the previous reliance on section 21, the complainant stated that as DWP went on to confirm that not all of the information requested was available via the links provided, *"This could only be interpreted either as deliberate misdirection on the part of your original respondent (15 Nov. 2019), or administrative negligence and gross incompetence. I await clarification of which of these explanations apply"*.
21. *In line with its response of 20 January 2020, DWP did not provide a further response to this letter.*

## **Scope of the case**

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22. On 10 February 2020, the complainant wrote to the Commissioner to complain about the handling of his request for information. The complainant raised numerous concerns regarding DWP's statements and actions.
23. The Commissioner confirmed which of the concerns she could address, specifically DWP's handling of his request for information.
24. The complainant asked that the Commissioner investigate his complaint alongside a separate complaint made under the Data Protection Act 2018 (the DPA). The Commissioner explained that as the complaints were made under separate pieces of legislation, they would be investigated separately. The Commissioner cannot issue a decision notice in relation to a complaint under the DPA and this notice will not therefore consider this separate complaint.
25. The Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on section 14(1) to refuse to comply with the request made in October 2019.

26. The Commissioner's role is to decide whether a particular request has been handled in accordance with the requirements of the Act. She cannot comment on or become involved in the complainant's dispute with DWP or make any finding with regard to DWP's compliance with other legislation.

## Reasons for decision

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27. Section 14(1) of the Act states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

28. The term "vexatious" is not defined in the Act. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>3</sup>. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

29. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:

- The burden imposed by the request (on the public authority and its staff);
- The motive of the requester;
- The value or serious purpose of the request; and
- Any harassment or distress of and to staff.

30. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the "*importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealing, the lack of proportionality that typically characterise vexatious requests.*" (paragraph 45)

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<sup>3</sup> <http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

31. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
32. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests<sup>4</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All of the circumstances of a case will need to be considered in reaching a decision as to whether a request is vexatious.

### **The complainant's position**

33. The Commissioner has included the arguments provided by the complainant in his complaint to her and his correspondence with DWP.
34. The complainant confirmed that his request stems from an investigation by DWP's Fraud and Error Team into the circumstances of his partner's claim. The complainant stated that DWP had submitted fabricated and misleading information to the Crown Prosecution Service.
35. The complainant explained that his request was for "*relatively modest but specific factual information*" which would not cause an undue burden on DWP.
36. The complainant considers that as DWP had confirmed in its initial response that the information was publicly available, it was not therefore confidential or restricted.
37. The complainant explained that the request could not be deemed trivial, as DWP had set out, because "*this information is required to determine any direct possible legal investigation against one or more officers of the DWP, and is therefore far from trivial*".
38. The complainant explained that the information was important as it is needed to confirm who was actually occupying the named job role between 2017 and 2019, on specific dates when the complainant had sent correspondence to the named individual regarding the alleged submission of fabricated information to the CPS.

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<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

39. The complainant explained that as he had not received an acknowledgement or reply to these letters, he needed to verify who was the incumbent Director General of DWP Operations on these dates.
40. The complainant explained it had been indicated in earlier letters from DWP that the Director General of DWP Operations at the time of the correspondence was Susan Park, however, internal emails obtained following a Subject Access Request referred to Ms Park as the "former DG" during the same time periods. The complainant considers that only the provision of the requested information would confirm whether Ms Park, or someone else, had been in a position to "*receive, ignore or suppress*" the complainant's correspondence which "*documented evidence of irregular and possibly unlawful, practices by more junior DWP staff*".
41. The complainant believes that DWP has attempted to prevent access to information which the complainant believes would "*provide the necessary evidence required to determine the direction and scope of pending legal investigation*". The complainant raised concerns that the same officers that had handled his subject access request under the DPA also handled the request for the Directors' employment dates and had done so under instructions to "*obstruct and mislead*" the complainant.
42. The complainant explained that DWP knew that the information that he was seeking was not publicly available and by applying section 21 in the first instance, DWP had provided a false and misleading response. The complainant disputed that the information available in the links provided was "*sufficient*" for his purposes, as DWP had stated in its internal review. The complainant considers that DWP must have known before issuing its section 21 refusal notice that not all of the requested information was available and therefore "*misdirected me quite deliberately*".
43. The complainant noted that the internal review stated that requests under the Act are purpose blind basis but then contradicts this by withholding the information because of its own interpretation of the purposes of the request. The Commissioner confirmed to the complainant that she would ask DWP to explain its contradictory statement but suggested that it was likely to be due to a missing word or poorly worded sentence. However, the complainant did not accept this and stated: "*The DWP Officers involved are presumably professional and experienced officers who must deal with such matters on a routine basis. Such errors are an indication of either gross negligence and unbelievable incompetence, or something more deliberate. We believe that the DWP's contradictory response is consistent with the DWP's previous attempts to confuse and mislead us, or to 'gaslight' us, on other very serious matters, which unfortunately do not come within the scope of your investigation*".

