

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

### **Decision notice**

**Date:** 19 February 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 specified internal guidance from the Department for Work and Pensions (DWP).
2. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold further information to that provided to the complainant.
3. The Commissioner does find, however, that DWP breached section 10(1) as it provided some of the requested information outside of the statutory timeframe.
4. The Commissioner does not require DWP to take any further steps.

## Request and response

---

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

“Some internal DWP guidance is only for use by teams working on managed migration. For example the following sets of guidance (one of which is ‘specialist teams guidance’) state ‘Note: This section must only be used by the agents working on Move to Universal Credit (managed migration)’:

[https://www.whatdotheyknow.com/request/884371/response/2141305/attach/5/Calculating%20the%20transitional%20protection%20top%20up%20payment%20V10.0.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/884371/response/2141305/attach/5/Calculating%20the%20transitional%20protection%20top%20up%20payment%20V10.0.pdf?cookie_passthrough=1) &

[https://www.whatdotheyknow.com/request/884371/response/2141305/attach/6/Requesting%20information%20for%20the%20transitional%20protection%20calculation%20for%20move%20to%20universal%20credit%20v2.03.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/884371/response/2141305/attach/6/Requesting%20information%20for%20the%20transitional%20protection%20calculation%20for%20move%20to%20universal%20credit%20v2.03.pdf?cookie_passthrough=1)

Please provide copies of internal guidance which is only for use by teams working on Move to Universal Credit. If this cannot be answered within the time limit then please limit the request to specialist teams guidance”.

6. DWP provided its response on 7 March 2023 and confirmed holding the requested information. DWP provided the complainant with some guidance documents and confirmed that it had redacted some information on the basis of section 35(1)(a), formulation or development of government policy.
7. The complainant requested an internal review of the handling of their request for information on 13 March 2023. They disputed that DWP had provided them with all of the guidance falling within the scope of the request, naming five further pieces of guidance that were referenced in the documents provided. They also requested clarification of whether DWP had responded to the first element of the request or the second, alternative, request. The complainant disputed the redaction of information under section 35(1)(a) but accepted that phone numbers could be redacted.
8. DWP provided the outcome of its internal review on 13 April 2023. DWP partially upheld the complainant’s request for internal review, acknowledging that it had not taken into consideration the additional links within the guidance provided. DWP provided further documents and confirmed that these also contained redactions on the basis of

section 35(1)(a). DWP confirmed that it was maintaining its position that section 35(1)(a) was engaged for the redacted information.

## Scope of the case

---

9. The complainant contacted the Commissioner on 13 April 2023 to complain about the way their request for information had been handled. They initially disputed DWP's reliance on section 35(1)(a).
10. During the course of the Commissioner's investigation, DWP confirmed that it was no longer relying on section 35(1)(a) to withhold the redacted information. DWP provided the complainant with copies of the guidance without these redactions but did confirm that it was redacting some information as it was personal data and therefore exempt under section 40(2).
11. The complainant confirmed to the Commissioner that they disputed that DWP had provided them with all of the information falling within the scope of the request. In particular, they expected to receive the information named in their request for internal review. They did not dispute DWP's reliance on section 40(2) to redact the personal data.
12. Over the course of several rounds of correspondence, DWP provided the complainant with further information. The complainant asked the Commissioner to proceed to decision notice on the adequacy of DWP's searches and to determine whether further information is held.
13. The Commissioner therefore considers that the scope of this investigation is to determine whether, on the balance of probabilities, DWP holds any further information to that already provided.

## Reasons for decision

---

### Section 1: General right of access to information held by public authorities

14. Section 1(1) of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request and, if so, to have that information communicated to them. This is subject to any procedural sections or exemptions that may apply. A public authority is not obliged under FOIA to create new information in order to answer a request.

15. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-Tier Tribunal (Information Rights) decisions and applies the civil standard of proof – ie on the balance of probabilities.
16. In the specific circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, DWP holds further recorded information that falls within the scope of the request.
17. During the course of the investigation, DWP returned to the complainant to provide further information on several occasions. DWP provided the Commissioner with details of its searches during his investigation.
18. DWP explained that usually where a search term is used in guidance, the search engine will find guidance containing this. However, DWP stated that it is important to note that Move to Universal Credit guidance products change constantly as processes are developed, updated and fine-tuned.
19. DWP acknowledged that there had been duplication in the information provided to the complainant as it had sent updated versions of the guidance already provided. The complainant had therefore been given one suite of guidance as held at February 2023 and one suite of guidance as held at June 2023 (during the Commissioner's investigation). DWP explained that it had provided the updated versions as it was trying to provide the most up to date information. DWP confirmed that some guidance products in the archive were held with different names as they were iterations of the same product.

