

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 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 information on the easements the Department for Work and Pensions (DWP) introduced during the Covid-19 pandemic.
2. The Commissioner's decision is that DWP is not entitled to rely on section 14(1), vexatious requests, to refuse to comply with the request.
3. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation:
 - Provide a fresh response to the request that does not rely on section 14(1) of FOIA.
4. The public authority must take these steps within 30 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.

Background

5. The complainant originally requested information in the following terms:

"A number of policy and operational changes (known as easements) were introduced by DWP as a result of COVID-19 to deal with the number of new claims and with capacity restraints.

Please provide a comprehensive list of these easements. The list should include a summary of each easement, the start and – if applicable – end dates of the easements, and (if the information can be provided within the time limit) links to materials publicising the easement (such as a memo, or a link to the gov.uk page on which information about the easement had been included). If this information appears within a single document then please provide the document in full”.

6. DWP responded and refused to comply with the request as it would exceed the appropriate limit provided at section 12(1) of FOIA. DWP provided advice on how to refine the request.
7. The complainant subsequently refined their request to the following:
“I would like to accept your suggested framing of the request. Please provide information in relation to the easement name, easement description, start date and end date”.
8. DWP disclosed this information.
9. The complainant then submitted their request which is the subject of this notice.

Request and response

10. On 9 January 2024, the complainant wrote to DWP and requested information in the following terms:

“A list of easements has previously been provided:

https://www.whatdotheyknow.com/request/covid_19_easements/response/2444397/attach/4/DWP%Easements%20list%201.pdf

I assume that the information already provided was extracted from a more detailed spreadsheet.

It would be useful for there to be more information in the public domain about each of the listed easements.

Please provide the full spreadsheet from which the list of easements was extracted”.

11. DWP provided its response on 1 February 2024 and refused to comply with the request on the basis of section 14(1), vexatious requests. DWP explained that this was because of the amount of time required to review and prepare the information for disclosure would impose a

grossly oppressive burden on the organisation. DWP stated that this is because of the large volume of easements and each easement entry, which covers all benefits and operational areas of DWP, would have to be checked in detail by multiple policy, strategy and operational areas. DWP also explained that a large number of the easements that were in place are now closed as it has moved back to normal business following the pandemic.

12. DWP advised the complainant that they may wish to focus their request to a more detailed description of the easements that are currently live.
13. The complainant requested an internal review on 1 February 2024 and disputed that the request would cause a gross oppressive burden which would engage section 14(1). They also considered that the historical nature of the easements did not mean that they were no longer relevant to DWP's decision making. The complainant provided the example of DWP decision makers "refusing to supersede awards to include [the Limited Capability for Work Related Activity] elements on the basis that medical certificates have not been provided despite the fact that easements were in place during the period in question stating that medical certificates did not have to be provided".
14. DWP provided the outcome of its internal review on 28 February 2024 and upheld its position that section 14(1) is engaged. DWP further explained that the information covers the wide range of service delivery and during the unprecedented time, Covid-19 presented multiple complex scenarios. DWP explained that there were many stakeholders, departments and partners involved in the formulation, approval and implementation of these easements that were put into place at pace in response to the Covid-19 pandemic. DWP stated that it would be burdensome to commit the many resources required to revisit these easements, particularly those that are no longer in place.
15. Regarding the complainant's example of how easements were no longer being included in decisions, DWP took this as a fresh request for information rather than evidence of the public interest in disclosure of the requested spreadsheet. DWP provided guidance used by Work Coaches.

Scope of the case

16. The complainant contacted the Commissioner on 28 February 2024 to complain about the way their request for information had been handled. Specifically, they disputed that the request imposed such a burden as to engage section 14(1).

17. The Commissioner therefore considers that the scope of his investigation is to determine whether DWP is entitled to rely on section 14(1) to refuse to comply with the request.

Reasons for decision

Section 14(1): Vexatious requests

18. Section 1(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 [them]".

19. Section 14(1) of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".

20. The term "vexatious" is not defined within FOIA. However, the First-Tier Tribunal in *Salford City Council v ICO and Tiekey Accounts Ltd* (EA/2012/0047) held that a request could engage section 14 purely because the burden of complying with that request would be grossly oppressive and that:

"a disproportionately high cost would be incurred for any minimal public benefit flowing from disclosure".