44. The complainant explained that he had previously sought to obtain this information by writing directly to the Director General of DWP Operations on 15<sup>th</sup> July 2019, however, this letter was not acknowledged or responded to and this led to the complainant having to make a formal request under the Act. The Commissioner requested that the complainant provide any evidence he held that this previous correspondence had been received by DWP. The complainant provided the Commissioner with an electronic copy of the letter that was sent; however whilst the complainant stated that the Royal Mail Track and Trace service showed delivery of the letter to DWP's "Victoria Delivery Office", the complainant did not provide the Commissioner with this proof of delivery. The complainant believes that the delivery to the Victoria Delivery Office was sufficient confirmation that the letters have been securely delivered and any failure to receive the complainant's correspondence by a specific office within DWP must therefore be the fault of the DWP internal mail system.
45. In response to DWP's internal review statement that the complainant had made allegations of impropriety, the complainant stated that in fact he had expressed serious criticism and stated suppositions as to why the request was handled as it was and that he had not made abusive or malicious comments.

### **DWP's position**

46. DWP provided the Commissioner with the following background to the request. DWP also provided copies of the correspondence referred to in this background. DWP confirmed that further correspondence had been received but, due to the volume, it had not made reference to every document.
47. DWP explained that the complainant, on behalf of his partner, had submitted complaints to the Counter Fraud and Compliance Directorate (CFCD) officer who was dealing with the criminal investigation of his partner's claim for benefits.
48. DWP confirmed that in May 2018, these letters were passed to the team leader responsible for the relevant investigation team who responded separately to the complainant and his partner. At this stage, the team leader acknowledged that the complainant's partner had not had a proper response to their complaints but provided assurance that the complaints relevant to the interview under caution had been passed to the Crown Prosecution Service (CPS) to take into account when making any decision relating to bringing a prosecution. The team leader also advised the complainant and his partner that if they were dissatisfied with her response and wish to take the complaint further, they should address their complaint to Susan Park, Director General Operations.

49. DWP explained that on 6 September 2018, the complainant wrote to Ms Park and the CFCD investigation team leader escalating his complaint. The letter made a number of allegations about the conduct of the fraud investigators involved in the case, particularly the interview under caution and the handling of a request for a copy of the recording of this interview, which he considered breached his partner's rights under the data protection legislation. The complainant ended this letter by making reference to his intention, if he did not receive a satisfactory response, to engage his local MP in seeking a police investigation into the matter.
50. DWP confirmed that shortly after this letter, the complainant's partner entered a guilty plea before her local Magistrates Court to an offence under the Social Security Administration Act 1992<sup>5</sup>.
51. DWP explained that on 4, 6<sup>6</sup> and 14 November 2018, the complainant wrote again to Ms Park and the CFCD investigations team leader.
52. DWP confirmed that a response was issued to these three letters by the Deputy Director of CFCD Operations North on 5 April 2019. The DWP acknowledged the delay in responding and apologised for this. The letter explained that because the complainant's partner had pleaded guilty to an offence based on the evidence that was being objected to<sup>7</sup>, the view was taken that no further action was required. The response confirmed that it was being issued on behalf of Ms Park and set out DWP's responses to the allegations of misconduct made in those letters. DWP outlined that if the complainant's partner was not satisfied with DWP's handling of the case, the matter should be escalated to the Independent Case Examiner's office (ICE).
53. DWP explained that the complainant wrote to Ms Park again on 9 May 2019 and cast doubt on the legitimacy of the response. The letter made a number of demands of Ms Park to confirm that the Deputy Director held proper delegated authority to issue the response and cast doubt on both the veracity of its content and its motives behind it. The

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<sup>5</sup> The Commissioner notes from the correspondence provided that the circumstances surrounding this plea are disputed by both parties. However, it is clear that the guilty plea was entered to a lesser charge of failure to inform DWP of a change in circumstances rather than the original charge of dishonestly failing to inform DWP of a change in circumstances.

