

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2023

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. In a two part request, the complainant requested information from the Department for Work and Pensions ('DWP') relating to the Access To Work Scheme ('ATW'). DWP advised that it did not hold recorded information for question one and cited section 21 of FOIA (Information reasonably accessible to the applicant by other means) in relation to question two.
2. The Commissioner's decision is that, on the balance of probabilities, DWP holds no recorded information relevant to the complainant's request in question one and has complied with section 1(1) of FOIA. The Commissioner considers that DWP has failed to correctly interpret the request in question two.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the complainant regarding question two of the request using the correct request interpretation and either disclose the information or, in respect of any information it wishes to withhold, issue a refusal notice within the meaning of section 17 of FOIA providing a basis for withholding the information.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 22 March 2022, the complainant wrote to DWP and requested information in the following terms:

"This is a request for information relating to the Access To Work scheme under the Freedom of Information Act 2000 (FOIA). I hope that members of the public can gain greater understanding of the ways that awarded grants can be used and who they may be used with.

Please could you provide:

1. Current prescribed supply chain list used by ATW Assessors

---- A version from 2018 is publicly available. This would assist members of the public in seeking out suitable suppliers for each element of grants - beyond what is quoted for on needs assessments. This would be useful for example where none of the quote suppliers have availability but an alternative supplier from the list has availability and undercuts the quotes on the needs assessment.

2. Guidance/policy/training materials for ATW Assessors on specific equipment/software/services that may be provided to applicants.

-----This would go into more detail than the publicly available Access to Work Staff guide and might outline specific software (e.g. ideamapper pro, dragon professional) and equipment (e.g. Remarkable 2 tablet, Lenovo thinksmart, Philips Speechair). Applicants can find it very difficult to know what equipment might meet their needs, and occasionally assessors may get it wrong. Arming applicants with this information would help people get better support to stay in work and avoid wasting money on things which probably won't help.

3. Would it be feasible for a list of equipment and software recommended or provided to applicants to be produced from your current data management systems?

- if feasible, ideally this list would be categorised by the condition groups used in the ATW statistics reports - but if this would be too labour intensive, an unsorted list would suffice.

I have tried to keep this request to below the capacity of one person spending 3½ working days but please advise how to reframe my request if not.

In summary I am requesting information on suppliers/companies and specific recommendations (equipment/software) for Access to work grant elements, not assessment suppliers."

6. DWP responded on 21 April 2022 refusing to respond to the request, citing section 12 (cost of compliance exceeds the appropriate limit) of FOIA. DWP provided advice and assistance in line with its section 16 duty by saying:

"If you would like to re-present your request, we believe we will be able to supply information related to questions one and two within the cost limit."

7. Accordingly, on 22 April 2022, the complainant asked DWP to:

"Please provide the information related to questions one and two as you have indicated you have this and can feasibly provide this.(FOI2022/31082)"

8. On 4 May 2022, DWP responded to the complainant. In relation to question one, although it did not say so explicitly, the response indicated that DWP did not hold the information requested. As regards question two, DWP cited section 21 of FOIA stating that the current Access to Work staff guidance is published and available on the GOV.UK website. A link was provided.

9. On 10 May 2022, the complainant requested an internal review. In relation to question one, they said:

"...what I requested was an updated version of the "Prescribed supply chain list used by Access to Work assessors" as supplied to the Rt Hon Frank Field MP in 2018 (can be viewed here: <https://www.parliament.uk/globalassets/d...>)".

10. In relation to question two, the complainant said:

"as outlined in my initial request - the publicly available Access to Work Staff guide doesn't outline interventions to provide to members of the public. Suppliers' assessors should follow training and guidance for what interventions are allowable under the Access to Work scheme which is funded by the DWP:- please provide copies of these policies, guidance documents and training materials."

