

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2022

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

Decision (including any steps ordered)

1. The complainant has requested all Internal Process Reviews (IPRs) conducted by the Department for Work and Pensions (DWP) between 1 September 2020 and 28 April 2022.
2. DWP confirmed that it was relying on section 14(1), vexatious requests, to refuse to comply with the request as it would place a grossly oppressive burden on the public authority.
3. The Commissioner's decision is that DWP is entitled to rely on section 14(1) to refuse to comply with this request.
4. The Commissioner does not require DWP to take any steps.

Request and response

5. On 28 April 2022, the complainant wrote to DWP and requested information in the following terms:

"Please provide me with copies of all Internal Process Reviews carried out by the department – redacted in line with the guidance provided by the Information Rights First Tier Tribunal – from 1 September 2020 until the present day, 28 April 2022. Please note that the tribunal has ruled that these reviews – suitably redacted – should be released in response to such FoI requests".
6. On 17 May 2022, DWP provided its response and confirmed that it was relying on section 14(1) to refuse to comply with the request.

7. DWP explained that complying with the request would require the review of over 90 IPRs and consideration of sections 35, 40(2), 41 and 44 to the information contained within the IPRs.
8. DWP explained that the work to review each report is time consuming and this work had reached a point where it is placing undue burden and pressure on the Department. DWP explained that the effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that it could not reasonably be expected to comply with the request, no matter how legitimate the subject matter or valid the intentions of the requester.
9. DWP confirmed that it had considered the purpose of the request and to what end the information serves. DWP stated that the complainant was aware from previous responses that it needs to make redactions to the reports to protect personal information, details of policy development or consider if releasing information may breach confidences or other legislation. DWP considered that, due to this, the information the complainant will receive is likely to offer little readable information.
10. DWP explained that a request may be treated as vexatious if it causes distress or irritation without justification; or if it is aimed at disrupting the work of an authority, including if the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.
11. DWP confirmed that it is the request which is treated as vexatious not the person making the request. An individual can make multiple requests and each will be considered on its own merits.
12. The complainant requested an internal review of the handling of the request on 17 May 2022. The complainant considered that DWP's response was an "unlawful attempt to prevent the publication of hugely important information that would be useful to disabled people and others across the country" and was "designed solely to prevent the release of information that would expose links between DWP and the deaths of benefit claimants".
13. DWP provided the outcome of its internal review on 15 June 2022 and upheld its original response.
14. DWP disputed the complainant's assertion that its response was "unlawful" as the exemption is provided by virtue of FOIA.
15. DWP stated that its original response had provided detailed reasons for the approach taken. DWP reiterated that to fulfil the request would be both burdensome and disproportionate and explained that a request can

be treated as vexatious solely on the grounds of burden where complying with the request would place a grossly oppressive burden on resources which outweighs any value or serious purpose of the actual request.

Scope of the case

16. The complainant contacted the Commissioner on 16 June 2022 to complain about the handling of their request for information.
17. The complainant disputed that DWP was entitled to rely on section 14(1) as "the information is very strongly in the public interest as it relates to recommendations for improvements in DWP procedures following the death of claimants".
18. During the investigation, the Commissioner asked the complainant if they would be willing to refine their request if DWP were to provide advice on how to do so. The complainant confirmed that they were not open to refining their request in any way.
19. The Commissioner therefore considers that the scope of the request is to determine whether DWP is entitled to rely on section 14(1) to refuse to comply with the request.

Reasons for decision

Section 14(1) – Vexatious requests

20. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
21. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
22. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would

place a grossly oppressive burden on the public authority. This is the position adopted by DWP in this case.

23. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where;
- the requester has asked for a substantial volume of information; **and**
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner; **and**
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

DWP's position

24. DWP explained that the IPR team is a small specialist team that deals with highly sensitive work. DWP explained that, as a result, access to its secure data is restricted to members of this small team.
25. DWP explained that the IPR team's fundamental purpose is to conduct a detailed, in-depth review of serious cases and identify recommendations where it can learn as a department. The team then works with the wider DWP to implement that learning to mitigate the risk of similar issues occurring again with other customers, some of whom are particularly vulnerable.
26. DWP explained that the scope of the request was 99 IPR reports of lengths varying from 4-10 pages and complying with the request would have required significant resource to be taken away from the team's normal duties. DWP considers that this diversion of resource would impact its ability to fulfil these essential, core duties and present an increased risk of a delay in identifying issues and implementing learning.
27. DWP explained that previous FOI requests on this subject matter have shown that a substantial amount of the data contained within an IPR report would be redacted to due to the exemptions that are applied to the sensitive and personal information. DWP considers that any information that can be disclosed from these reports would be presented out of context and would have little or no added value to the complainant.
28. DWP explained that IPR reports are created as an internal learning tool, not intended to be shared outside of the department due to the nature of the information in them. DWP explained that the nature in which they

are written therefore further decreases their value when viewed by an external audience when presented in their redacted format.