<sup>6</sup> The Commissioner was not provided with a copy of the letter dated 6 November 2018.

<sup>7</sup> The Commissioner notes that the complainant argues in his correspondence that the evidence submitted to the CPS was not relevant to the lesser charge and therefore the complainant's partner had not had the opportunity to dispute its veracity in court.

complainant alleged that the letter was fraudulent and that a standard annual letter regarding review of savings was harassment of his partner<sup>8</sup>. DWP considered that the tone of the letter was highly personalised and targeted Ms Park as an individual, questioning her personal responsibility and liability to her for each of the contested statements within the Deputy Director's response. In this letter, the complainant stated:

*"we should also advise you at this point that, should you or any other officer of the DWP who may be potentially implicated in these possibly widespread unlawful practices, suddenly decide to take early retirement, transfer to another department of Government, or take a lucrative job in the private sector, it will not deter us from seeking the fullest legal scrutiny of your, and any other DWP Officers', involvement in – or responsibility for – these irregular practices and possibly unlawful actions by the DWP against [the complainant's partner] and possibly against other vulnerable people with known physical disabilities and mental disorders."*

54. DWP explained that a further 26 page letter was addressed to the Deputy Director on 9 May 2019. This letter also cast doubt on the legitimacy of the response and included an unfounded allegation that the Deputy Director was suspended from duty for misconduct when they wrote the letter and that it was written without the knowledge or approval of Ms Park. The complainant stated that he considered a complaint to ICE was inappropriate, claiming that was an issue of law and therefore fell outside of the jurisdiction of ICE<sup>9</sup>. The claimant considered that the appropriate remedy was to seek a criminal investigation by Greater Manchester Police into unlawful practices by the fraud investigation team. The complainant suggested that he would seek to have both the Deputy Director and Ms Park investigated for criminal conspiracy in the matter before going on to outline, in detail, a series of assertions that he claimed amounted to evidence of an offence of perverting the course of justice.
55. DWP explained that it then followed its procedure to place the complainant and his partner on its Unreasonable Persistent Contact

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<sup>8</sup> The Commissioner notes from the correspondence provided that the concerns about this standard review letter were raised as the complainant's partner had not been in receipt of benefits for 19 months and therefore it was not apparent why a yearly review of savings was necessary.

<sup>9</sup> DWP had previously confirmed to the complainant that ICE could not investigate matters of law.

(UPC) register. DWP explained that the purpose of this register is to enable DWP to draw to a close a series of correspondence where this has become repetitive and unproductive. DWP explained that a letter was drafted and issued to the complainant and his partner on 20 June 2019. This letter explained that although the complainant had written to Ms Park, a response to his complaint would be provided by the most appropriate Director. This letter advised that a full and final response to the complaint had been provided in the letter dated 5 April 2019 and that no further correspondence would be entered into on the matter as the internal complaints procedure had been exhausted. DWP restated its advice that a complaint could be made to ICE and provided contact details for how to do this.

56. DWP explained that the Director General Operations office received a further letter on 13 June 2019 and this was dealt with by the Official Correspondence team. DWP's response again indicated that the complainant had received, in its response dated 5 April 2019, a full and final response and that no further correspondence would be entered into and again provided the contact details of ICE.
57. DWP explained that further correspondence was received by the investigations and compliance team on 9 July 2019, 18 July 2019, 22 July 2019 and 30 July 2019, all of which were responded to with a standard response that acknowledged the correspondence but declined to enter into further discussion.
58. DWP explained that the letter of 18 July again disputed the legitimacy of the Deputy Director's letter dated 5 April 2019. The complainant further contested that it was a full and final response to his complaints stating "*you pretend or try to fool yourselves – that it is 'a full and final response' to our 'complaints'.*" The complainant stated that he was unable to submit his complaint to ICE as such a submission requires the DWP complaints procedures to be exhausted.
59. DWP explained that the complainant continued to address complaints to its staff and on 26 July 2019, he wrote to the Director General Operations' office as a result of correspondence provided to him following a Right of Access request. The complainant addressed his letter to a junior officer within the office and demanded to know why he had not been informed of the departure of the Director General Operations. This letter again implied that the letter of 5 April 2019 had been sent without authority and made allegations that the Director General's office was attempting to mislead the complainant by obfuscating the issue of who was in post as the Director General Operations. The complainant further suggested that this was part of an attempt to deflect him from continuing his allegations of criminal behaviour by DWP.