11. DWP provided an internal review on 7 June 2022 and upheld its original position.

Scope of the case

12. The complainant contacted the Commissioner on 21 June 2022 to complain about the way their request for information had been handled.
13. In relation to question one, the complainant explained that they had a copy of a prescribed supply chain list for Access to Work scheme grants that DWP had provided in 2018 to the Work and Pensions Select Committee Chair. Therefore, they were requesting an updated version of this supply chain list.
14. During the course of the Commissioner's investigation, DWP explained to the Commissioner that question two was interpreted as a request for information on how ATW Case Managers make Access to Work grant awards. DWP confirmed that following the Commissioner's intervention, it now understood that the information sought was the guidance, policies, and training that the contracted ATW assessment providers use.
15. In light of this, DWP confirmed to the Commissioner regarding question two that the information was "not available as the information is commercially sensitive proprietary information of the contracted assessment providers." The Commissioner was unclear from DWP's submissions whether DWP considers that it holds the requested information.
16. In circumstances such as this, where the two parties have a different interpretation of a request (here, question two) the Commissioner will determine which interpretation is correct.
17. The Commissioner will therefore consider whether DWP holds information falling within the scope of question one and the correct interpretation of question two.

Reasons for decision

Question one

18. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.

19. FOIA concerns recorded information only. It does not require a public authority to answer general questions, provide opinions or explanations.
20. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e. the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.
21. Accordingly, the investigation will consider the scope, quality, thoroughness, and results of the searches, and other explanations offered by DWP as to why the information in question one is not held.
22. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it ought to be held).
23. The complainant's request in question one was for a current and updated prescribed supply chain list used by ATW Assessors. They argued that DWP should be able to provide an updated list, like the one supplied to the Rt Hon Frank Field MP in 2018¹.
24. DWP responded to the complainant that such an updated list was not held by it in any form or by the assessment providers on DWP's behalf.
25. DWP explained that it does not maintain a list of organisations or products considered when ATW Suppliers' assessors complete an assessment report, as DWP expect suppliers to keep up to date with the latest products, equipment and support available. DWP argued that recommended solutions to workplace barriers are based on individual customers' needs – limiting assessor recommendations to a prescribed list of suppliers would not be efficient or cost-effective. Further, assessment providers are contractually obligated to provide assessors with at least one years' experience in holistic workplace assessments and to keep up to date with the latest advances in assistive technology and workplace adaptations through Continuous Professional Development.

¹ <https://www.parliament.uk/globalassets/documents/commons-committees/work-and-pensions/Carillion/Letter-from-the-Minister-for-Disabled-People-regarding-assistive-technology-20-February-2018.pdf>

26. Access to Work Assessment contracts were also searched by DWP to check if there was an obligation on DWP or the contracted assessment providers to create, maintain, use, or provide a 'prescribed supply chain list' at any stage of the procurement or during the carrying out of the services but no such requirement was included in the contracts.
27. In addition, DWP told the Commissioner that, despite the title of the list provided to Frank Field MP, the list provided was not in fact a 'prescribed supply chain list' but instead a non-exhaustive list of some of the suppliers that the assessment providers had recommended in holistic assessments in 2018.
28. The Commissioner has carefully considered the points made by the complainant and DWP.
29. The Commissioner is satisfied that adequate searches of electronic and paper files were carried out by DWP to determine whether recorded information within the scope of question one was held. Furthermore, the Commissioner is satisfied that appropriate consultations took place with DWP staff and that should information within scope of the request have been held, those staff who were consulted would have been aware of such information.
30. Whilst the Commissioner understands why the complainant would consider that there is an updated version of the list compiled previously, he notes that the previous list itself confirms that it is not an exhaustive list and is instead a list of suppliers used regularly. The previous list was created in response to the Work and Pensions Select Committee and is not a list that is updated with new 'approved' suppliers. DWP has confirmed that equipment from any supplier can be recommended and therefore there is no prescribed supplier list.
31. Having considered all the circumstances, on the balance of probabilities, the Commissioner therefore accepts DWP's position that it does not hold recorded information falling within the scope of question one. As such, the Commissioner has decided that DWP has complied with section 1(1)(a) of FOIA.

Question two

32. Public authorities must interpret requests for information objectively². They should ensure that responses pay careful attention to the wording

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/>

of requests for information and be sure to discharge its obligation to confirm whether the requested information is or is not held. If the request clearly specifies exactly what information or documents the requester wants, then there will only be one objective reading to the request.

