

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 October 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 about a hypothetical State Pension High Income Charge (SPHIC). The Department for Work and Pensions ("DWP") stated that it did not hold information within scope of the request.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, DWP does not hold information within scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 15 April 2023, the complainant wrote to DWP via WhatDoTheyKnow and requested information in the following terms:

"Re: Questions relating to revenue raised by a hyperthetical [sic] State Pension High Income Charge (SPHIC), one similar to Child Benefit HIC (CBHIC). Preamble: To cite HMRC Child Benefit Statistics Small Area Data 2016 Appendix A: "Child Benefit (CB) was introduced in 1977. It

replaced Family Allowance, which was a benefit payable to families with 2 or more children whereas CB includes all families with 1 child or more. CB is designed to help with the extra costs of bringing up a child. It is a benefit payable to all qualifying parents/guardians in the United Kingdom. From January 2013, if a claimant of CB or their partner has an individual income of more than £50,000 per year, they will be liable to repay some or all of their Child Benefit due to the introduction of the High Income Child Benefit charge. Claimants affected by the High Income Child Benefit charge [(CBHIC)] have the option to opt-out of receiving Child Benefit." To further cite cm199899/cmselect/cmsocsec/114/144a02.htm - "The objective of Child Benefit is to make a contribution towards the cost of a child. Take-up of the benefit is consistently above 98 per cent of eligible families." "As a largely universal, fixed rate benefit, Child Benefit is relatively cheap to administer and achieves a high rate of accuracy in decision making." This FOI request was originally made on 02/03/2023 to HM Treasury ref: FOI2023/04347. Here (Q8), (Q9) and (Q10) are additions. Additional preamble starts here. The state pension is taxable income by ITEPA 2003 ss 577, 578. "The Welfare Reform and Work Act 2016 reduced the level of the 'benefit cap' to £23,000 per annum (£442.31 a week) for a family or lone parent in Greater London and £15,410 (£296.35 a week) for single childless claimants. Outside of London the rate is £23,000 for a families and £13,400 for single claimants." "Stat-Xplore provides a guided way to explore DWP benefit statistics", but groups all claimants with income above £2,000 a week into one category, preventing analysis of state benefits paid to the wealthiest.

(Q1) How many recipients of the State Pension have an individual income of more than £50,000 a year, using the same basis as CBHIC (adjusted net income)?

(Q2) How many recipients of the State Pension have an individual income, excluding the State Pension itself, of more than £50,000 a year, using the same basis as CBHIC (adjusted net income)?

(Q3) How many recipients of the State Pension have an individual income of more than £1,000,000 a year, on the same basis as CBHIC (adjusted net income)?

(Q4) What is the cost to the Treasury of the payments made to those recipients identified in (Q1), (Q2) and (Q3)?

(Q5) If State Pension payments where [sic] tapered at 1% for each £100 of income above £50,000 a year, that is on the same basis as the CBHIC, what would be the annual cost saving to the Treasury? An

estimated answer would be perfectly acceptable.

(Q6) Are any internal papers on such a charge available? If so please publish copies.

(Q7) Is the internal working name of any such charge the State Pension High Income Charge?

(Q8) If the "benefit cap" limits rather than Child Benefit HIC limits were applied across all income for any such hypothetical State Pension High Income Charge what would be the reduction in cost to the Treasury?

(Q9) If the "benefit cap" limits were applied across all income for DWP benefits to all recipients what would be the reduction of cost to the Treasury?

(Q10) If the State Pension were [sic] paid net (where the DWP would operate PAYE) and not gross (gross where tax is typically paid next month from private pension PAYE deductions from those with private pensions) what would be the reduction of cost to the Treasury?

Should resources constrain your answer, please prioritise (Q5) an estimate of annual cost saving of a SPHIC - a charge similar to the CBHIC but clawing back the State Pension from High Income individuals."

5. DWP responded on 9 May 2023. It stated that it did not hold information within scope of the request.

6. On 16 June 2023 the complainant requested an internal review. Within their request they modified part (3) of their request:

"In this case I would be willing to accept an answer to a slightly simplified (Q3) How many recipients of the State Pension have an income in excess of £100,000 a year"

7. The complainant also asked for advice and assistance on how to modify their request so that it was successful. Finally, the complainant asked:

"And if DWP does not think it holds this information or can not find it, then a possible further question may well be "Why does it not?""

8. Following an internal review DWP wrote to the complainant on 20 June 2023. It stated that it was maintaining its position. DWP further explained:

"Analysts in the department explored the option of modifying the

request to focus on only one of the question you asked however as we do not hold the information requested concluded that these could not be answered. In addition, the option of providing estimates was also explored and it was determined that this would exceed the cost limit.”

Scope of the case

9. The complainant contacted the Commissioner on 4 July 2023 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, on the civil standard of the balance of probabilities, DWP holds information within scope of the request.

Reasons for decision

11. Section 1 of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(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 him.”

The complainant’s position

12. In their grounds of complaint the complainant stated:

“The Department for Work and Pensions (DWP) administers the State Pension (non-means tested) as well as the Pension Credit (means tested). It also reports extensive statistics on the income of various recipients of benefits, including those with income in excess of £2,000 a week as a single category. It [sic] therefore difficult to accept that the DWP does not hold the information I requested, particularly on internal review when I simplified my request to the following: “In this case I would be willing to accept an answer to a slightly simplified (Q3) How many recipients of the State Pension have income in excess of £1,000,000 a year. That might be a good place to start.” Any individuals in receipt of income in excess of £1,000,000 a year would receive in excess of £19,000 a week and would be included in the £2,000 a week category. Since DWP must know to some extent the breakdown of those included in the excess of £2,000 a week category, not to provide any information does not seem to be a valid reply.”

