

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

### **Decision notice**

**Date:** 30 March 2023

**Public Authority:** Department for Communities (Northern Ireland)

**Address:** Causeway Exchange  
1-7 Bedford Street  
Belfast  
BT2 7EG

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

---

1. The complainant requested information from the Department for Communities (the DFC) relating to the Affordable Warmth Scheme. The complainant disputes that the DFC has disclosed all of the information which it holds.
2. The Commissioner's decision is that the DFC did not carry out sufficient searches to confirm, on a balance of probabilities, whether some of the requested information is held by it. He has also decided that it was not correct to state that other information was not held by it.
3. The Commissioner therefore requires the DFC to take the following steps to ensure compliance with the legislation.
  - To respond again to part 4(a) of the request, and
  - to carry out further searches and to respond again to part 4(b) of the request for information as required by section 1 of FOIA.
4. The DFC 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

---

5. On 22 June 2022, the complainant wrote to the Department for Communities ('the DFC') and requested information in the following terms:

"My request is in relation to the Affordable Warmth Scheme, (AWS).

1] Please give a brief description of how AWS works.

2] Please detail the algorithm used to target potential beneficiaries. How often is the effectiveness of the targeting algorithm reviewed? How long has the current algorithm been in use for?

3] What is the source of the targeting data? If possible please provide links to the sources.

4] Please detail the targeting matrix, (supplied by DFC) which councils must adhere to when assessing self referrals.

4] For the years 2018, 2019, 2020 & 2021 please provide figures for:

a) The total amount spent, (by council area).

b) Performance against target for completing supplied lists and self referrals (by council area).

c) The number of households by income bands <£10,000, £10,000 - £14,999 and £15,000 -£19,999 that have received support from the AWS.

d) The percentage of properties receiving retrofits by property type, (Detached, Terraced, Semi-Detached, and Flats/Apartments).

e) The age of properties that have benefited from improvements from AWS. Please show the figures in the following bands: pre 1900, 1901 – 1930, 1931 – 1960, 1961 – 1990 and 1991 onwards."

6. The DFC responded on 25 July 2022. It provided responses to parts 1-3 and to the first part of request 4. For part 4 of the request, it did the following:

a) It disclosed information in respect of the years 2020 and 2022, but said that it did not hold information in respect of 2018-19.

b) The DFC and said that no relevant information is held by it.

- c) It clarified that household income is not banded. All private sector households e.g., owner occupiers and private sector tenants with income below £23,000 are eligible to apply to the scheme.
  - d) It disclosed information in respect of years 2020 onwards, but said that no information is held for the years prior to that.
  - e) It said that it does not collect the requested information. It informed the complainant that that information is collected by the Northern Ireland Housing Executive (NIHE).
7. On 9 August 2022 the complainant asked the DFC to review its decision. He also amended his request in light of the DFC's previous response to his request.
- i. He questioned why the DFC had not disclosed a copy of the algorithm in response to part 2 of the request.
  - ii. He questioned why only 2 years data was held in respect of part 4(a) of his request.
  - iii. In respect of part 4(b) of the request, he asked if the DFC holds Service Level agreements ('SLA's) with the providers, and if these contain targets. He said that, if so, he wished a copy of the targets and performance monitoring information to be provided to him.
  - iv. In respect of part 4(c) he asked whether the DFC recorded the incomes of people who have received support from the scheme. He also asked it to clarify whether the councils or the NIHE's would hold this information if it did not.
  - v. The complainant did not question the DFC's response for this part of the request.
  - vi. In respect of part 4(e) of the request, he asked the DFC to provide the age of properties for the years requested, presented in yearly bands.
8. The DFC wrote to the complainant with the outcome of its review on 06 September 2022:
- i. In respect of question 2, the DFC confirmed that it does not hold the requested information, and explained that the algorithm is held by the University of Ulster. It explained how to contact the University directly if the complainant wished to request the information from it.

- ii. 4(a) - It confirmed that it only holds data in respect of 2020 onwards. It said that the information was not collected in terms of council area, but in regard to the area covered by each NIHE Grant Office, and the requested information is not extractable from this data. It therefore suggested that the complainant contact the NIHE Grant Office and ask it if it holds the relevant information.
- iii. 4(b) – The DFC applied section 35(1)(a) to withhold the SLA's on the basis that these were under review at the time that the request was received.
- iv. 4(c) – The DFC again confirmed that it does not hold the information requested. It said that the data is verified by local councils. It told the complainant that he could request the data from these councils should he wish to receive it.
- v. 4(e) - The DFC again confirmed that no information is held, and suggested that the complainant contact the NIHE's directly as they may hold the requested information.

## **Scope of the case**

---

- 9. The complainant contacted the Commissioner on 12 September 2022 to complain about the way his request for information had been handled. He argued that the DFC should hold 4 years of data, that it should provide data it holds relating to the performance of councils, and that it was wrong to apply section 35(1)(a) to withhold information in respect of part 4(b) of his request.
- 10. During the course of the Commissioner's investigation, the DFC withdrew its decision to apply section 35(1)(a) to part 4(b) of the request. It recognised that the complainant hadn't requested the SLA's, and it therefore withdrew its reliance upon this exception.
- 11. In conclusion, the Commissioner considers that the complaint is that the DFC failed to provide all of the data which it holds which falls within the scope of parts 4(a), (b), (c) and (e) of the request. He will also consider whether the DFC is correct to argue that the SLA's were not requested by the complainant.

