

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

### **Decision notice**

**Date:** 18 August 2023

**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 related to the Department for Work and Pensions' (DWP) risk model for advances fraud.
2. DWP originally relied on section 31(1)(a) to withhold the requested information. However, during the course of the Commissioner's investigation, DWP changed its position and introduced section 12(1) as to comply with the request would exceed the appropriate limit.
3. The Commissioner's decision is that DWP is entitled to rely on section 12(1) to refuse to comply with the request.
4. The Commissioner does, however, find that DWP failed to provide reasonable advice and assistance in accordance with section 16 to aid the complainant in refining their request. The Commissioner therefore requires DWP to take the following steps:
  - Provide the complainant with further advice and assistance regarding how to refine their request, specifically which elements within the original request may be complied with within the appropriate limit.
5. DWP must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. On 13 July 2022, the complainant wrote to DWP and requested information in the following terms:

"The DWP 2021/22 annual report states that "the Department had trialled a risk model to detect fraud in Universal Credit advances claims. This model analyses information from historical fraud cases to predict which cases are likely to be fraudulent in the future.

It says: "This analysis is performed by a machine learning algorithm. The algorithm builds a model based on historic fraud and error data in order to make predictions, without being explicitly programmed by a human being."

Under the FOI Act please release to me:

1. The name of any third party provider(s) of the risk model and/ or the machine learning algorithm[sic], its name and where the hardware and software are based
2. The contract details – its terms, length and cost
3. Any description in emails, correspondence or in a manual detailing how the algorithm works and what "historic fraud and error data" it processes
4. Any reports, presentations, emails providing the results and analysis of the trial in 2021-22 testing its ability to detect fraud in advances claims already in payment.

This includes:

a) results of officials' checks on the accuracy of the model's test results before launch, showing any inaccuracies, unintended bias and unfairness.

b) the results of the "fairness analysis" which looked at the distribution of false positive results across groups with protected characteristics in order to identify any disproportionate impacts.

c) any analysis of the accuracy of case-workers' decision-making when a random selection of claims judged not fraudulent by the model were fagged [sic] to caseworkers for review

5. Any reports or analysis carried out assessing the wider risk of biased outcomes that could have an adverse impact on certain claimants, or any emails or presentations about this.”
7. DWP provided its response on 2 August 2022 and confirmed that it held the requested information. DWP confirmed that it was withholding this information under sections 31(1)(a) and 43(2). DWP confirmed that it considered that the public interest lay in maintaining the exemptions.
8. DWP upheld this position at internal review.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 21 September 2022 to complain about the way their request for information had been handled. In particular, they disputed that DWP could withhold the requested information on the basis of section 31(1)(a).
10. During the course of the investigation, it became apparent that DWP had incorrectly interpreted the request and further information fell within the scope of the request.
11. On 5 June 2023, DWP wrote to the complainant to confirm that it was now relying on section 12 to refuse to comply with the request as collating all of the information falling within the scope of the request would exceed the appropriate limit.
12. The Commissioner acknowledges that public authorities may at any stage seek to rely on an exemption or exclusion not previously claimed. This was confirmed by the Upper Tribunal in the case of *McInerney v IC and Department for Education* [2015] UKUT 0047 AAC<sup>1</sup>.
13. The Commissioner therefore considers that the scope of his investigation is to determine whether DWP is entitled to rely on section 12 to refuse to comply with the request.

### **Reasons for decision**

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#### **Section 12: Cost of compliance**

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<sup>1</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=4420>

14. Section 1(1) of FOIA states:

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him"

15. Section 12 states:

"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit".

16. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments.

17. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that DWP may rely on section 12 where it reasonably estimates that complying with the request would take longer than 24 hours or 1440 minutes.

18. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

19. DWP confirmed to the Commissioner that the wide range of information requested is held within emails, documents and systems across different teams within DWP.

20. DWP explained that in one email inbox alone there were approximately 3000 emails around the advances risk model at the time of the original request. DWP confirmed that it had based its calculations on this single inbox, however, there are a number of additional inboxes potentially containing information in scope of the original request.
21. DWP explained that many of its emails contain a degree of technical detail due to the nature of the work it does. It would therefore take time to identify and absorb the information to ensure all the relevant information was captured.
22. DWP estimated that it would take an average of five minutes to locate, retrieve and extract the information from each email. DWP set out that searching 3000 emails at five minutes each would result in an estimate of 250 hours.
23. Having considered DWP's submissions, the Commissioner is not persuaded that five minutes per email is a robust estimate. He acknowledges that there will be significant variation between emails with some containing detailed attachments and others containing only brief information.
24. However, the Commissioner notes that even if the average time per email were to be reduced to thirty seconds, this would still exceed the appropriate limit of 1440 minutes. He also notes that DWP's estimate is based on a single email inbox and therefore is presented as a minimum estimate based on only a small part of a multi-part request.
25. Section 12(4) provides that a public authority may aggregate requests made by the same individual, within 60 working days, which is to any extent for the same or similar information. The Commissioner is therefore satisfied that DWP is entitled to aggregate all five requests.
26. For the above reasons, the Commissioner is satisfied that DWP was entitled to rely on section 12(1) to refuse to comply with the request.

## **Section 16: Advice and assistance**

27. Section 16(1) of FOIA states:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".

28. DWP confirmed that it had advised the complainant how they can focus their request by sharing a redacted copy of a DPIA already in the public domain.

29. DWP considered that this provided the complainant with sufficient information to be able to narrow their request as it illustrates the level of detail it is able to share and unable to share. DWP explained that the document contained headers and topics that could be chosen for a more focused request.
30. Having reviewed this advice and assistance, the Commissioner considers that, whilst the redacted DPIA is helpful, it does not aid the complainant in refining the request itself.
31. The Commissioner considers that it would be reasonable for DWP to provide advice on any of the following:
  - What elements of the request could be complied with within the appropriate limit;
  - Whether introducing a timeframe would bring the request within the appropriate limit; and
  - Whether removing the emails from the scope of the request would sufficiently refine the request.
32. For these reasons, the Commissioner considers that DWP has not provided reasonable or adequate advice and assistance.
33. The Commissioner requires DWP to provide the complainant with advice and assistance on how to refine the request.

### **Other matters**

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34. The Commissioner acknowledges the unfortunate circumstances that have led to a late reliance on section 12(1). However, his decision must be based on the specific wording of a request and he cannot require a public authority to refine a request during the course of an investigation.
35. The Commissioner is disappointed that DWP failed to consider this request on the basis of its clear objective interpretation. He reminds DWP of the importance of fully considering the scope of the request and collating the requested information for review before applying an exemption.

36. The Commissioner has issued a practice recommendation regarding DWP's handling of requests<sup>2</sup> and notes that DWP's original handling of this request happened before the Commissioner formalised his concerns. He therefore expects to see that DWP's request handling has improved when considering requests made after this practice recommendation was issued.

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4024647/department-for-work-and-pensions-practice-recommendation.pdf>

## Right of appeal

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37. 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)

38. 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.
39. 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**