29. DWP explained that the recent nature of the IPRs means that the recommendations contained in the reports are more likely to be redacted under section 35(1)(a) due to being related to the formulation of government policy. DWP therefore considered that the IPR reports are therefore less likely to be of value and more likely to take additional resource to review for this reason.
30. DWP explained that there already exists independent and transparent systems for investigation of such cases. Coroners investigate unnatural deaths and those where the cause of death is unknown. Their investigations and conclusions are made at public hearings and published. If a risk of other deaths occurring in similar circumstances is identified, Coroners will issue a Prevention of Future Deaths report which is published on the judiciary website.
31. DWP also explained that the Independent Case Examiner (ICE) investigates serious complaints relating to DWP. They report to the individual making a complaint and publish case studies of findings in the ICE annual report. DWP explained that the Parliamentary Health Service Ombudsman also looks at serious cases and publishes reports on its website.
32. DWP explained that all these bodies have investigated the deaths of benefit claimants in recent years and that, in a small number of cases, their investigations have enabled DWP to learn from these cases and implement several improvements for claimants. DWP considers that the impacts identified above are therefore disproportionate when weighed against any value that the complainant may gain from any information received from the request.
33. DWP explained that when considering the burden that would be imposed, it needs to include several factors. DWP stated that a total of 99 IPR reports were completed during the period requested by the complainant and each of these would need to be identified and retrieved and due to the nature of the information several exemptions would need to be considered and applied to each report.
34. DWP stated that it would need to review all the sensitive data in the reports from a personal information perspective and the application of the exemptions at section 40(2), 41(1) and 44(1)¹. DWP explained that

¹ Section 40(2) – personal data

when considering section 35(1)(a) and the recommendations contained in the reports, it would need to engage with colleagues across DWP to understand their status and whether they link to the formulation or development of government policy. This would include seeking input from lawyers to obtain legal advice on the application of any exemptions.

35. DWP also considered that a robust checking and clearance process by multiple teams, for example, legal, special advisers and the press office, needs to be applied to ensure that it is meeting its obligations under FOIA and other legislation, to not inadvertently release sensitive and personal data.
36. DWP explained that any requests that relate to IPRs must be considered by the IPR team because they have familiarity with the reports and the broader work taking place within this area and that particularly burdensome single requests make it very difficult to manage whilst responding to other requests and detracting from their capacity to complete their normal workload.
37. DWP confirmed that the sensitive nature of the IPRs means it is not able to commission this work out to other areas of DWP. DWP explained that the IPR team are a small team made up of under 30 members, less than 20 of these colleagues can support the work required to respond to requests and some colleagues will only have a minimal contribution. DWP again confirmed that they are the only team that have access to the information contained within the IPRs and are the only team who are trained in understanding and implementing the onward work that is required once an IPR has been completed. DWP confirmed that it has a responsibility to manage the personal and sensitive material included in the IPRs in the correct way ensuring that it aligns with Data Protection legislation.
38. DWP explained that in addition to their routine work, the IPR team also has the responsibility of dealing with multiple requests from several sources. These include FoI requests from the complainant and other members of the public and Parliamentary Questions from MPs. DWP confirmed that their input is required for submissions to the Secretary of State, the Work and Pensions Select Committee, the Public Accounts Committee and Press Office enquiries. DWP considered that this all

Section 41(1) information provided in confidence

Section 44(1) statutory prohibition on disclosure

increases the burden on the team, where any additional increase in resource is impacted by the well-publicised Civil Service head count reduction being implemented by central government.

39. DWP provided an estimate of the burden relating to the time and cost of responding to this FoI request:

- Identify and assure cases – 2 hours
- Locate and file cases (2.5 minutes per case x 99) – 4.13 hours
- Convert cases from PDF (1.5 minutes per case x 99) – 2.5 hours
- Review and update all recommendations (collation 8 hours, review 15 minutes per case x 99 = 24.75 hours) – 32.75 hours
- Highlight and assure reports, including determining which exemptions may need to be applied on each case (30 minutes per case x 99) – 49.5 hours
- Time to collate reports into an accessible format for release – 4 hours
- Time to write response (based on a basic request with no additional questions), including an explanation of the redaction made to the reports – 2 hours
- Internal review of response and reports to ensure consistency and accuracy of exemptions applied to information (Response 2 hours, review of each case 10 minutes per case = 16.5 hours) – 18.5 hours
- Stakeholder and senior manager review and clearance (Response 8 hours, review of each case 10 minutes per case = 16.5 hours) – 24.5 hours
- Undertake full redaction prior to disclosure (25 minutes per case x 99) – 41.25 hours

40. This results in a total estimate of 181.13 hours to comply with the request. DWP confirmed that a working day is 7.4 hours and therefore complying with the request would take a total of 24.47 working days.

41. DWP confirmed that it had considered the public interest in complying with the request. DWP acknowledged that the requested information would promote government transparency and accountability and may improve public understanding of the role of IPRs and how that fits in with government policies and processes.

