

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2024

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 information in Internal Process Reviews (IPRs). The Department for Work and Pensions (DWP) withheld the information on the basis of section 21, information reasonably accessible to the applicant, and section 22, information intended for future publication. The complainant did not dispute DWP's reliance on section 21 and 22 in respect of questions 1 and 2.
2. The Commissioner's decision is that DWP is not entitled to rely on section 22 to withhold the information falling within the scope of the remainder of the request.
3. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation:
 - Disclose the information falling within questions 3 and 4 and the request for IPR recommendations relating to Universal Credit.
4. The public authority must take these steps within 30 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 FOIA and may be dealt with as a contempt of court.

Background

5. Where it is alleged that DWP's actions may have had a severe negative impact on a claimant, DWP conducts a review of its claim handling and interactions in the individual's case. These are called Internal Process Reviews (IPRs).
6. The IPR considers the detailed chronology of the individual's case and makes recommendations where it finds that DWP's policy or case handling could be improved.

Request and response

7. On 27 November 2023, the complainant wrote to DWP and requested information in the following terms:

"For each of the last four calendar years (including 2023 to date), please tell me:

- 1 How many internal process reviews (IPRs) were completed.
- 2 How many completed IPRs involved the death of a claimant.
- 3 How many completed IPRs (whether involving the death of a claimant or not) included recommendations relating to universal credit.
- 4 How many completed IPRs involving the death of a claimant included recommendations relating to universal credit.

For each year, please send me all the IPR recommendations that were made relating to universal credit, noting for each one whether it related to the death of a claimant."

8. DWP provided its response on 21 December 2023 and confirmed holding the requested information. For questions 1 and 2, DWP confirmed that it was relying on section 21, information reasonably accessible to the applicant, and provided links to this information. DWP confirmed that for the year "April 2023 to date", it was relying on section 22(1) of FOIA as it intended to publish this information in its next annual report.
9. In response to questions 3 and 4, and the IPR recommendations, DWP also relied on section 22(1) to withhold information as it was intended for future publication. DWP provided its public interest considerations and confirmed that it was satisfied that the balance of the public interest lay in maintaining the exemption.
10. The complainant requested an internal review on the same day. They accepted DWP's position regarding questions 1 and 2 but disputed that the information falling within the scope of the remainder of the request

could be withheld under section 22(1). They explained that they were not persuaded that the specific information request would be published.

11. DWP provided the outcome of its internal review on 17 January 2024 and upheld its position that section 22(1) was engaged.

Scope of the case

12. The complainant contacted the Commissioner on 18 January 2024 to complain about the way their request for information had been handled. Specifically, they disputed that the information would be published as broken down in the request.
13. The Commissioner therefore considers that the scope of this case is to determine whether DWP is entitled to rely on section 22(1) to withhold the information falling within questions 3 and 4 and the request for IPR recommendations relating to Universal Credit.

Reasons for decision

Section 22: Information intended for future publication

14. Section 22(1) of FOIA states that:

“Information is exempt information if –

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)”.

15. Section 22(1) is qualified by a public interest test.

16. There are, therefore, four questions to consider:

- Was there an intention to publish the requested information at some future date?
- Was the information already held with a view to publication at the time the request was made?

- Is it reasonable to withhold the information from disclosure until the intended date of publication?
- Does the public interest favour maintaining the exemption or disclosing the information?

Was there an intention to publish the requested information at some future date?

17. In order to correctly rely on section 22, there must have been a settled intention to publish the requested information prior to the request being received.
18. DWP confirmed that in order to answer the request, it would be required to collate the information from the recorded information it held. It confirmed that it was this recorded information that would be published.
19. DWP stated:

“IPR data publication will provide the applicant with all the recorded information that is in scope of their request, and they would be able to extract the data they require”.
20. DWP provided the Commissioner with a representative sample of the information it intended to publish.
21. Having reviewed this information, and DWP’s submissions, the Commissioner is not persuaded that there was an intention to publish the requested information.
22. The Commissioner’s guidance on section 22(1)¹ states:

“Publishing the same information as the request

 9. A general intention to publish some information will not suffice. It is not enough for the public authority to note that it will identify some, but not all, of the information within the scope of the request for future publication.
 10. The information that the public authority intends to be published must be the specific information the applicant has requested.”

¹ <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>

23. The Commissioner is satisfied that the information that will be published is not the information that has been requested. It is the 'building blocks' from which the requested information can be collated that will be published.
24. The Commissioner acknowledges that DWP appears to be following the established approach for section 21 where if the information can be collated from already published material, section 21 can apply.
25. However, section 21 makes clear that the requested information need only be "**reasonably accessible** to the applicant" meaning that if the applicant can obtain the information elsewhere, the public authority can refuse to provide this. Section 22 however requires that the requested information itself will be published.
26. Section 22 states "Information is exempt information if – (a) the information is held by the public authority with a view to its publication..." which makes clear that it is the exempt information which must be intended for publication. As the exempt information can only be the requested information, it follows that the information as described in the request must be what will be published.
27. In the specific circumstances of this case, the requested information is not what will be published. DWP intends to publish individual IPRs. In order to get the information sought by questions 3 and 4 the complainant would have to review each of them in order to calculate the number sought by each question. In other words, DWP is not publishing the figures sought by questions 3 and 4 it is only publishing information from which the complainant will be able to calculate the requested totals.
28. The Commissioner therefore finds that section 22(1)(a) is not fulfilled and section 22(1) cannot be engaged.

Right of appeal

29. 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

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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