60. DWP confirmed that following the request under consideration in this notice, the complainant contacted DWP again on 20 April 2020 to complain that the correct process had not been followed to place him and his partner onto the Unreasonably Persistent Contact register. DWP provided its response on 25 June 2020 finding no fault with the process and upholding the complaint.
61. DWP confirmed that the complainant submitted his complaint to ICE on 18 July 2020.
62. DWP acknowledged that the complainant's use of the Act has not been excessively burdensome, however, it considered that the complainant has already placed a significant burden on its resources by repeatedly raising complaints about matters that DWP considers have been dealt with.
63. DWP considers that the request is designed to cause disruption and annoyance by opening up a further channel of complaint to circumvent the standard response received under the Unreasonably Persistent Contact policy.
64. DWP considers that the complainant is demonstrating unjustified persistence in pursuing this matter as per the decision in *Welsh v Information Commissioner (EA/2007/0088, 16 April 2008)*<sup>10</sup>.
65. DWP explained that it is satisfied that it has responded to the complainant and has acknowledged where it fell short of the standards that should be expected of it by not responding in a timely manner. DWP's view is that the complaints procedure has been exhausted as it provided its final response on 5 April 2019 which included details of how to refer the matter to ICE.
66. DWP considers that the complainant has maintained an intransigent and unreasonably dogmatic belief that he has not received a response to his complaint and has refused to acknowledge that the appropriate route is a referral to ICE. DWP explained that this has led the complainant to repeatedly raise issues within his correspondence that DWP has already addressed.
67. DWP considers that the complainant's letters of 9 May and 13 July 2019 confirms the complainant's belief that DWP's final response dated 5 April 2019 was not an official response to his complaint. DWP considers that

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<sup>10</sup> [https://www.bailii.org/uk/cases/UKIT/2008/EA\\_2007\\_0088.html](https://www.bailii.org/uk/cases/UKIT/2008/EA_2007_0088.html)

the complainant's belief is based on "*some extraordinary and unfounded allegations*" including that it was written without the authority of the Director General Operations by an individual who was suspended from duty for misconduct and that in order to be considered a "*full and final*" response, it needed to state those words.

68. DWP quoted decision notice FS50423035<sup>11</sup> which states:

*"the complainant's refusal to use the appropriate channels available to her to lodge an appeal against the fine substantially reduces the seriousness of the purpose."*

69. DWP considers that the complainant's similar refusal to follow proper channels in this matter supports its view that this request is vexatious.

70. DWP explained that the complainant continued to make allegations of wrongdoing by DWP, not only in the handling of the initial matter but also the subsequent complaints handling procedure. DWP considers that this request is an attempt to reopen a matter that DWP considers to be closed and that the complainant refuses to accept this. DWP explained that it has in place a well-defined and publicised complaints procedure<sup>12</sup> that individuals can access and follow if they are dissatisfied with the service provided by DWP.

71. DWP considers that the complainant's continued correspondence to the Director General Operations, including his misapprehension that he should have been informed of her departure and his statement that he would seek legal action against any individual that he considers is involved in the matter, even after their departure, is indicative that the complainant holds a highly personal grudge against the Director General Operations.

72. DWP believes that the aim of the request was to cause distress to the named Director General Operations and her successors by raising the spectre of legal action against them. DWP believes that the complainant intended that the request should be read in conjunction with his statement as set out in paragraph 52 that he would seek legal action even after their departure.

