

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2023

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 on the cost of payments to benefit claimants and pensioners who do not have bank accounts.
2. The Department for Work and Pensions (DWP) originally relied on section 43(2) to refuse to provide the requested information.
3. During the course of the Commissioner's investigation, DWP amended its position and confirmed that it did not hold the information falling within the scope of the first request. DWP also introduced section 43(1) to withhold the information falling within the scope of the second request.
4. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold the information falling within the scope of the first request and that section 43(2) is engaged in relation to the information falling within the scope of the second request and the public interest lies in maintaining this exemption.
5. The Commissioner does however find that DWP breached section 10(1).
6. The Commissioner does not require DWP to take any steps.

Background

7. Where a benefit claimant or pensioner does not have a bank account, DWP has a separate payment process to enable them to access these funds.
8. Previously this was administered via a Post Office account operated by JP Morgan Bank. DWP now administers these via the Payment Exception Service¹.

Request and response

9. On 14 March 2022, the complainant wrote to DWP and requested information in the following terms:

"Enclosed is a copy of an unratified letter to me from : 'Office Manager', Department for Work and Pensions etc. It is referenced [redacted] dated 23rd February 2022 and states in paragraph 5 that: "The Post Office card account is operated by JP Morgan bank. It is expensive to administer and as we deal with public funds we have a duty to use the most cost-effective method for issuing customer payments".

Under the Freedom of Information Act I request the following information about cost to public funds of 1 customer payment at a Post Office using the following methods:

- A. Post Office Card Account – The cost to public funds of one customer payment at a Post Office ?
 - B. Payment Exception Service – The cost to public funds of one customer payment at a Post Office ?"
10. DWP received the request by post on 15 March 2022.
 11. DWP provided its response on 6 April 2022 and confirmed that it held the requested information. DWP explained that it was withholding the requested information on the basis of section 43. DWP did not confirm which subsection it was relying on.
 12. DWP explained that section 43 exempts information which, if disclosed, would be likely to prejudice the commercial interests of any person.

¹ <https://www.gov.uk/payment-exception-service>

DWP explained that it protects not only the commercial interests of third parties but also the commercial interests of DWP. DWP further explained that it is intended to protect the ability of a public authority like DWP to obtain goods and services on the best possible commercial terms and to protect the legitimate commercial interest of its suppliers.

13. DWP provided its consideration of the balance of the public interest. DWP acknowledged the public interest in the disclosure of commercial information to ensure transparency in the accountability of public funds and to show that public money is being used effectively. However, DWP considered that there is a public interest in ensuring that disclosure does not compromise an existing competitive market environment or DWP's ability to secure best value for money for the taxpayer. DWP confirmed that, on balance, it considered that the public interest lay in withholding the information.
14. The complainant wrote to DWP on 25 April 2022 and requested an internal review of the handling of their request for information. The complainant disputed that DWP was entitled to withhold the requested information. The complainant considered that as they were a taxpayer and were being required to use a new service which is less convenient and carries more penalties, they were entitled to have the information. They also consider that the public interest favoured disclosure to ensure transparency and accountability of public funds when requiring pensioners to use a different service to facilitate 'cost-effective customer payments'.
15. This correspondence was received by DWP on 26 April 2022.
16. DWP provided the outcome of its internal review on 25 May 2022 and upheld its original response.

Scope of the case

17. The complainant contacted the Commissioner on 5 July 2022 to complain about the way their request for information had been handled.
18. During the course of the Commissioner's investigation, DWP confirmed to the Commissioner that it had reconsidered its handling of the request and had determined that it did not hold information falling within the scope of the first request.
19. DWP confirmed that, with regards to the second request, it had originally relied on section 43(2) but it now intended to rely on sections 43(1) and 43(2) to withhold the information falling within the scope of the second request.

20. DWP wrote to the complainant on 21 June 2023 to confirm this revised position and provided advice on what information was held.
21. The Commissioner therefore considers that the scope of this investigation is to determine the following:
 - Whether, on the balance of probabilities, DWP holds information falling within the scope of the first request.
 - Whether section 43(1) or section 43(2) is engaged in relation to the second request and the balance of the public interest.

Reasons for decision

Section 1: General right of access

22. 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.
23. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the Commissioner, following the lead of a number of First-Tier Tribunal (Information Rights) decisions, applies the civil standard of proof – ie on the balance of probabilities.
24. In the specific circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, DWP holds recorded information that falls within the scope of the request.

