

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

### **Decision notice**

**Date:** 13 September 13, 2024

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1A 9NA

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

---

1. The complainant has requested information from the Department for Work and Pensions (DWP) relating to the 'In work progression offer' phased roll out to people on Universal Credit. DWP stated that it did not hold some of the information requested. It applied sections 35(1)(a), formulation or development of government policy, and 21, reasonably accessible to the applicant, to the remainder of the information.
2. The complainant has not challenged the application of section 21 or DWP's position that it does not hold some of the information. The Commissioner has therefore not addressed either of these in this decision notice.
3. The Commissioner's decision is that section 35(1)(a) is engaged for the withheld information and the public interest lies in maintaining the exemption.
4. The Commissioner does not require further steps.

#### **Background**

---

5. In the Autumn 2022 statement the Chancellor announced plans to bring forward the nationwide rollout of "in work progression" with a phased

rollout from September 2023. In its Impact assessment 'Equality Analysis: In-Work Progression Offer'<sup>1</sup> published 17 April 2023 DWP said:

"Claimants in the Light Touch conditionality group will start to have requirements placed on them to engage with the in-work progression offer. Attending Work Focussed Interviews and undertaking activities to increase their chances of progressing in work will become mandatory, in a phased approach starting from September 2023. The offer will remain voluntary for claimants in the Working Enough group.

The September 2023 start date will allow the department time to prepare for the change, including embedding the voluntary in-work offer and provide time to recruit and train the staff needed to deliver the new offer."

## Request and response

---

6. On 3 September 2023, the complainant wrote to DWP and requested information in the following terms:

"During the Autumn budget the chancellor announced there would be a phased rollout of the in-work progression offer to 600,000 Universal Credit claimants that are in work whose household income is typically between the equivalent of 15 and 35 hours a week at the National Living Wage.

Please can you provide a detailed schedule of this rollout? Has the DWP revised its estimate of 600,000 claimants since the announcement was made during the 2022 Autumn Statement?

How many of the 600,000 claimants are women and how many are disabled? Other than meeting with a dedicated work coach what will these claimants be required to do? Will these claimants have to meet a work coach in person? If an employer refuses to give an affected employee time off to speak to a work coach will they be subject to a benefit sanction?

If meetings can be done by video or phone, what provision has DWP put in place for those claimants who do not have access to a phone or computer during work time? What efforts have been made to speak to Trade Unions about these changes? What efforts have been made to speak to employers/employer associations about these changes?

---

<sup>1</sup> [Equality Analysis: In-Work Progression Offer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114422/equality-analysis-in-work-progression-offer.pdf)

This policy change is due to start this month so have the claimants affected been contacted by letter or electronic means?"

7. DWP responded on 29 September 2023. It stated that DWP held information within the scope of the request, however, it needed more time to consider aspects of the request.
8. DWP provided a response on 29 September 2023. It stated that it did not hold some of the information requested, it applied section 35(1)(a), formulation or development of government policy, and section 21, reasonably accessible to the applicant, to the remainder of the information.
9. In its refusal notice DWP provided a link to information that had been put into the public domain via a parliamentary question since the request was made. It said "We are providing this outside our obligations under the FoI Act, as it may provide more context on the overall information you are after."<sup>2</sup>
10. Following an internal review DWP wrote to the complainant on 30 November 2023 in which it maintained its original position.

### **Scope of the case**

---

11. The complainant contacted the Commissioner on 10 January 2024 and challenged the decision to withhold information on the basis of section 35(1)(a) of FOIA.
12. The Commissioner considers the scope of his investigation is to determine whether DWP is entitled to rely on section 35(1)(a) to withhold the disputed information.
13. The complainant has not challenged the application of section 21, therefore, it has not formed part of the Commissioners investigation.

### **Reasons for decision**

---

#### **Section 35(1)(a) – formulation or development of government policy**

14. Section 35(1)(a) of FOIA states that: "Information held by a government department or by the Welsh Assembly Government is

---

<sup>2</sup> [Written questions and answers - Written questions, answers and statements - UK Parliament](#)

exempt information if it relates to - (a) the formulation or development of government policy”.

15. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.
16. The Commissioner takes the view that the ‘formulation’ of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a minister or decision makers.
17. ‘Development’ may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
18. Ultimately whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the precise context and timing of the information in question.
19. The Commissioner’s guidance on section 35 includes examples of different processes that might involve formulation of policy including White Papers, bills and the legislative process. It also considers that the following factors will be key indicators of the formulation or development of government policy:
  - The final decision will be made either by the Cabinet or the relevant minister;
  - The Government intends to achieve a particular outcome or change in the real world; and
  - The consequences of the decision will be wide ranging

#### DWP’s position

20. For context, in the Autumn 2022 statement the Chancellor announced plans to ‘bring forward the nationwide rollout of “in work progression” with a phased rollout from September 2023. On 17 April 2023 DWP published its ‘Equality Analysis: In-Work Progression Offer’. The analysis states “The policy and the impacts, including continuous improvements as set out in this assessment will be reviewed during design and implementation stages”.
21. DWP explained that, at the time of the request, Senior Officials were in discussion with Ministers regarding the balancing of departmental

priorities. It went on to say that it is and was, at the time of the request, in the development stages of policy design, developing options and different approaches which will then be put forward to Ministers.