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<sup>11</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2012/719322/fs\\_50423035.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2012/719322/fs_50423035.pdf)

<sup>12</sup> <http://www.gov.uk/government/organisations/department-for-work-pensions/about/complaints-procedure>

73. DWP believes that the intention of the request and the follow up correspondence was intended to be communicated to the Director General Operations that the complainant was preparing legal action against them.
74. DWP considers that an individual in a senior role can expect to be subject to criticism and must be prepared to accept such criticism, particularly in light of the delay responding to his complaint. However, DWP considers that the conduct of the complainant has stepped outside of the bounds of pursuing a legitimate grievance. DWP considers that the complainant has received a response to his complaint and although he may disagree with the substance of the response, his refusal to acknowledge the fact of their *bona fides*, combined with his refusal at the time of his request to submit his case to ICE for independent adjudication, negates any legitimate concerns he may have in pursuing this matter.
75. DWP explained that where the name of an individual has been provided, the named Director General being the most notable example, the complainant has shown themselves to be capable of targeting that individual and seeking to hold them personally accountable for the actions of DWP. DWP considers that, based on the complainant's previous conduct, there is a significant and real risk that they would use any information provided about the dates of incumbency to begin a further highly personalised campaign of harassment against the current incumbent of the post.
76. DWP believes that, based on his previous conduct, the requester will not be satisfied with any response that he receives and will continue to correspond with DWP in this matter until it accedes to his demands to admit the wrongdoing that he alleges and which DWP categorically refutes.
77. DWP believes that the frequent references in correspondence to seeking legal action against individuals, combined with the statement quoted above that the complainant would continue to hold individuals to account even if they "*suddenly decide to take early retirement*" means that the complainant may instigate a private legal action against the named Director General despite their departure from the role. DWP explained that it was also concerned that the date of her departure may be used by the complainant to "*slot into the alleged chronology of events*" and be construed as an attempt to evade what the complainant sees as her accountability.
78. DWP explained that in determining whether the request was vexatious, it conducted a balancing test of the purpose and value as set out in *Dransfield*:

*"Does the request have a value or serious purpose in terms of the objective public interest in the information sought?"*

79. DWP considers that the request represents a highly personalised matter that is of little interest to the wider public. DWP considers that complying with the request would not further the complainant's stated aim, as due to the Carltona Principle<sup>13</sup>, legal action should be taken against the relevant Secretary of State.
80. DWP considers that, for the wider public, being aware of the name of the Director General at any given point in time does not assist or preclude any individual from following the defined complaints procedure.
81. DWP explained that correspondence submitted in the form of a complaint directly to the Director General's office would be referred to the correct complaints procedure in the first instance. DWP confirmed that individuals using the complaints procedure are routinely advised of the appropriate escalation route if they remain dissatisfied with the initial outcome of their complaint and this may include escalation to the appropriate Director General. DWP confirmed that only the Director General, or an appropriate delegated representative, in post at the time of the complaint can respond to the correspondence, regardless of the dates of their tenure in post.
82. DWP explained that in the first quarter of the financial year for 2020-21, it dealt with over 5000 complaints. DWP explained that if this volume of correspondence passed through the Director General's office, it would cause the effective management of the office to break down. DWP therefore considers that it is of little wider benefit for the requested information to be made available as it provides no benefits to an individual who wishes to raise a matter with DWP.
83. DWP confirmed that it had considered the wider public interest in knowing who was responsible for DWP decisions at a given point. DWP considers that although it may be in the public interest to know who was in post at a senior level within DWP at any given time, the overriding public interest can be served by reference to the fact that acts of these staff are taken in the name of the Secretary of State, who retains ultimate responsibility for the operation of DWP.

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<sup>13</sup> [https://uk.practicallaw.thomsonreuters.com/7-385-1428?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://uk.practicallaw.thomsonreuters.com/7-385-1428?contextData=(sc.Default)&transitionType=Default&firstPage=true)