DWP's position

25. DWP explained that the complainant is asking to be provided with a unit price for delivering a benefit payment via the Post Office Card Account.
26. DWP explained that the Post Office card account did not operate on a per payment delivered charging mechanism. DWP confirmed that it was charged per month based on the number of accounts which existed at the time and the status of those accounts, ie Active or Dormant.
27. DWP explained that an account would be classified as 'Active' if a payment was made to the account or a withdrawal of funds was made from the account within a specified period, regardless of value. DWP

confirmed that the number of transactions made per month were not a factor when calculating the Active account fee paid per month.

The Commissioner's position

28. On the basis of DWP's explanation of how the Post Office card accounts were charged for, the Commissioner is satisfied that on the balance of probabilities, DWP does not hold the specific information that has been requested, ie the cost of an individual payment made at a Post Office.
29. The Commissioner has reached this conclusion as DWP has provided persuasive arguments that the cost to DWP of administering the Post Office card account system did not depend on the number of payments made and therefore there is no per payment unit price to provide. He is also satisfied that this cannot be calculated as the number of payments made per month could differ without affecting the cost to DWP. There is, therefore, no single unit price for a customer payment that can be calculated.
30. The Commissioner is disappointed that a public authority with the knowledge and experience of FOIA that DWP has would make such a basic procedural error by stating that it is withholding information that is not, in fact, held. The Commissioner reminds DWP of the importance of ascertaining exactly what is being requested when handling a request for information.

Section 43: Commercial interests

31. Section 43 of FOIA states:

- (1) Information is exempt information if it constitutes a trade secret
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)".

32. The Commissioner's guidance on section 43² states:

"A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent".

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

33. The Commissioner will first look at DWP's reliance on section 43(2) to withhold the disputed information.
34. In order for a prejudice based exemption such as section 43(2) to be engaged, there must be a likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption.
 - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely to' result in prejudice or disclosure 'would' result in prejudice.

DWP's position

Applicable interests

35. DWP confirmed that it considered that disclosure would be likely to prejudice the commercial interests of itself and the third party service provider, I-movo.
36. DWP explained that as a supplier of payment services, to both the private and public sector, I-movo is engaged in a commercial activity and its commercial interest in this case is its ability to fairly and competitively compete for future contracts for the provision of these or similar services.
37. DWP explained that, as a buyer of services, it is engaged in a commercial activity and its commercial interest in this case is its ability to procure these or similar services, through competitive tendering processes which achieve the best value for money.
38. DWP set out that in *Department for Work and Pensions v the Information Commissioner and Slater (EA/2022/0240)*, the first-tier tribunal held that the conduct of a competitive tendering process

constitutes a relevant commercial interest of DWP for the purposes of section 43(2).

Causal link to real, actual or of substance prejudice

39. DWP explained that any procurement of goods or services via a competitive process, governed by the Public Contracts Regulations 2015³ requires that the price of the goods or services are taken into account when deciding who the contract should be awarded to⁴.
40. DWP explained that pricing information submitted as part of a competitive process under the Public Contracts Regulations 2015 is generally not shared publicly or with other participants in the process, although the overall value of a contract is communicated after the contract is awarded. DWP contended therefore that bids are submitted by potential suppliers without the knowledge of competitor's prices.
41. DWP explained that if the withheld information was disclosed, I-movo's competitors would have a competitive advantage over it, in that they would be better placed to accurately estimate the prices which I-movo may include in their bid with respect to a comparable opportunity, whereas I-movo would not have corresponding pricing information about its competitors in order to gain the same level of insight into the operating model of its competitors. DWP set out that it was recognised in *Jackley v Information Commissioner and the Department for Work and Pensions EA/2016/0082* paragraph 24⁵ and decision notice IC-162282-V1Y1⁶ that this type of imbalance would damage the relevant supplier's prospects in comparable competitions in the future.
42. DWP explained that this prejudice would be more likely to occur where there is a limited supplier market, as any increased insight into one supplier may equate to an increased insight with respect to a substantial part of the relevant market. DWP further explained that to its knowledge there are limited suppliers in this particular market, reflected in the fact that there are only two suppliers who could provide this service under

³ <https://www.legislation.gov.uk/ukxi/2015/102/contents/made>

⁴ Regulation 67 of the Public Contracts Regulations 2015

⁵

[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1855/Jackley,%20Stephen%20EA-2016-0082%20\(04.08.16\).PDF](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1855/Jackley,%20Stephen%20EA-2016-0082%20(04.08.16).PDF)

⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022862/ic-162282-v1y1.pdf>

the G-Cloud 13 framework⁷, so it is more likely that the requested disclosure could lead to this prejudice.