22. DWP went on to say due to the recent announcement of a General Election and the decision to prioritise other policies, there is still not an agreed, finalised policy. It explained that should there be a change in direction of the policy, due to a change in government or not, it could decide to not continue with the offer. Therefore, if it were to release more specific information, as set out in the request, and that shared at the budget announcement, it could increase confusion and cause for concern where no change may even occur.

#### The complainant's position

23. The complainant does not accept that the exemption was engaged because the information they have requested was announced during the Spring budget or Autumn Statements and therefore is a complete policy and in the public interest.

#### The Commissioner's position

24. The Commissioner's guidance<sup>3</sup> on section 35 states that:

"The term 'formulation' of policy refers to the early stages of the policy process where options are generated and analysed, risks are identified, consultation occurs, and recommendations or submissions are put to a Minister who then decides which options to translate into political action.... The classic and most formal policy process involves turning a White Paper into legislation. The government produces a White Paper setting out its proposals. After a period of consultation, it presents draft legislation in the form of a bill, which is then debated and amended in Parliament. In such cases, policy formulation can continue all the way up to the point the bill finally receives royal assent and becomes legislation."

25. The Commissioner has reviewed the withheld information and the arguments provided by the DWP. He is satisfied that the information relates to the stated policy, and at the time of the request was in the formulation or development stage.
26. The Commissioner accepts that, whilst a statement has been released relating to this policy and its roll out, DWP had not finalised the policy and the disputed information relates to this policy in development.

---

<sup>3</sup> [Section 35 - Government policy | ICO](#)

27. The Commissioner is therefore satisfied that the withheld information falls within the scope of the exemption contained at section 35(1)(a).
28. As section 35(1)(a) is engaged, the Commissioner will go on to consider the balance of the public interest.

### **Public interest test**

29. Section 35(1)(a) is a qualified exemption and is therefore subject to the public interest test. The Commissioner has considered the context of the information in order to determine whether the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.

### **The public interest arguments in favour of disclosure**

30. DWP acknowledged that transparency is necessary in order to assist claimants and stakeholders understanding of what DWP will expect from them in the future. It recognises that there may be an impact as to the frequency or method they will be expected to interact with the benefit system.
31. DWP further acknowledged the significant interest from representative groups as they will need to assess how any changes might affect their respective group.
32. The complainant considers that as the announcement about a 'phased roll out' has been announced the policy is complete and, therefore, it is in the public interest for the details about who the policy impacts to be shared publicly.

### **Public interest in favour of maintaining the exemption**

33. DWP explained to the Commissioner that it was mindful that the premature disclosure of any government policy, procedure or otherwise, could have the potential to lead to the release of incomplete information that could easily change whilst under development and thus have the potential to lead people to draw incorrect conclusions which could then lead to unnecessary distress. To do this would not be the actions of a responsible government. DWP therefore argued that it was important to ensure a safe space is protected for this detailed policy making, and to ensure that full equality and impact analysis can be completed before sharing this information more widely.
34. Furthermore DWP explained that sharing information prematurely could lead to people making their own conclusions about what is expected of them resulting in sanctions.

35. DWP explained to the Commissioner that, given the risk to individuals in the case of misinterpretation, it is keen to remove all risk of confusion in any external communications during the development phase.
36. As stated previously, DWP explained to the Commissioner that at the time of the request and, as of today, no formal decision by either Senior Officials or Ministers has been made about the aspects covered in the request.
37. DWP explained that "Given the fluid nature of the development of this policy, the potential adverse impact on vulnerable claimants and the sensitivities of releasing early proposals before decisions are made by Ministers we believe that the public interest is best served by withholding the information requested until we have fully developed and agreed with Ministers what we expect claimants to do, when and the consequences of failing to do so."

### **Balance of the public interest test**

38. The Commissioner appreciates that this policy and how it will impact benefit recipients is a matter of considerable interest to a range of stakeholders and one that involves balancing a range of competing demands.
39. The Commissioner notes that 'safe space' arguments will be at their strongest when the matter is still 'live' and in this case the development of this policy was, at the time of the request, and remains a 'live' issue. Which is further supported by the content in the withheld documents provided to the Commissioner.
40. The Commissioner accepts that significant weight should be given to safe space arguments - ie the concept that the government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction where the policy making process is live and the requested information relates to that policy making. Officials and ministers therefore need space to consider a range of policy issues, in a free and open way.
41. The Commissioner considers that DWP has provided compelling arguments that premature release of information relating to this policy would have a detrimental effect on claimants and stakeholders, including vulnerable people.
42. DWP have stated that when, or if, the policy is finalised then appropriate communications will be provided to people affected. To mitigate the public interest during the policy development process DWP has made information available to the public where possible.

43. Furthermore DWP has published the factual information falling within the scope of the request i.e. the information withheld under section 21. The Commissioner considers this further supports DWP's position that the information which is being withheld is options and/or proposals that have not yet been decided on.
44. The Commissioner's established position is that incomplete information or the potential for misunderstanding is not an argument that carries significant weight. However, in the specific circumstances of this case the Commissioner considers that the potential detrimental impact of releasing an unfinalised policy carries more weight than the argument for disclosure.
45. In the Commissioner's view, the balance of the public interest therefore lies in maintaining the exemption.
46. The Commissioner's decision is that DWP has correctly applied section 35(1)(a) of the FOIA to withhold the information.



## Right of appeal

---

47. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

48. 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.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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