84. DWP considers that in applying the decision in *Betts v Information Commissioner EA/2007/0109* to this case, it believes that when viewed in context this request is vexatious due to the history of contact in regard to this matter. DWP considers that the request is part of a significant campaign of personal harassment addressed towards an individual and is designed to place undue pressure on DWP to accede to the complainant's demands.
85. DWP considers that the complainant may be using his request to further his campaign against DWP to secure a reversal of DWP's position. DWP confirmed that the implicit threat of legal action against the named Director General in the request for internal review was interpreted by DWP as a "*shot across the bows*", an indication by the complainant of his seriousness in taking legal action against an individual who has already been subjected to a sustained and highly personalised campaign of harassment.
86. DWP considers that it is the complainant's intention to face DWP with a choice of either expending a considerable amount of its resources preparing for and supporting an individual in defending themselves against what it considers is a spurious legal action, or reversing its position and acceding to the complainant's demands.
87. DWP believes that the complainant is misusing his rights under the Act to place pressure on DWP to reconsider the substance of his complaint, which DWP considers has already been fully considered and concluded. DWP set out that the Tribunal has previously noted in *Betts v Information Commissioner [EA/2007/0109]* that it is "*not the purpose of the FOIA to assist requesters in placing undue pressure on a public authority either as part of a campaign to expose maladministration or in order to force it into an admission of liability*".
88. DWP considers that this case involves a similar motivation by the complainant to misuse his right under the Act to attempt to force DWP to modify its position.
89. DWP believes that, should the complainant renew his series of correspondence, albeit directed at another individual, this would again increase the detrimental burden on DWP. DWP explained that in line with its Unreasonably Persistent Contact Policy, no response would be required on matters already dealt with, however, each item of correspondence would need to be reviewed and any new matters identified.
90. DWP explained that the volume of correspondence, both in terms of frequency and verbosity, that the Director General was subjected to indicates that this review of correspondence alone would be a significant task. DWP explained that although it is a large department, it has an

appropriate level of resource in place to deal with customer complaints and the effort expended on dealing with a single correspondent of this nature is disproportionate to the value of such activity and obstructs its ability to deal in good time with other customers.

91. In relation to the complainant's claim that he had already requested this information from the Director General Operations, DWP confirmed that at the time of the internal review, it contacted the Director General's office to confirm whether it had any record of the correspondence that the complainant had sent previously asking for similar information. DWP confirmed that it found no record of this correspondence and was unable to comment on why it was not received.

### **The Commissioner's position**

92. The Commissioner considers that scrutiny of the decisions of a public authority is a fundamental right for those whom the decisions affect.
93. The Commissioner acknowledges that the complainant has serious concerns regarding how DWP handled his partner's case, in particular whether his partner should have been offered an appropriate adult during their interview under caution and whether an accurate record of this interview was provided to the CPS. The Commissioner recognises the severity of these concerns and understands the complainant's reasons for pursuing a resolution. The Commissioner has therefore considered whether the complainant's approach is justified and proportionate in order to uncover what he believes constitutes misconduct and potentially unlawful actions by DWP.
94. The Commissioner recognises that the complainant is attempting to act in the best interests of his partner in order to obtain answers to their questions, however, she considers that the complainant's behaviour has strayed beyond what would be considered reasonable.
95. The Commissioner observes that the complainant has been advised on numerous occasions that he had the option of submitting a complaint to ICE if he felt that DWP had not adequately resolved his concerns. At the time of the request, the complainant was still refusing to accept that this was the appropriate next step and chose instead to continue corresponding with DWP.
96. The Commissioner has reviewed the correspondence provided by DWP and she notes that several of the complainant's concerns do not appear to have been addressed, in particular, how DWP ascertained that an appropriate adult was not required during the interview under caution. However, whilst DWP's response may not have been as detailed as expected, DWP did make clear on several occasions that it would not reconsider its position and that the complainant should progress his

complaint to ICE if he is dissatisfied. The Commissioner notes that the complainant has subsequently taken this step.