43. DWP explained that this greater insight into I-movo's operating model would likely cause competitors to:
- Reduce the prices they will include in their bids in the future, in an attempt to undercut I-movo's prices or bring their prices closer to I-movo's, ie attempt to make their bid(s) more competitive and accordingly I-movo's bid(s) less competitive; **or**
 - Conversely, the insight into I-movo's operating model following disclosure could reveal that I-movo's prices for these particular services are higher than their own. This could then provide the competitor with scope to increase their prices without an increase in the level of service provided and still win the contract. DWP considered that this would result in higher prices being submitted than would otherwise be the case. DWP considered that this would lead to less value for money being achieved.
44. DWP further explained that I-movo may be forced to mitigate against the risk of its competitors using this knowledge to undercut its prices and reduce the likelihood of it winning future procurements, by reducing the prices it quotes for the same services as part of future tenders. DWP explained that this in turn, without any corresponding reduction in costs will reduce the profit I-movo could achieve from these contracts, should it win such contracts.
45. DWP considered that in addition to the above, with respect to its own commercial interests, I-movo or other bidders may decide not to participate in future opportunities or be more selective in the opportunities they choose to bid for, due to the risk that their commercially sensitive information may be disclosed, which could harm their ability to secure or negotiate contracts in the future, in both the public and private sector.

Real, actual or of substance prejudice

46. DWP explained that the change in the content of bids or the likelihood of bids being successful as a result of disclosure of the withheld information could, with respect to I-movo, result in:

⁷ <https://www.crowncommercial.gov.uk/agreements/RM1557.13>

- A reduction in the commercial score (scores for price) which I-movo are likely to achieve in comparable competitive procurements in the future, ie a reduction in I-movo's chances of winning such competitive procurements; and
 - A reduction in the prices it would otherwise achieve in successful bids.
47. DWP explained that this would constitute real, actual or of substance prejudice from the disclosure of the requested information. DWP considered that any loss of opportunity to provide services could be significant for I-movo considering the value of such contracts. DWP gave the example that it is estimated that the value of the Payment Exception Service contract could exceed £17,000,000⁸.
48. With regards to DWP's own commercial interests, DWP explained that the change in the content of bids or the likelihood of bids being successful as a result of disclosure could result in an increase in the prices included in bids when it procures the same or similar services in the future. DWP considered that the resulting reduction in value for money achieved from such contracts would constitute a real, actual or of substance prejudice from disclosure of the requested information.
49. DWP explained that the above prejudice can be summarised as a "distortion of competition" and it was held in *Department for Work and Pensions v the Information Commissioner and Slater (EA/2022/0240)* that these impacts on a tendering process amount to real, actual and of substance prejudice to the commercial interests of the relevant supplier and DWP.
50. DWP explained that one of the main benefits of running a competitive procurement process is that competition is used to achieve value for money from contracts entered into as the competition between suppliers to secure the opportunity means they have to submit competitive prices in their bids. DWP considered that if suppliers are discouraged from bidding for future opportunities due to the risks of disclosure of sensitive commercial information, this reduction in competition could reduce the value for money which DWP achieves from its future procurement of services. DWP considered that this would amount to a significant prejudice to its own commercial interests.

⁸ <https://www.contractsfinder.service.gov.uk/notice/98ed3741-9415-411a-8fa6-5e6f1018bccb?origin=SearchResults&p=1>

