

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

### **Decision notice**

**Date:** 21 March 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 Commissioner's decision is that, on the balance of probabilities, Department of Work and Pensions (DWP) does not hold the requested information about a review carried out by the Equality and Human Rights Commission. DWP has complied with section 1(1)(a) of FOIA but breached section 10(1) as it did not comply with section 1(1) within 20 working days of receiving the request. It is not necessary for DWP to take any steps.

#### **Request and response**

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2. The complainant made the following information request to DWP on 2 September 2022:

"Para. 45 of this DWP response to SSAC [Social Security Advisory Committee] states that a review into DWP was conducted by the Equality and Human Rights Commission:  
<https://www.gov.uk/government/publicatio...>

I have requested a copy of this review from EHRC but they appear to be unsure what DWP are referring to:  
<https://www.whatdotheyknow.com/request/r...>

Please provide a copy (redacted if appropriate) of the full review that was sent to DWP by EHRC.”

3. The DWP advised that it does not hold this information. It said that the Equality and Human Rights Commission (EHRC) had reviewed DWP processes in 2021 but did not produce a physical report to accompany this review.
4. The complainant made the following information request to DWP on 30 September 2022:

“Please amend this request. Clearly (a) the EHRC review was communicated to DWP in some way and (b) was documented in such a way as to allow DWP to include a reference to the review in the report I cited in my request.

Please provide documentation regarding either (a) the communication of the EHRC review to DWP and (b) DWP's record of the substance of the EHRC review e.g. minutes of a meeting.

A full history of my FOI request and all correspondence is available on the Internet at this address:

<https://www.whatdotheyknow.com/request/r...>”

5. The DWP responded on 7 December 2022. It explained that the policy paper published on GOV.UK that the original request referenced included phrasing around a review into DWP conducted by the EHRC. DWP said that this phrasing was erroneous, and that the DWP holds no recorded information about a review taking place. DWP maintained this position following its internal review.

## **Reasons for decision**

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6. This reasoning covers whether, on the balance of probabilities, DWP holds information falling within scope of the complainant’s request of 30 September 2022, and the timeliness of DWP’s response.
7. The complainant disputes that DWP does not hold relevant information because in its response to their original request, DWP said that EHRC had carried out a review. The complainant considers that DWP must therefore hold the information they then requested.
8. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds information that has been requested and (b) communicate the information to the applicant if it is held and is not subject to an exemption.

9. In its submission to the Commissioner, DWP said it does not hold the requested information because the view that an EHRC review exists is due to a misunderstanding. DWP stated that there has been no EHRC review into DWP, "in relation to or as a result of this case."
10. DWP has noted that the complainant has previously submitted a request to EHRC through the WhatDoTheyKnow website. On 7 September 2022 EHRC responded to the request stating that, "it should be noted that DWP appear to have a broad definition of 'review' which refers to examining an issue but does not necessarily require a terms of reference document, scoping paper or plan."
11. DWP says it has checked with relevant internal policy and operational teams who would hold evidence of such a review, or communications around a review, and it has found no evidence of a review being communicated to DWP by EHRC, or evidence of the existence of a review. As there has been no EHRC review, DWP says that there is no documentation to disclose that concerns communicating a review to DWP or a record of the substance of a review.
12. Significantly, DWP has also checked with the former member of staff who wrote the word 'review' in the document referred to in the original request. That staff member has clarified via email that they were referencing an August 2020 Section 23 Agreement from the EHRC titled "Ensuring deaf customers can access services from DWP<sup>1</sup>". While not a report or review, this was a legally binding improvement agreement between DWP and EHRC to improve DWP's approach to providing reasonable adjustments for other customers with disabilities. DWP has provided the Commissioner with a copy of that email exchange, and he notes that reference is also made to general tracking information that EHRC actively publishes on its website.
13. DWP concludes its submission to the Commissioner by confirming that no review in any format or state [within scope of the complainant's request] ever existed and that DWP therefore does not hold any relevant information.
14. Due to an unintentional ambiguity in a DWP response to the SSAC, and in DWP's response to the original request of 3 September 2022, the complainant reasonably considered that DWP would hold a copy of a

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<sup>1</sup> <https://legal.equalityhumanrights.com/en/case/ensuring-deaf-customers-can-access-services-dwp>

review that had been referred to in the SSAC response and that DWP then indicated may have been carried out in 2021.

15. DWP has now communicated with the person who wrote the SSAC response which is the focus of the complainant's original and associated request. That person has clarified that the document they were referring to when they wrote "review" was the 2020 Section 23 Agreement.
16. The Commissioner notes that the complainant also submitted a request to EHRC for the same review and it had not been clear to EHRC what review DWP had been referring to.
17. But the Commissioner also notes that the DWP advised the complainant in its response to their 3 September 2022 request that EHRC had carried out a review of its processes in 2021 and that it does not hold any information related to this. The Commissioner cannot consider whether a public authority **should** hold requested information; his focus is solely whether or not it holds the information, on the balance of probabilities. With regard to any 2021 review that took place, or any other review by EHRC, DWP has carried out adequate searches for relevant information and has categorically stated that a review such as the complainant has requested has never existed and DWP does not hold that document or any associated information.
18. The Commissioner accepts DWP's position. He is satisfied, on the balance of probabilities, that, aside from the Section 23 Agreement, DWP does not hold any other type of document that could be categorised as a review of DWP by EHRC. The Commissioner therefore finds that DWP does not hold the requested information and complied with section 1(1)(a) of FOIA.

## **Procedural matters**

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19. Section 10(1) of FOIA obliges a public authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request. In this case, the complainant submitted their request on 30 September 2022 and DWP did not confirm it does not hold the requested information until 7 December 2022. DWP therefore did not comply with section 10(1) of FOIA.

## **Right of appeal**

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20. 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)

21. 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.
22. 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**

**Cressida Woodall**  
**Senior Case Officer`**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**