97. The Commissioner acknowledges that the request had a serious purpose to the complainant and was not submitted trivially. However, the Commissioner cannot attach significant weight to this serious purpose as it can be reasonably seen as an example of attempting to apply inappropriate pressure on DWP. In addition, the complainant's refusal to use the appropriate channels available to him to obtain independent scrutiny of DWP's handling of his partner's case also reduces the weight attached to this purpose.
98. The Commissioner has also considered the nature of the complainant's behaviour towards DWP staff. The complainant has persistently alleged misconduct and unlawful activity in correspondence to DWP officers, placing responsibility for this alleged action with the individual to whom they are corresponding with at that time. Having had sight of the correspondence referred to by DWP in its background, the Commissioner accepts DWP's description of the complainant's tone and language as having a harassing and intimidating effect on its staff. The Commissioner appreciates the complainant's strong feelings about the concerns raised, but she considers that this does not justify the persistent personal allegations and threats of legal action directed at various members of staff responding to the complainant's correspondence.
99. The complainant has raised threats of private legal action against several individuals during his correspondence with DWP and the Commissioner. Whilst she acknowledges that DWP does not appear to have addressed some of the complainant's concerns, she is unable to determine whether DWP acted unlawfully in its dealings with the complainant's partner. However, she is not persuaded that the logical course of action to determine liability is to undertake legal action against specific individuals employed by DWP. As DWP explained to the complainant, any action taken by a DWP officer is taken on behalf of DWP and therefore responsibility for this action lies with DWP and the Secretary of State. The Commissioner does not accept that the appropriate route to resolve a complaint against DWP is to take legal action against an individual who was working on behalf of, and within the framework set by, DWP. If DWP, or an independent body, were to determine that inappropriate actions were taken by a member of staff, it is the responsibility of DWP to rectify the actions taken.
100. The Commissioner acknowledges that it could be argued that sustained correspondence is necessary to resolve the matter to the complainant's satisfaction. However, the Commissioner does not accept that the complainant's persistence was justified in this case. She considers that as the option of independent scrutiny was open to the complainant, his

refusal to take this option means that the complainant's request and associated correspondence demonstrate his determination to pursue and prolong his dispute directly with DWP.

101. The Commissioner has considered the nature of the requested information. She understands that the complainant is seeking the information in order to ascertain who was in post at the time of the response to his complaint, in particular because he disputes that the response was sent by a DWP officer with full authority to provide this. However, whilst the complainant's initial concerns regarding the validity of the response may have been reasonable<sup>14</sup>, it was subsequently confirmed to him on more than one occasion that the letter dated 5 April 2019 represented DWP's final response to his complaint. It is not therefore apparent what further understanding the requested information could provide other than to guide the complainant towards which individual he wishes to target legal action against.
102. Having reviewed the correspondence provided, the Commissioner considers that the history of the complainant's correspondence demonstrates that the complainant is unlikely to ever be satisfied with DWP's response. Whilst she acknowledges that it appears that the serious concerns raised by the complainant have not been addressed in their entirety, DWP confirmed the appropriate next steps on several occasions. The Commissioner considers that if DWP complied with the request, there is a high likelihood that correspondence would continue with no end in sight for DWP. The Commissioner is satisfied that providing a response to this request would prolong correspondence and place an unfair burden on DWP which, in light of the option to progress the complaint to ICE and the targeted nature of the requested information, would be disproportionate to the value of the requested information.
103. The Commissioner is of the opinion that the bar regarding what makes a request vexatious is, and ought to be, reasonably high. However, the Commissioner is satisfied that DWP has demonstrated that the request is vexatious and compliance would place a disproportionate burden on DWP. The Commissioner therefore finds that section 14(1) is engaged in the specific circumstances of this case.

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<sup>14</sup> The letter of 5 April 2019 was sent by a DWP officer not previously known to the complainant. The complainant also had concerns regarding its validity as it did not appear to have been sent on DWP letterhead, rather, an enlarged DWP logo was pasted onto the letter and no reference numbers were included.

104. The Commissioner acknowledges that the complainant previously requested this information directly from the Director General's office, however, she has not been provided with evidence that this piece of correspondence was received by DWP. The Commissioner has no reason to disbelieve either party but without evidence of receipt, she cannot find that DWP failed to respond to this request previously. She does not, however, consider that this would affect her decision to the extent that section 14(1) does not apply. The Commissioner notes that the letter of July 2019 was sent after DWP confirmed that it was no longer responding to the complainant on the matter of his partner's investigation and that the appropriate next step was to complaint to ICE.

### **Section 17 – Refusal Notice**

105. Section 17(5) of the Act states that:

*"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."*

106. As DWP failed to confirm that it was relying on section 14(1) within the time for compliance, it has breached section 17(5).

### **Other matters**

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107. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She also acknowledges the disproportionate impact it has had on certain public authorities, including DWP. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the Act.

108. However, the Commissioner has concerns regarding aspects of the handling of this request for information which occurred before the pandemic. DWP provided an inadequate initial response which did not consider fully what information could be found on the links provided to the complainant. The Commissioner considers that a public authority with DWP's experience of handling requests for information should know that it must consider the full scope of the request and not merely what the public authority considers "*sufficient*". DWP's provision of only the publicly available information with no further disclosure or exemption shows a lack of regard for adequate compliance with the Act.