51. DWP confirmed that, at the time of handling the original request, it did not consider it necessary to consult I-movo to confirm that it held the concerns outlined above. DWP explained that this was because during the process of publishing a contract award notice with a redacted version of the Payment Exception Service contract, DWP and I-movo collectively agreed that the requested pricing information should be redacted because it constituted sensitive commercial information which if disclosed could damage I-movo's and DWP's commercial interests generally. DWP confirmed that the redacted version of the contract specifically states that the Service Order containing the prices has been redacted due to "commercial sensitivity". DWP set out that it was therefore already aware of I-movo's views with respect to this information.
52. DWP also explained that concerns around distortion of competition are concerns shared generally by suppliers and public bodies with respect to public procurements and nothing in this request suggested that these concerns would not be relevant in this case.
53. DWP explained that concerns around distortion of competition as a result of disclosure of information is a common concern raised with DWP by suppliers and dealt with by DWP.
54. DWP explained that under regulation 18 of the Public Contract Regulations 2015, it is expressly required to take steps to ensure that no such distortion of competition occurs to ensure the protection of suppliers and public buyers of goods and services. DWP explained that it is also required under regulation 21 of the Public Contract Regulations 2015 to keep supplier information confidential and ensuring a level playing field is a common theme addressed in the approach to the design of procurements⁹.
55. DWP confirmed that it had sought the views of I-movo during the Commissioner's investigation and provided evidence that I-movo held the concerns set out above.

Would be likely to

56. DWP explained that disclosure of the withheld information would be likely to have caused the prejudice outlined above, the "distortion of competition", in this case because the requested information was highly relevant to upcoming procurement activity of both I-movo and DWP.

⁹ <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks>

DWP therefore considered that there was a real and significant risk rather than a remote or hypothetical possibility.

57. DWP confirmed that it entered into the Payment Exception Service contract with I-movo on 8 June 2021 pursuant to Lot 2 of the G-Cloud 12 framework and under this contract I-movo provided a service which delivered benefits payments to customers via vouchers.
58. DWP confirmed that during the course of 2022, I-movo and some of its competitors had the opportunity to submit tenders as part of the process of admission to two government frameworks for services that are the same or similar to those provided under the Payment Exception Service contract.
59. DWP confirmed that I-movo was admitted to the G-Cloud 13 framework based on the tender it submitted shortly after the request was received¹⁰. DWP confirmed that the deadline for submissions to this framework was 18 May 2022¹¹.
60. DWP explained that the prices submitted as part of these tenders would be the prices under which I-movo and its competitors would be required to provide their services, or the maximum I-movo and its competitors would be able to include in any future competitive tender or contract under the applicable framework.
61. DWP explained that any distortion of competition which therefore occurred at the time the initial tenders were submitted as part of the admission process to these frameworks would impact all future competition activity by I-movo under such frameworks.
62. DWP explained that the similarity of services being procured under such frameworks, the fact that I-movo was seeking admission to these frameworks a short time after the request was received, and the fact that the pricing information was no more than a couple of years old when tenders were being submitted for admission to these frameworks, meant that at the time of the request the withheld information was still highly relevant to the formulation of tenders for these frameworks. There was a significant risk therefore that the distortion of the competition envisaged would likely have occurred had the withheld information been disclosed at the time of the request.

¹⁰ <https://www.crowncommercial.gov.uk/agreements/RM1557.13>

¹¹ The Request was received by DWP on 15 March 2023 and the response issued on 6 April 2023.

63. DWP also explained that, pursuant to social security legislation, DWP is under an obligation to deliver benefit payments to customers. This obligation means that when benefit payments cannot be delivered via transactional bank accounts to customers, it must find an alternative way to deliver these benefit payments. DWP explained that the voucher-based payment service provided by I-movo under the Payment Exception Service contract is the main way in which it currently delivers benefits payments to customers without transactional bank accounts or to those who cannot or do not want to receive their payments into transactional bank accounts.
64. DWP set out that based on its current projections, even though the volume of users have and are expected to reduce significantly during the course of the contract, there are still likely to be a significant number of people who will still need to receive payments via an alternative method in May 2025.
65. DWP explained that it is therefore very likely that it will need to procure a replacement service in order to satisfy its legal obligations when the Payment Exception Service contract expires. DWP consider that at this time, its basic requirement will substantially be the same when such re-procurement activity takes place.
66. DWP confirmed that based on the maximum duration currently stated in the Payment Exception Service contract, the Payment Exception Service will expire no later than 7 June 2025. DWP explained that it will likely need to conduct a competitive procurement process for a replacement service prior to 7 June 2025, usually 12 months before the end of the existing contract to allow for implementation and transition by a new supplier, should this be required.
67. DWP considered that, in light of this future procurement, it would likely suffer the prejudice envisaged if the information was disclosed at the time of the request, because the disclosure would likely impact its future procurement of a replacement service to the Payment Exception Service.
68. DWP considered that the only reasonable basis for finding that section 43(2) is not engaged with respect to pricing information is where the pricing information is no longer relevant to future commercial activity because of the age of the information at the time of the request (Brendan Montague v Information Commissioner v Tate Gallery