DWP's position

13. In correspondence with the Commissioner, DWP explained that a 'hypothetical State Pension High Income Charge (SPHIC)' is not an existing DWP policy or one that it has considered, therefore there is no readily available workings which could be used to answer the questions contained in the request.
14. DWP considered whether it may have been possible to answer questions (1) to (3) of the request, with a view to provide the complainant with advice and assistance on how to refine their entire request such that DWP would be able to provide a response.
15. DWP first consulted with its Pensioners' Income specialists who advised that there was no readily available data which could be used to answer the questions contained in the request.
16. DWP then considered whether it could extract information from across its databases. Two data experts suggested that it may have been possible to provide a response using data contained in the Family Resource Survey ("FRS"). However, after consulting with the FRS team to understand whether it would be possible to provide an answer to questions (1) to (3) as written in the request, the team advised that this would require a new piece of analysis that necessitated specialist knowledge and building of new code in order to organise the data from scratch. The team concluded that it would be highly unlikely to be able to provide responses to the questions in the request within the time and cost limit prescribed in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.¹
17. DWP therefore concluded that information within scope of the request was not held as the hypothetical policy had not been considered by the Department, and it would not be possible to answer the descriptive questions which relate less to the hypothetical policy without specialist manipulation of the raw data or exceeding the cost limit.
18. In respect of questions (6) and (7) of the request, the Commissioner asked DWP to outline searches it had undertaken to locate any information within scope. DWP stated that verbal consultation with policy colleagues confirmed that no such policy had been considered, and therefore there are no internal papers regarding such a policy, or any working name.

¹ <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

The Commissioner's position

19. The Commissioner is satisfied that, on the civil standard of the balance of probabilities, DWP does not hold information within scope of all parts of the request.
20. The specific wording of the request at questions (1) to (3) is for the number of state pension recipients with adjusted net incomes over specific thresholds, and questions (4) is dependent on the answers to these questions. The Commissioner infers that these parts of request are based on an assumption that DWP holds a central repository of income information for all persons drawing their state pension. However, DWP has explained that this is not the case.
21. As the complainant has not directed the Commissioner to specific data on Stat-Xplore, he has reviewed the information available in the latest Family Resources Survey for the financial year 2020/2021. The data tables for 'Households by composition and total gross weekly household income, 2021 to 2022²' are broken down into weekly increments of £200; from 'under £200 a week' up to '£2000 or more'. The data shows the percentage of households comprised of one 'adult male over State Pension age' or one 'adult female over State Pension age' with a total gross weekly income at each income band. The Commissioner asked DWP to provide a response to the complainant's assertion that "DWP must know to some extent the breakdown of those included in the excess of £2,000 a week category". DWP stated:

"The income data within Stat-Xplore, that the FoI issuer refers to, is based on the Family Resource Survey (FRS). The FRS section of StatXplore [sic] sets incremental bands so as to minimise the chance of any band having less than thirty respondents within it. This limits the possibility of respondents becoming identifiable. This practice is consistent with other publications based on surveys."
22. The Commissioner is not positioned to comment on the manner in which DWP runs its surveys, however he considers it reasonable and prudent for DWP to arrange the data in such a way that reduces the risk of a personal data breach (ie in incremental bands to reduce risk of identification through small numbers). As a result of how the data is arranged, the Commissioner considers it unlikely that DWP already holds

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https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F1145350%2Fc2-income-state-support.xlsx&wdOrigin=BROWSELINK

a breakdown of how many recipients of the state pension have an individual adjusted net income above the thresholds given by the complainant at questions (1) to (3).

23. Furthermore, as the information readily available on Stat-Xplore has been collected via surveys conducted with participating members of the public³, any income data shown is representative rather than an accurate reflection of all State Pension recipients.
24. The Commissioner accepts that the processes required to satisfy questions (1) to (4) of the request would constitute a bespoke piece of work. He accepts that this would require specialist knowledge and the building of new code to manipulate and then analyse the raw data contained in the FRS in order to present it in a manner meeting the requirements of the request. It would not be a simple case of re-presenting existing information already held by DWP as a by-product of responding to an information request.
25. He also considers that as questions (5), (8), (9), and (10) are asking DWP to perform cost analysis based on a variety of hypothetical scenarios that it has not already considered, this would also constitute bespoke work. DWP is not required to run bespoke analysis in order to answer the request, and the Commissioner considers that to do so would amount to the creation of new information.
26. The Commissioner is satisfied that as the information requested concerns a hypothetical policy that the complainant has proposed, rather than a policy that DWP has already developed, DWP does not hold any existing documentation that would fall within scope of questions (6) and (7) of the request.
27. Finally, in respect of the question raised by the complainant in their request for internal review⁴, the Commissioner would like to remind complainants that FOIA covers the provision of recorded information and does not require public authorities to provide opinions or explanations, generate answers to questions, or create or obtain information it does not hold.

³ The information available on the 'Family Resources Survey: background information and methodology' page gives an overview of how the data was obtained - <https://www.gov.uk/government/statistics/family-resources-survey-financial-year-2020-to-2021/family-resources-survey-background-information-and-methodology#population-and-sample-selection-methodology>

⁴ "And if DWP does not think it holds this information or can not find it, then a possible further question may well be "Why does it not?""

Right of appeal

28. 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

29. 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.
30. 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

Jonathan Slee
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Information Commissioner's Office
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