21. The Commissioner's guidance¹ advises public authorities to rely on section 12 of FOIA when refusing burdensome requests wherever possible. However, he recognises that there will be a small number of cases where a public authority can identify and extract information within scope reasonably quickly so section 12 cannot be cited, but where responding would nevertheless impose a grossly oppressive burden. Generally, this will be due to the time that the public authority believes it will be necessary to spend on work relating to citing exemptions from

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

part II of FOIA and separating exempt information from disclosable information. Time spent on such work cannot be taken into account in relation to section 12.

22. The Commissioner considers that such a situation is likely to occur where:

- The request has asked for a substantial volume of information; **and**
- The public authority has real concerns about potentially exempt information, which it will be able to substantiate; **and**
- Any potentially exempt information cannot be easily isolated because it is scattered throughout the requested material.

23. There is no time or cost limit which determines whether section 14 is or is not engaged. The Tribunal in 'Salford' considered that the £600 limit, the equivalent of 24 hours of staff time which is applied in relation to section 12, was "helpful in considering whether the scale of costs might be proportionate". However, the Commissioner considers that it should not be assumed that a burden which exceeds £600 would be grossly oppressive where there is a significant public interest in disclosure of the requested information, the burden that a public authority would be expected to accept will be higher and there is therefore a balance to be struck between the burden of complying with a request and the public interest in complying with a request.

DWP's arguments

24. DWP explained that it was relying on section 14(1) as it considered that it would be too burdensome to release the information requested as doing so would require it to contact many and multiple policy, strategy and operational teams across service lines to check each easement entry for the information held. DWP stated that each easement would have to be reviewed by many different information owners and stakeholders who are working in devolved directorates.

25. DWP considered that reviewing the easements would also require many people checking emails and minutes of meetings going back to the formulation stage, prior to when the easements were put in place. DWP explained that, due to the time that has since passed, much of this information would no longer exist and many staff are no longer in the roles they were in in 2020 due to internal movement, career progression, retirement and so on.

26. DWP considered that the amount of time required to review and prepare the information for disclosure or redaction would impose a grossly

oppressive burden. DWP explained that this is because there are 210 easements on the list, including those that are no longer in place and the easements span all Service Delivery areas of DWP. DWP set out that some easements were operations driven and some were policy driven and 64 of the 210 easements required Ministerial approval. DWP explained that the many stakeholders, teams and policy areas who were involved in the formulation, approval and implementation of each of the easements are located in devolved areas across the organisation. DWP confirmed that there are over 200 policy teams within DWP.

27. DWP explained that in estimating the time, it had looked at a range of activities and estimated how long it would take to review all 210 easements. DWP stated that it had estimated that the time required to comply with the request would be a conservative seven working days.
28. DWP stated that as a bare minimum, if each review took each stakeholder five minutes, this would result in a total time of seven working days, twice the appropriate limit provided at section 12(1). DWP stated that, realistically, it would anticipate that reviewing a large proportion of easements would take significantly longer than five minutes. DWP explained that this estimate does not include any of the considerable additional administrative activities that would be required to comply with the request.
29. DWP considered that a conservative average of three stakeholders per easement would need to review from their areas of expertise. DWP also stated that, in turn, some of these stakeholders may have to consult with other colleagues.
30. DWP set out its calculations as five minutes per easement to review would take 17.5 hours, multiply that by three stakeholders per easement would result in a total of 52.5 hours. As a working day is 7.4 hours, DWP estimated that complying with the request would take a total of 7.09 working days.
31. DWP explained that an estimate of the required tasks to review each easement would include the following:
 - The administration surrounding identifying and locating relevant stakeholders per easement (these stakeholders may have moved on to different roles or may have left DWP).
 - Extensive administration required to write to potentially 630 stakeholders with a request to review.
 - Expert/stakeholder review. Stakeholders would need to examine historical information in emails (which may have since been deleted), background decision making, minutes, notes etc. This

would take a substantial amount of time that is difficult to quantify.