EA/2014/0040¹² and Decision Notice FS50591864¹³) or because the service which is to be procured or offered in the future is not sufficiently similar to the applicable service to which the pricing information relates (Ministry of Justice v Information Commissioner GIA/2548/2015). DWP considers that neither of these situations are applicable in this case because the pricing information was less than a year old at the time of the request and whilst the services which may be procured in the future may not be exactly the same, they will likely be sufficiently similar to mean the pricing information is still relevant.

69. DWP confirmed that it was relying on the prejudice threshold of “would be likely to”.

The Commissioner’s position

70. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by DWP does relate to the interests which the exemption contained at section 43(2) is designed to protect, ie the commercial interests of DWP and I-movo.
71. With regard to the second and third criteria, the Commissioner is satisfied that disclosure of the information has the potential to harm the commercial interests of both DWP and I-movo. This is because, having considered DWP’s submissions and evidence of I-movo’s views, it is clear that disclosing the requested information would provide competitors with insight into I-movo’s pricing structure and the pricing that DWP is likely to accept. The Commissioner accepts that disclosure of this information would provide other bidding companies with an unfair advantage as they can amend their bid to undercut I-movo or increase their bid if DWP appears willing to accept a higher price point.
72. In particular, the Commissioner accepts that, as the requested information would have been disclosed during the tender process period for a similar contract, there is a more than hypothetical risk of prejudice occurring to I-movo’s and DWP’s commercial interests. The second and third criterion are therefore met.

¹²

[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1438/Montague,%20Brendan%20&%20Tate%20Gallery%20EA.2014.0040,%200070%20&%200071%20\(22.12.2014\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1438/Montague,%20Brendan%20&%20Tate%20Gallery%20EA.2014.0040,%200070%20&%200071%20(22.12.2014).pdf)

¹³ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1560297/fs_50591864.pdf

73. The Commissioner therefore finds that section 43(2) is engaged.

Public interest test

74. Section 43(2) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest in disclosure of the requested information

75. DWP acknowledged that disclosure of pricing information concerning the contracts which government departments enter into generally promotes transparency and accountability, as it allows the public to understand where public money is being spent and if the money is being spent effectively ie is the contract delivering value for money?

76. DWP explained that it should be noted, however, that transparency and accountability around the use of public funds in this context is already achieved by the publishing of a contract award notice when a government department enters into such contracts, as the expected value of the contract and the nature of the services provided are published, with a redacted version of the contract, as part of the contract award notice.

77. DWP considered that the overall amount of taxpayer money spent is of greater relevance to this aim, and therefore the disclosure of individual pricing information is arguably unnecessary and of limited benefit with respect to achieving this aim, in cases where the overall amount of money to be spent is published.

78. DWP explained that in this case, a contract award notice with respect of the Payment Exception Service was published with the above information, so the relevant information for transparency and accountability purposes is already available to the public. DWP argued that the requested information would do little to promote greater transparency and accountability with respect to its relationship with I-movo and its use of public funds.

79. DWP explained that the pricing information alone will not give an indication of the value of the Payment Exception Service contract, as this information does not take into account all other costs, nor the volume of transactions which will be carried out using the service. DWP explained that the value communicated on the contract award notice accounts for all relevant costs and factors, based on reasonable estimates at the time the award was made, making the already publicly available information more relevant for transparency purposes.

80. DWP confirmed that it did not include the following public interest arguments in favour of disclosure as it did not deem them relevant:
- Promoting public understanding: The disclosure of the pricing information does not help the public understand any obligations or rights which apply to it or add to any contract.
 - Promoting involvement in the democratic process and furthering debate on an issue of public interest: The information does not relate to a widespread or significant policy decision and the costs paid for these limited services are not a specific matter of public debate to DWP's knowledge.
 - Increasing awareness with respect to wrongdoing: There is no suspicion of wrongdoing including any suspicions around the procurement of the services, and the information does not relate to the conduct of the procurement process.