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

20. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check what information was held at the time of the request and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.
21. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether further information is held on the civil standard of the balance of probabilities. That is, whether it is more likely than not that DWP holds further information.

22. The Commissioner understands why the complainant would believe that DWP may hold further information in light of the sporadic location of the information provided and the poor handling of the request. However, he accepts that DWP has now undertaken proportionate and adequate searches.
23. The Commissioner's guidance on "Determining whether information is held"<sup>1</sup> states:
- "We don't expect you to search all of your filing cabinets or computers before determining that you don't hold information. However, you should search those areas where it is reasonable to expect that you would find the information (if it existed). The broader the request, the more areas you are likely to need to search".
24. Whilst the Commissioner notes the "drip feeding" of information to the complainant and the inadequate request handling originally, he is satisfied that DWP has now undertaken proportionate searches for the requested information. The Commissioner is unable to identify any further searches or actions DWP could take to locate information falling within the scope of the request and he is therefore satisfied that, on the balance of probabilities, no further information is held.

## **Procedural matters**

---

### **Section 10(1): Statutory time for compliance**

25. Section 10(1) of FOIA states:
- "Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".
26. DWP provided information during the course of the Commissioner's investigation and therefore breached section 10(1) of FOIA.

---

<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

## Other matters

---

27. The Commissioner is disappointed with the quality of DWP's request handling and searches in this case.
28. The Commissioner considers that DWP has the resources and expertise to conduct thorough and robust searches. DWP should also be aware of the importance of correctly interpreting and locating the information held at the time of the request. The scope of any request is based on what is held at the time of the request and therefore any subsequent changes or updates to the information will not fall within the scope of the request. The Commissioner appreciates that DWP was trying to be helpful by providing the complainant with up to date information during the Commissioner's investigation, however, this led to confusion as some of the information had changed and it was not apparent where there was duplication or differences in the information and where information was missing.
29. The complainant was required to scrutinise the information provided and direct DWP to its own guidance in order to obtain all of the information falling within the scope of the request.
30. The request sets out that if DWP cannot comply with the request then the complainant would accept a second alternate refined scope. DWP stated to the Commissioner that it had originally interpreted the request on the basis of the refined version as complying with the request was believed to exceed the cost limit. DWP did not inform the complainant of this until during the Commissioner's investigation.
31. DWP then amended its position and confirmed that the cost limit would not be exceeded and it had provided all information falling within the scope of the original request.
32. Whilst it subsequently became clear that section 12(1) was not engaged, the Commissioner reminds DWP of his guidance on "Recognising a request made under the Freedom of Information Act (section 8)"<sup>2</sup> which states:

"A request that is conditional on a change in circumstances will not be valid. This is because the requester does not want any information as

---

<sup>2</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/recognising-a-request-made-under-the-freedom-of-information-act-section-8/>

things stand. They are only expressing an intention to ask for information in the future, which is not 'a request for information' under section 8.

Nevertheless, these requests are likely to trigger your duty to provide assistance to a requester.

You should therefore go back to the requester to advise them to resubmit the request once the change in circumstances they are anticipating has occurred".

33. DWP should therefore have complied with the first part of the request and advised the complainant that the second, alternative, element of the request was not valid as it is dependent on the outcome of the first part of the request.
34. The Commissioner considers that the DWP FOI team has the expertise and experience to ensure requests are handled correctly. He expects the wider DWP to use this resource, and his published guidance, to ensure that future requests do not encounter the same difficulties. Since the request was made, the Commissioner has issued a practice recommendation<sup>3</sup> relating to his concerns regarding request handling. He therefore expects to see an improvement in the handling of requests which are brought to him.

---

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4024647/department-for-work-and-pensions-practice-recommendation.pdf>

## Right of appeal

---

35. 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)

36. 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.
37. 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**