- Further administration required to follow up and collate stakeholder responses.
 - Undertake full redaction to remove personal information and any other information identified by stakeholders.
32. DWP provided the Commissioner with a sample easement which it considered showed a minimum of seven people who would each need to review the easement. DWP stated: "Significant activity to administer this easement involved working across boundaries and included negotiation with another Government department outside DWP".
33. DWP explained that diverting approximately 630 resources to complete a detailed assessment of each of the easements would place a disproportionate burden on it. DWP explained that this burden comes at a time when departmental resources are stretched due to increased demand resulting from the current economic situation and headcount limitations.
34. DWP explained that it took approximately three working days to sift and extract the information that it provided to the complainant in response to the preceding request. DWP set out that the complexity in doing this was due to the number of lines that needed to be checked for start and end dates and to ensure that the information shared was accurate.
35. DWP explained that the information was needed from multiple stakeholders, some of which were responsible for commenting on a single easement.
36. DWP stated: "In simple terms, it took approximately 1 working day to confirm and identify stakeholders and request the information, 1 working day to compile the information received and 1 working day to review the list for accuracy and consistency".

The Commissioner's position

37. The Commissioner considers that DWP has not demonstrated that complying with the request would have imposed a burden which was grossly oppressive.
38. The Commissioner considers this to be an unusual case, not least because unlike in many cases where a public authority has sought to rely on section 14(1) of FOIA, DWP had previously disclosed some of the information falling within the scope of the request. Furthermore, the three criteria set out at paragraph 22 above do not necessarily provide a

perfect framework for providing a clear or simple answer as to whether the request was vexatious. Nevertheless, the Commissioner does consider them useful in guiding his decision.

39. In relation to the first criterion, whilst the Commissioner accepts that information held within the requested spreadsheet, ie 210 easements, is not an insignificant amount of information, he is not convinced that this is necessarily a substantial amount of information. In other cases, where public authorities have sought to rely on section 14(1) of FOIA on the basis of burden the information has extended to several hundred, if not thousands of pieces of paper. The Commissioner considers it unlikely that the same can be said for the information in the scope of this request.
40. In relation to the second criterion, the Commissioner accepts that DWP had genuine concerns about redacting the personal data contained within the easements that would engage section 40(2). However, he does not consider that this would be difficult to locate. DWP has not provided any indication of what further exemptions it considers are likely to be engaged or the extent to which redactions would need to be made. DWP provided the Commissioner with an example of an easement however this did not include whether it considered information would be exempt beyond stating that it contained personal data.
41. In terms of the third criterion, in light of the lack of detail on what information DWP considers will be exempt, the Commissioner cannot determine that this information would be difficult to isolate.
42. On the basis of DWP submissions, it appears that DWP is basing its calculations on locating who would need to review each easement and searching for information relating to each easement.
43. As set out by DWP, a significant part of the estimate relates to multiple stakeholders undertaking reviews of the easements. DWP stated that the sample provided shows a minimum of seven people would need to review the easement, however, the sample includes only five named people and DWP has not provided any reasoning for why they would all be required to review the same information.
44. With regards to DWP's inclusion of searching for information held in its estimate, it is not apparent why this task would be necessary. The requested information is the spreadsheet from which the previously disclosed information was extracted. DWP is not required to add to this or locate further information regarding the easements contained within to fulfil the request.

45. The Commissioner notes that the time stated by DWP to provide the information in the previous request includes one working day to confirm the accuracy and consistency of the information. The Commissioner has confirmed to DWP previously that this activity is not required under FOIA and, whilst DWP may wish to undertake a check, this should not be included in the cost or burden of complying with a request.
46. In view of the non-essential activities that DWP has included in its calculations and the lack of detail regarding the redactions it anticipates would be required, the Commissioner has difficulty accepting that the estimate is robust.
47. The Commissioner considers that the request has a clear value as it allows scrutiny of how public bodies reacted to the global pandemic and any learning from this is clearly in the public interest.
48. The Commissioner is concerned that DWP appears to consider that some of the information is no longer of value to the public due to the change in circumstances now that Covid-19 restrictions have been removed. The Commissioner considers that scrutiny of how DWP reacted to the restrictions and ensured that benefits claims continued to be processed in spite of the inability to conduct face to face assessments and difficulties providing medical evidence is clearly of significant public interest.
49. The Commissioner accepts that responding to the request would require DWP to spend time considering and applying exemptions. However, his view is that DWP has not provided persuasive arguments that this would be grossly oppressive. Combined with the clear public interest in complying with the request, the Commissioner considers that the request cannot be characterised as vexatious and therefore section 14(1) is not engaged.

Right of appeal

50. 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

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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