42. DWP explained that if it were to comply with the request, previous responses have shown that the level of information that could be released in a redacted format would be minimal. DWP set out that the nature of the sensitive subject material in the reports requires extensive redaction under sections 40(2), 41(1) and 44(1) and section 35(1)(a).
43. DWP explained that the redactions are required because the protection of private information and the maintenance of a safe space for Ministers and policy colleagues to deliberate and formulate policy proposals, outweighs the public interest in complying with the request. DWP considered that each report would be likely to contain little or no information that could be released and would be out of context and have minimal value to the public.
44. DWP stated that, in light of the burden it had demonstrated compliance would impose on it, it believes that this significantly outweighs any public interest in complying with the request. DWP considered that although there may be an appetite for the public to have access to these IPRs, it believes that good governance and the appropriate use of time and resources to improve its processes for the good of all citizens outweighs this.

The Commissioner's position

45. Having reviewed DWP's submissions and estimates, the Commissioner is not persuaded that all of the activities set out in DWP's estimate should be included in the consideration of this case. There appears to be duplication of work and DWP has named activities such as the need to 'assure' reports and 'update' recommendations with no explanation of what these tasks actually entail or why they are necessary.
46. However, the Commissioner accepts that there is a redaction burden associated with complying with the request and will proceed to consider if this is sufficient to engage section 14(1).
47. With regards to the first criterion, the Commissioner accepts that a substantial amount of information falls within the scope of the request as it covers 99 reports which vary in length between 4 and 10 pages.
48. With regards to the second criterion, given the subject matter of the request, ie reviews of claimant individual experiences with DWP, the Commissioner accepts DWP's concerns about potentially exempt information being caught by the request are legitimate.

49. With regards to the third criteria, the Commissioner has previously reviewed IPRs in case IC-102213-F4W6² and has therefore reviewed information of the type being requested. The Commissioner accepts that any exempt information cannot be easily located from non-exempt information. Whilst some parts of the documents have been redacted in a broad fashion, eg entire paragraphs or sections, other redactions have only resulted in certain lines or particular words being removed. In some cases, where an entire section has been redacted, this includes lines redacted under different exemptions. The Commissioner is therefore satisfied that it would be necessary to conduct a detailed assessment of all the information in order to ensure that disclosure would not reveal personal information of the individual claimant or their families or advocates.
50. The Commissioner is therefore satisfied that DWP has demonstrated that the three criteria are met and consequently that DWP has provided compelling evidence to demonstrate that complying with the request would place a grossly excessive burden on it. Nevertheless, the Commissioner has considered whether the purpose and value of the request are enough to justify the impact on the public authority.
51. The Commissioner has previously considered the application of section 35(1)(a) and the associated public interest test in IC-102213-F4W6. In this decision, the Commissioner found that section 35(1)(a) was engaged for some of the recommendations but that the public interest favoured disclosure. DWP has appealed this decision³.
52. The Commissioner acknowledges that the current request is for different reports and, therefore, he may come to a different opinion should he be required to consider section 35(1)(a) in relation to the requested information. However, in the specific circumstances of this case, the Commissioner has based his decision solely on the burden of redacting personal and identifying information that DWP would be required to undertake to make the reports suitable for disclosure.
53. Having reviewed IPRs in previous cases, the Commissioner notes that an overwhelming majority of the information is exempt under sections

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022359/ic-102213-f4w6.pdf>

³ Following the service of this decision notice but prior to publication, it was confirmed to the Commissioner that this statement was incorrect. At the date the decision notice was served, DWP had not appealed the decision in IC-102213-F4W6.

- 44(1), 40(2) and 41(1) due to it comprising personal and identifying information. Each IPR contains only a small amount of information that would not be considered the claimant's private information.
54. The Commissioner accepts that there is a significant public interest in scrutiny of the recommendations that DWP itself considers should be implemented to safeguard vulnerable claimants. He also acknowledges that the information published by the external bodies cited by DWP would not provide this insight.
 55. However, the Commissioner considers that the impact of answering this request on DWP has to take into account that the amount of information that can be disclosed is disproportionately small. The Information Tribunal has previously confirmed that personal information can be withheld and provided guidance on what is and is not prohibited from disclosure under section 123 of the Social Security Administration Act 1998 and therefore section 44(1) of FOIA⁴.
 56. The request itself includes that the information should be redacted in line with this ruling and the complainant has previously accepted that these redactions are necessary.
 57. Having previously reviewed IPRs, the Commissioner notes that the information that could be considered for disclosure (ie non-personal and identifiable information) is generally restricted to the recommendations section which often contain only a few lines of information.
 58. Having balanced the burden of complying with the request against the value and public interest in complying with the request, the Commissioner considers that DWP is entitled to rely on section 14(1) to refuse to comply with the request.

Other matters

59. The Commissioner understands that receiving a decision on the basis of section 14(1) can be an emotive and frustrating experience. The Commissioner reiterates that his decision regarding the application of section 14(1) is based solely on the redaction burden associated with complying with the request. The complainant may wish to refine their
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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1778/Pring,John%20EA-2015-0237\(12-04-16\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1778/Pring,John%20EA-2015-0237(12-04-16).pdf)

request to the 'recommendations' section of the IPRs which is less likely to contain personal information and contains the information most likely to aid the public's scrutiny and understanding of DWP's safeguarding improvements.

Right of appeal

60. 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

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

61. 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.
62. 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