

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

### **Decision notice**

**Date:** 8 November 2022

**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 regarding a specific scenario occurring within Universal Credit claims.
2. The Commissioner's decision is that DWP does not hold information falling within the scope of the request.
3. The Commissioner does, however, find that DWP breached section 10(1) as it did not deny holding the requested information within the statutory timeframe.
4. The Commissioner does not require DWP to take any steps.

#### **Request and response**

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5. On 6 April 2021, the complainant wrote to DWP and requested information in the following terms:  
  
"Can you please provide information and internal guidance on Childcare cost element of universal credit criteria self employed during covid 19 pandemic when there is no minimum income floor. Particularly when claimant is making losses."
6. On 19 April 2021, DWP provided its response. DWP stated that it held the requested information but was withholding it under section 31(1)(a), prejudice to the prevention or detection of crime. DWP stated that it had balanced the public interest in withholding the information against the

public interest in disclosure but did not provide any details of its public interest considerations.

7. The complainant requested an internal review on 28 April 2021 and explained that Marylebone Job Centre and Belfast Service Centre had refused to provide any information and refused to explain on what basis they had denied the childcare cost element.
8. DWP provided the outcome of its internal review on 13 May 2021. DWP confirmed that it was satisfied that the original response was handled properly and the outcome of the request was correct. DWP confirmed that it was withholding the requested information under section 31(1)(a). DWP did not provide any further insight into why section 31(1)(a) was engaged or the balance of the public interest.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 10 June 2021 to complain about the way their request for information had been handled.
10. During the Commissioner's investigation, DWP reviewed its position and confirmed that its original response was incorrect. DWP explained that due to an internal misunderstanding, it had incorrectly identified that information fell within the scope of the request. DWP confirmed that it held general guidance on Universal Credit claims but not the specific information that the complainant was seeking.
11. On 23 March 2022, DWP provided the complainant with a revised response. DWP confirmed that there is no guidance held to explain the process for childcare cost when self-employment or the minimum income floor needed to be considered during the pandemic but it did hold general guidance on childcare. DWP provided a redacted version of this general guidance outside of FOIA as it did not fall within the scope of the request.
12. The complainant disputed that DWP had provided the information they had asked for and confirmed that they were specifically seeking self-employment eligibility information in light of the Covid-19 pandemic when the minimum income floor was not applicable.
13. The Commissioner contacted the complainant and set out his interpretation of their request. The complainant confirmed that they were seeking:

“Information and internal guidance on the eligibility of self-employed Universal Credit claimants for childcare costs element in light of the covid-19 pandemic, particularly if they are making losses”.

14. On 30 March 2022, the Commissioner provided the above interpretation to DWP and asked DWP whether it accepted this as the objective reading of the request.
15. On 11 April 2022, DWP wrote to the complainant and provided a revised response on the basis of the clarified interpretation set out above. DWP confirmed that it did not hold the specific information requested. DWP provided some general information outside of the Act as it considered this may be helpful.
16. The complainant again disputed that the general information answered their request. On 14 April 2022, DWP confirmed again that the requested information was not held. DWP explained that: “The rules for self-employed people claiming Universal Credit were temporarily different from the 20 March 2020 (the Minimum Income Floor rules were suspended), because of the coronavirus pandemic. However, since 31 July 2021 the pre-pandemic rules have applied”.
17. The Commissioner considers that the scope of this investigation is to determine whether, on the balance of probabilities, DWP holds recorded information falling within the scope of the request.

## **Reasons for decision**

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### **Section 1: General right of access to information**

18. Section 1(1) of the Act states that any person making a request for information to be a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request and, if so, to have that information communicated to them. This is subject to any procedural sections or exemptions that may apply. A public authority is not obliged under FOIA to create new information in order to answer a request.
19. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the Commissioner, following the lead of a number of First-Tier Tribunal (Information Rights) decisions applies the civil standard of proof – ie on the balance of probabilities.

20. In the specific circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, DWP holds recorded information that falls within the scope of the request.

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

21. The complainant disputed that DWP did not hold any information falling within the scope of the request and queried in their correspondence with DWP:

"If you claim that this information is not available then how was the childcare cost element of universal credit for self-employed during the covid 19 pandemic when there was no minimum income floor administered, are you claiming that it was the same as pre covid? We know there was no minimum income floor so how were decisions made to pay the childcare cost element when the claimant was self-employed and making a loss during a pandemic."