## Reasons for decision

---

### Section 1 – General right of access to information

12. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates that information to the requestor, subject to any exclusions or exemptions applying.
13. In scenarios where there is a dispute between the amount of information which a public authority says it holds, and the amount of information that a complainant believes it holds, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
15. The Commissioner has considered the response to each part of the requests complained about separately.

#### Part 4(a) of the request - The total amount spent, (by council area).

##### The complainant's position

16. The complainant argues that the DFC should hold the entire four years of data he requested. He suggest that if it does not, this would appear to be in contravention of government guidance.

##### The DFC's position

18. The DFC argues that it does not hold the requested data before 2020. It argues that it holds data set out by the relevant NIHE Grant Office's, not by council area for this period, and as these two different types of geographical data do not match up, it is unable to extract the information and provide it in terms of council area in order to respond to the request.

##### The Commissioner's conclusion

19. The Commissioner has considered the arguments of both parties, in conjunction with the request.

20. In terms of whether data is held or not, the Commissioner's guidance states that "whether you hold information is determined as an issue of fact."<sup>1</sup>
21. The DFC 's response clarifies that it does hold raw data which contains the information which the complainant has requested, however this is held in terms of the NIHE Grant Offices area, not by council area. Nevertheless, the requested data is held by the DFC, but not in the form in which it was requested. The DFC was not, therefore, correct to argue that requested information is not held.
22. It is possible that other exemptions or sections of FOIA may apply to the data if the DFC is unable to extract and reconstitute the data in the form requested by the complainant. For instance, section 11 (form and format) may be applicable. The DFC may consider that it would not be reasonable under the circumstances of the case, for it to disclose the information in terms of council area, but it could disclose the information it holds in the form in which it is held, i.e., by NIHE Grant Offices area.
23. The Commissioner therefore requires the DFC to respond again to part 4(a) of the complainant's request for information.  
  
*Part 4(b) of the request - Performance against target for completing supplied lists and self referrals (by council area)*
24. In its original response the DFC said that it does not hold the requested information.
25. In its review, it applied section 35(1)(a) to the SLA's which the complainant's amended request referred to. However, during the course of the Commissioner's investigation, the DFC withdrew its reliance upon section 35(1)(a). It said that it had reconsidered the amended request, and realised that the SLA's were not, in fact, requested.
26. The initial request for information was for: "4(b) Performance against target for completing supplied lists and self referrals (by council area)."

---

<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/#requests>

27. In his review, the complainant amended his request to:

"Does the department have SLAs with councils? If it does, in these SLAs are there targets with regard to completing supplied lists and self-referrals? If so please provide these targets.

How is performance monitored? If councils are obliged to provide data to the department on how many referrals are completed please provide this information. Please show this information by council area for the years requested."

28. The Commissioner notes that the amended request does not ask for a copy of the SLA's.

29. The DFC is therefore correct to identify that it was mistaken to apply section 35(1)(a) to withhold the SLA's as these did not fall within the scope of the complainant's request for information.

30. As regards the information which does fall within the scope of the request, the DFC clarified that the SLA's do not contain the information requested by the complainant in part 4(b) of the request.

31. It said that "The SLA is an agreement between the Department and the Council which is signed at a certain point in time. This is not updated with performance figures against the set targets. The monitoring information of performance against targets is discussed at the Senior Officials meetings."

32. The Commissioner notes that in response to the initial request, the DFC said that no information is held by it in response to the request for performance against targets data. However, its response to the Commissioner, as noted above, is that performance against targets is discussed at the Senior Officials meetings.

33. The DFC has not described the searches which it carried out in order to determine its position that no information is held. Given that it has explained that relevant information is discussed during these meetings, the Commissioner considers that it is possible that notes will be held relating to the meetings, and/or that reports or records would be made relating to the outcome of these meetings.

34. The Commissioner is not, therefore, satisfied that the DFC has conducted appropriate searches to determine whether it holds data relating to performance against target data.

35. The Commissioner has not decided that the DFC does hold additional information relevant to the request. He has decided that it has provided insufficient evidence to support a conclusion that it is more likely than not that it does not hold information falling within the scope of part 4(b) of the initial request.
36. The Commissioner therefore requires the DFC to carry out further searches for relevant information and to respond to the complainant's request again. This should include searches of its relevant records systems, and it should also ask senior officials who take part in the meetings to carry out adequate and appropriate searches of their records in order to confirm whether relevant information is held by them.
37. Following these further searches, the DFC should respond to the complainant again as required by section 1 of FOIA as regards this part of the request.
38. This decision does not exclude the possibility that its further searches will fail to locate relevant information.

Parts 4(c) and (e) of the request.

39. The DFC has confirmed to the Commissioner that:
  - 4(c): The DFC clarified how its targeting system works, and clarified that it is local councils which administer the system and approve payments.
  - 4(d): The DFC clarified to the complainant that it does not collect this information, and explained to the Commissioner that this information is held by the NIHE's.
40. There is no contradictory evidence available to the Commissioner that indicates the DFC's position is wrong.
41. Given the clarification of its processes by the DFC, and the explanation which it provided as to how the payments are targeted and administered via local councils and the NIHE's, the Commissioner has seen no evidence countering the DFC's position that it does not hold relevant information falling within the scope of these parts of the complainant's request for information.
42. The Commissioner's decision is therefore that, on a balance of probabilities, the DFC does not hold the information falling within the scope of parts 4(c) and 4(e) of the request.



## Right of appeal

---

43. 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)

44. 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.
45. 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 .....**

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**