33. The complainant requested in question two information on the training, policy and guidance provided to ATW **assessors** on which interventions to supply to ATW applicants.
34. DWP responded by citing section 21 of FOIA stating that the current Access to Work staff guidance is published and available on the GOV.UK website. In other words, DWP provided the publicly available Access to Work guide on how ATW Case Managers (i.e. DWP staff) make Access to Work grant awards once the ATW assessor assessment report is returned to DWP.
35. During the course of the Commissioner's investigation, DWP explained to the Commissioner that question two was first interpreted as a request for information on how ATW Case Managers make Access to Work grant awards. DWP further explained that following the complaint to the Commissioner when the complainant provided clarification that the information sought was the guidance, policies, training that the contracted assessment providers use, DWP changed its position in its submissions to the Commissioner (but did not inform the complainant).
36. The Commissioner does not accept that it was only when the complainant provided clarification to the Commissioner that DWP was able to correctly interpret the request. He accepts that on an objective reading of the request, the complainant's request in question two was clear that it referred to "assessors" and not "DWP staff or case managers". He notes that if DWP had any doubts about what was requested, this was clarified further in the complainant's request for internal review and this was well before the complainant contacted the Commissioner.
37. In making his determination, the Commissioner has considered the strict wording of the original request:

"Guidance/policy/training materials for ATW **Assessors** on specific equipment/software/services that may be provided to applicants.

-----This would go into more detail than the publicly available Access to Work Staff guide and might outline specific software (e.g. ideamapper pro, dragon professional) and equipment (e.g. Remarkable 2 tablet, Lenovo thinksmart, Philips Speechair). Applicants can find it very

difficult to know what equipment might meet their needs, and occasionally **assessors** may get it wrong. Arming applicants with this information would help people get better support to stay in work and avoid wasting money on things which probably won't help." (emphasis added)

38. The Commissioner considers that the request is clear in its scope that the request was for guidance, policies, and training that is available to the ATW assessors for the purposes of conducting an ATW assessment that conforms to DWP's standards and requirements. The Commissioner notes that the information that DWP directed the complainant to is the specific information that the request confirms is not being sought.

39. However, if DWP was in any doubt then in their internal review request, the complainant said:

"as outlined in my initial request - the publicly available Access to Work Staff guide doesn't outline interventions to provide to members of the public. **Suppliers' assessors** should follow training and guidance for what interventions are allowable under the Access to Work scheme which is funded by the DWP:- **please provide copies of these policies, guidance documents and training materials.**" (emphasis added)

40. If DWP was unsure of the objective interpretation of the request at any stage, it should have taken the opportunity to clarify the request, because public authorities are entitled to seek clarification in accordance with section 1(3) of FOIA before responding to the request. DWP did not do so here.

41. As the Commissioner considers that the complainant's request was objectively clear in its scope from the outset, the Commissioner requires DWP to issue a fresh response to question two confirming whether or not it holds information falling within the scope of the request³ and to either disclose the information if held by DWP (or by the contracted assessment providers on its behalf), or issue a refusal notice that complies with s17 of FOIA.

³ information on the training, policy and guidance provided to ATW **assessors** on which interventions to supply to ATW applicants.

Other Matters

42. The Commissioner has noted a pattern of requests brought to him in which DWP has failed to correctly interpret the request, locate all of the information falling within the scope of the request or has failed to confirm what information, if any, is held. The Commissioner has issued a practice recommendation regarding this⁴.
 43. DWP should note that it must consider whether there is information held on its behalf by the contractors. When issuing a fresh response to question two, DWP should therefore ensure that it does not discount information held by the contractors/assessment providers on behalf of DWP, as this information is still held by DWP for the purposes of FOIA. It would be best practice for DWP to include a substantive explanation of why the information is not held by it or on its behalf, if that is the case.
 44. DWP confirmed to the Commissioner that it was content to provide information that fell outside of the scope of the requests to aid the complainant. DWP has provided the Commissioner with a list of some of the recommended suppliers that were included in assessment reports for the month of February 2023. DWP have also produced a high-level summary of the current assessment providers' CPD activities that they use to keep assessors up to date with the latest advances in assistive technology and specialist aids and equipment
 45. The Commissioner welcomes the fact that DWP has prepared this additional information and recommends that DWP provide this information to the complainant - but he is unable to order disclosure of this information as part of this decision notice as it does not contain the specific requested information.
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⁴ <https://ico.org.uk/media/action-weve-taken/4024649/dwp-practice-recommendation-20230323.pdf>

Right of appeal

46. 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

47. 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.
48. 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
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SK9 5AF