### **DWP's position**

22. DWP explained to the Commissioner that the Universal Credit rules were not changed significantly in response to the Covid-19 pandemic. The primary changes made were the £20 uplift applied to all Universal Credit claims and the suspension of the Minimum Income Floor<sup>1</sup> for the self-employed.
23. DWP explained that although the Universal Credit rules remained in place, it put in place 'light touch' verification during the pandemic allowing for rapid processing and swift payment to those making a new claim to Universal Credit.
24. DWP confirmed that the rules about the entitlement of self-employed claimants and the childcare entitlement rules of Universal Credit did not change during the pandemic. DWP confirmed that the only change for self-employed claimants was the removal of the Minimum Income Floor.
25. DWP explained that there was no difference in the treatment of self-employed claimants making losses in relation to childcare costs before or during the pandemic.

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<sup>1</sup> <https://www.turn2us.org.uk/Jargon-buster/Minimum-Income-Floor#:~:text=The%20minimum%20income%20floor%20is%20set%20at%20the,or%20look%20after%20children%2C%20it%20might%20be%20less.>

26. DWP explained that as these rules did not change, staff assessing claims involving the scenario set out in the request were able to use the existing guidance.
27. DWP confirmed that communications about the Minimum Income Floor removal were delivered across all areas with Jobcentres as part of daily communication calls and guidance products as part of the Covid-19 contingency easement arrangements. DWP confirmed that the 'daily communication calls' were verbal and not recorded.
28. DWP confirmed that it had searched the Universal Learning area of the DWP Intranet which contains Universal Credit guidance products. DWP confirmed that the search terms used included: "Childcare", "childcare cost element", "self-employed", "minimum income floor" and "start up period".

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

29. In making his determination, the Commissioner has considered DWP's submissions and the specific wording of the request.
30. The Commissioner notes that the request is focussed on information relating to how a specific set of circumstances would be assessed in a Universal Credit claim. In light of the specific nature of the request, the Commissioner considers that it is unlikely that DWP would not be able to easily locate any information falling within the scope of the request. The Commissioner considers that as this information would be used by any staff assessing Universal Credit claims, it would not require in depth searches to locate if it were held. He would expect DWP to have knowledge of any information held regarding assessing claims in specific circumstances.
31. He therefore considers that the searches performed by DWP were adequate and proportionate in the specific circumstances of this case.
32. The Commissioner can only investigate whether or not information is held by a public authority at the time of the request. He cannot issue a decision on whether a public authority should hold the information or require a public authority to record specific information.
33. Whilst the Commissioner understands why the complainant would believe that DWP holds guidance on assessing claims in this specific scenario, he accepts that DWP does not hold guidance or information down to this granular level. Instead, staff assessing claims use the available guidance and frameworks to make decisions on the basis of the specific circumstances of each individual case. The Commissioner considers that it would not be feasible to create specific guidance to meet each and every scenario that a case worker may encounter.

34. The Commissioner has seen no evidence to suggest that DWP does in fact hold information that it claims not to hold. In addition, the Commissioner is unable to identify any further actions that DWP could reasonably be expected to take in order to comply with the request. As has been set out above, if information is not held then it cannot be disclosed in response to a request.
35. In conclusion, the Commissioner has determined that, on the balance of probabilities, DWP does not hold any information falling within the scope of the request.

### **Section 10: Statutory time for compliance**

36. Section 10(1) of the Act states:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

37. Whilst DWP did provide a response within 20 working days of the request, it did not confirm that it did not hold the specific withheld information until during the Commissioner’s investigation.
38. The Commissioner therefore finds that DWP has breached section 10(1).

### **Other matters**

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39. Whilst DWP has explained its error in applying section 31 in its original response, the Commissioner reminds DWP of the importance of considering whether a request may have more than one interpretation and seeking clarification where this is the case.
40. The Commissioner has issued guidance on ‘Interpreting and clarifying requests’ which DWP may find helpful<sup>2</sup>.

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<sup>2</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/>

## Right of appeal

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41. 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: 0203 936 8963

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)

42. 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.
43. 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

**Victoria Parkinson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**