109. The Commissioner requested an explanation from DWP regarding why it had applied section 21 in the first instance when a significant amount of the requested information could not be found on the links provided in its original response. DWP explained that when responding to a request for data about its senior officers, DWP would ordinarily wish, in the first instance, to refer to published information that is already accessible in the public domain.
110. DWP explained that where this information does not provide a complete response, as in this case, it would seek to supplement this with additional information or to apply any appropriate exemptions to the requested data. DWP acknowledged that this had not occurred in this case. DWP set out that it was unable to confirm what exemptions were considered at the time that the response was drafted, however, it stated that in the event that it received an identically framed request, it would consider either providing the information or applying section 40(2) as it constitutes personal data.
111. DWP explained that robust Quality Assurance processes, including the checking of responses by the Department's central FOI team are already in place. It explained that guidance material, including links to the Commissioner's website is in place to support officers when asked to respond to a request under the Act.
112. DWP confirmed that the Focal Point team<sup>15</sup> has taken a more robust approach to identifying that responses address each aspect of a request, either by providing the requested information or by citing a statutory exemption. DWP also confirmed that it has developed a checklist for ensuring compliant responses that is applied when requests are handled. DWP explained that the use of this document will be reinforced with officers drafting responses to ensure that they remain compliant with the Act.
113. DWP confirmed that in order to supplement this, further support is being developed in the form of learning opportunities which are planned for those who draft responses to requests to reinforce the requirements of the Act and to identify the requirements of a compliant response.

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<sup>15</sup> Due to its size, DWP's central FOI team cannot handle all requests and internal reviews submitted. The individual business areas therefore handle requests relevant to their area. The Focal Point team are FOI contact points situated in each business area to provide advice and liaise with the central FOI team.

114. The Commissioner acknowledges the steps now in place to ensure a compliant response and expects to see an improvement in DWP's request handling in these respects.
115. Despite confirming that it should have relied on section 14(1), DWP also confirmed in its internal review that it was satisfied that the handling of the request, and therefore its original response, was correct. The Commissioner asked DWP to explain how the internal review came to the conclusion that its original response that section 21 applied to the entirety of the requested information was correct when it also acknowledged that not all of the information was available via the links provided.
116. DWP explained that the internal review reached the conclusion that the original response was correct on the basis that information not found in the links would not be disclosed. DWP explained that this was as a result of the original response only considering aspects of the handling of the request and whether it met the requirements for lawfully withholding the information.
117. Although DWP subsequently revised its position to finding that section 14(1) applied to the entirety of the request (and the Commissioner has since confirmed that to the complainant), DWP explained that the internal review concluded in the circumstance that the information outside of that contained in the links provided would not be disclosed on the grounds that the request was vexatious under section 14(1). DWP acknowledged, however, that the question of whether the request was properly handled within the provisions of the Act was not correctly considered.
118. DWP stated that had this happened, the review would have reached the conclusion that the initial response was inadequate because it did not disclose all of the information requested or cite an appropriate exemption.
119. DWP acknowledged that in this case, the internal review should have identified these errors within the initial response before going on to consider if any exemptions should apply to the release of the requested information. DWP explained that this would likely have led to the review partially upholding the request for internal review in respect of the handling of the request and its failure to provide an exemption under which the undisclosed material was withheld, and at that point introduce section 14(1).
120. DWP confirmed that in order to improve its internal review processes, it would take the following steps:

- When requesting that an officer conducts an internal review, explicit reference will be made to the current guidance that is available to all staff on DWP's intranet.
- Reviewers will have their attention drawn to the need to identify not only whether the outcome of the original request was correct but also to consider whether it was correctly handled.
- DWP will continue to direct reviewers to guidance found on the Commissioner's website and will also look to develop a checklist for reviewers that will provide assurance that they reach the correct decision.

121. The Commissioner expects to see an improvement in the quality of internal reviews conducted by DWP. The handling of this request and its internal review will be logged and used as evidence when considering DWP's overall compliance with the Act.

## Right of appeal

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122. 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 123 4504  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

123. 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.

124. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**