

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

### **Decision notice**

**Date:** 24 June 2024

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested the criteria against which the Department for Work and Pensions (DWP) has assessed its readiness to scale up the migration of specified benefit claimants. They also requested the assessment of this readiness. DWP withheld this information under section 22, information intended for future publication.
2. The Commissioner's decision is that section 22 is not engaged.
3. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation.
  - Disclose the requested information.
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 the Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 5 February 2024, the complainant wrote to DWP and requested information in the following terms:

"On 04/12/23 Neil Couling wrote to Local Authority Chief Executives. His letter included the following information:

"In my last note to you in July, I mentioned that from September we are planning to continue our small-scale Discovery work with other legacy benefit combinations to support our preparations for moving these households at scale in 2024/25."

"I'm pleased to say that my Programme Board Colleagues have now approved our migration plans for 2024/25. We will therefore be notifying the remaining applicable households of the need to move to UC during this period, which includes residual tax credit cases (including those on both Employment Support Allowance and tax credits and Housing Benefit), all cases on Income Support and Jobseeker's Allowance (Income based) and those combined with Housing Benefit and Housing Benefit only cases. (except those Housing Benefit only customers living in Supported or Temporary Accommodation)."

[https://www.rightsnet.org.uk/pdfs/041223 LA - UC update.pdf](https://www.rightsnet.org.uk/pdfs/041223_LA_-_UC_update.pdf)

This request refers to the claimant groups planned for migration in 2024/25 as 'remaining legacy claimant groups'. The request refers to moving on from discovery to the 2024/25 plans as 'scaling'.

(1) Please release the criteria against which readiness to scale up the managed migration of the remaining legacy claimant groups is being assessed.

(2) Please provide the assessment of readiness against those criteria".

6. DWP provided its response on 4 March 2024 and confirmed that it held the requested information. DWP withheld the entirety of the information under section 22(1) as the information was intended for future publication. DWP provided its consideration of the public interest and confirmed that it believed the balance of the public interest lay in maintaining the exemptions.
7. The complainant requested an internal review on the same day. They confirmed that they considered the balance of the public interest favoured disclosure and that the Social Security Advisory Committee (SSAC) had called for the contemporaneous publication of these assessments.
8. DWP provided the outcome of its internal review on 22 March 2024 and upheld its position.

## Scope of the case

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9. The complainant contacted the Commissioner on 22 March 2024 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to determine whether DWP is entitled to rely on section 22 to withhold the requested information.

## Reasons for decision

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### Section 22: Information intended for future publication

11. 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)”.

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

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

- Is 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? Was the information already held with a view to publication at the time the request was made?**

14. 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.
15. DWP confirmed that the requested 'Readiness Criteria' and assessment were intended to be published in full as part of its publication strategy for Universal Credit Programme Board (UCPB) papers. This strategy publishes UCPB minutes and papers in six month batches two years after the relevant meeting<sup>1</sup>.
16. The Commissioner is therefore satisfied that there was an intention to publish the requested information before the request was made.

**Is it reasonable to withhold the information from disclosure until the intended date of publication?**

17. A public authority must consider whether it is reasonable, in all the circumstances of the request, to withhold the information until its intended publication.
18. The issue of DWP's UCPB strategy and its use of section 22(1) has been before the Commissioner on several occasions. The Commissioner has previously found that the two year delay is not reasonable and previous decisions are currently awaiting consideration at the First Tier Tribunal following DWP's appeal of the Commissioner's position.
19. In order to preserve resources and prevent duplication of effort, the Commissioner wrote to DWP and confirmed that he was satisfied that the criteria at sections 22(1)(a) and (b) were met and asked DWP if it wished to rely on the submissions provided in a previous case regarding readiness assessments for the criteria at section 22(1)(c). DWP confirmed that it did not consider this case was linked to the previous case and wished to provide separate submissions.
20. As part of this correspondence, DWP made the following statement:  

"We believe this is the best way of preserving the ability of the UC Programme Board to have frank and candid discussion[sic]"
21. The Commissioner asked DWP to set out why, in the specific circumstances of this case, it had concluded that the application of section 22 was reasonable. DWP did not provide a direct response to

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<sup>1</sup> [https://data.parliament.uk/DepositedPapers/Files/DEP2018-1083/Letter -  
\\_Future\\_Publication.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2018-1083/Letter_-_Future_Publication.pdf)

this question, however, its submissions included the following statement:

"The DWP maintains its position. The interpretation that was made at the time of the original request for information was for a set of criteria that is constantly evolving. This is in part in the way we assess it our readiness[sic]. At the time of the request the set of readiness criteria that would be in scope, as we interpreted it, was from November 2023. Please note this readiness continues to be constantly reviewed and releasing the assessment against the readiness criteria is subject to section 22".

22. There is some overlap between the factors to consider when deciding what is reasonable and those which are relevant to the public interest test. The Commissioner has therefore included DWP's public interest considerations where they are relevant to the question of whether it is reasonable to withhold the information until the intended publication.

23. DWP stated:

"Whilst the release of the information would provide greater transparency in this area especially given the public & media interest given that the readiness is evolving and that we will be migrating our more vulnerable claimants during 2024/25, we wish to ensure that confidence is maintained in the move to Universal Credit and that undue concern is not experienced by these claimants with releasing this information. We accept there is a strong public interest in permitting public authorities, such as DWP, to publish information in a manner and form and at a time of their own choosing, and believe applying the section 22 in this manner reflects this.

Therefore we still believe the Department has taken a balanced approach in setting a two year time lag for publishing Programme Board information".

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

24. The Commissioner has considered DWP's submissions and his own guidance on this matter.

25. The Commissioner's guidance<sup>2</sup> states:

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>

“The closer to the date of publication, the more reasonable it is likely to be for the public authority to withhold the information until publication has taken place”.

26. The Commissioner notes that at the time of the request, DWP did not intend to publish the requested information for nearly two years at the earliest. The request was made in February 2024 and the information would not be published before November 2025.
27. The Commissioner has previously issued decisions regarding DWP’s use of section 22 where it intends to publish information two years or more after its creation:
  - <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615863/fs50820378.pdf>
  - <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619655/ic-46647-y7r2.pdf>
  - <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021931/ic-145903-x8d9.pdf>
  - <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4027064/ic-240821-n0k4.pdf>
28. The Commissioner notes DWP’s arguments regarding frank discussions and that the readiness criteria evolve over time. However, DWP has not provided any explanation or evidence regarding why disclosing the requested information would have a detrimental impact or why delaying disclosure would be reasonable.
29. The Commissioner is disappointed at the paucity of DWP’s arguments, particularly as this issue has been considered on several occasions. It is not apparent to the Commissioner why DWP is unable to provide detailed explanations regarding why delaying disclosure to align with the two year publication schedule is reasonable.
30. Section 22(1)(c) makes clear that public authorities must be able to demonstrate why it is reasonable, in all the circumstances of the request, to withhold the information until the intended publication. DWP is required to demonstrate why two years is reasonable in this case.
31. The Commissioner considers that DWP has not demonstrated that it would be reasonable to refuse to provide the requested information until at least November 2025, two years after the information’s creation.
32. The Commissioner requires DWP to disclose the requested information.

## **Right of appeal**

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33. 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)

34. 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.
35. 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**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**