Public interest in favour of maintaining the exemption

81. DWP explained that there is a public interest in maintaining the exemption, as doing so ensures a competitive market environment for the procurement of these type of services. DWP considered that it is in the public interest to ensure the supplier is able to compete fairly and competitively in future procurements for government contracts and that DWP itself can procure services which deliver value for money by conducting competitive procurements.
82. DWP considered that arguably more relevant value information with respect to the Payment Exception Service contract is already in the public domain, and the information requested is therefore unlikely to promote the transparency or accountability aim in any meaningful way. DWP considered that there is therefore no compelling public interest argument for disclosure of the information requested, in line with the decisions in *Coombs v Information Commissioner* and the *University of Cambridge EA/2021/0127* (paragraphs 68 and 80) and *Jackley v Information and the Department for Work and Pensions EA/2016/0082* (paragraph 26-30).
83. DWP explained that, as set out above, disclosure of the requested information could severely prejudice I-movo's and DWP's commercial interests, particularly I-movo's ability to compete fairly and competitively under the G-Cloud 13 and Payment Solutions 2 frameworks, given the relevance of the information to the competition process under such frameworks.
84. DWP explained that taking into account the severity of harm to I-movo and DWP and the significant likelihood of prejudice occurring in the

circumstances, the importance of ensuring fair and competitive competition, and the fact that substantial information was already available to facilitate public scrutiny, there is a compelling public interest argument for maintaining the exemption in the circumstances.

85. DWP considered that this view is supported by the decision in *Michelle Currie v the Information Commissioner and Department for Education EA/2021/0368*, where it was found that there is a substantial public interest in withholding disclosure of information to ensure fair and competitive competition processes, especially in cases where information was already publicly available to facilitate public scrutiny of the procurement process.
86. DWP confirmed that on the basis of the above, it is of the view that the public interest in maintaining the exemption is significantly stronger than the public interest in disclosure.

The balance of the public interest

87. The Commissioner understands why the complainant is seeking the specific information requested, they have been unwillingly moved to a pension payment system that is less convenient for them on the basis that it is more cost effective. The Commissioner acknowledges why the complainant would wish to receive the cost per payment so that they can understand how much has been saved by migrating them to the new system.
88. However, the Commissioner also accepts DWP's position that the information in isolation does not necessarily fulfil the wider public interest in understanding why DWP would undertake a change in the process of paying those who cannot access a bank account. The individual payment amount does not give an adequate insight into the overall cost to DWP of administering this process. Therefore the requested information may appear to show only a minimal benefit, or potentially no benefit, to DWP on an individual payment basis when the complete picture shows that this is magnified by the number of people undertaking weekly withdrawals.
89. The Commissioner is also aware that a per payment cost is not the only cost associated with the process as evidenced by the fact that DWP was unable to provide this cost in relation to the previous contract.
90. The Commissioner therefore considers that whilst there is a public interest in transparency and accountability of public sector contracts and the costs associated with them, this is weakened by the limited scope of the requested information.

91. The Commissioner considers that there is a clear public interest in ensuring that the commercial interests of private companies are not harmed and that fairness of competition is not undermined. Disclosure of the information in question would therefore be against the public interest as it would be likely to harm I-movo's commercial interests when competing for contracts and DWP's commercial interests when tendering for this type of contracted services.
92. In light of the information already in the public domain regarding the contracts in question and the limited understanding that the specific requested information would add to this, the Commissioner considers that the public interest in maintaining the exemption outweighs that in disclosure.
93. The Commissioner therefore considers that DWP is entitled to withhold the information falling within the scope of the second request on the basis of section 43(2).

Procedural matters

Section 10: Time for compliance

94. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled, subject to the exemptions:
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to them.
95. Section 10(1) of FOIA provides that public authorities must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
96. As DWP confirmed that it did not hold the information falling within the scope of the first request until the Commissioner's investigation, outside the statutory time frame of 20 working days, DWP has breached section 10(1) of FOIA.

Other matters

97. As set out above, the Commissioner is disappointed that DWP did not adequately determine exactly what information was held before issuing its original refusal notice.

98. The Commissioner has already raised this issue with DWP in his practice recommendation dated 23 March 2023¹⁴.
99. The Commissioner notes that this request was handled by DWP prior to the issue of this practice recommendation and the Commissioner therefore expects that DWP's improvements in request handling will become apparent via the requests handled after this recommendation was issued.

¹⁴ <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4024647/department-for-work-and-pensions-practice-recommendation.pdf>

Right of appeal

100. 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

101. 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.

102. 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
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