

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

### **Decision notice**

**Date:** 4 November 2024

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

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

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1. The complainant has requested information relating to a change in criteria regarding when to carry out an 'internal process review'.
2. The Department for Work and Pensions (DWP) stated that it did not hold information falling within the scope of the request.
3. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold information falling within the scope of the request.
4. The Commissioner does not require DWP to take any steps.

#### **Request and response**

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5. On 15 March 2024, the complainant wrote to DWP and requested information in the following terms:

"I have been told by the DWP press office that the criteria for when to carry out an internal process review was changed by the department in April 2021.

Please let me see any documents held by the team that made this change which relate to this change of criteria, from 1 January 2021 to 1 May 2021."

6. DWP provided its response on 17 April 2024 and denied holding the requested information. DWP maintained this position at internal review.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 16 May 2024 to complain about the way their request for information had been handled. Specifically, they disputed that DWP did not hold any information falling within the scope of the request.
8. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, DWP holds information falling within the scope of the request.

### **Reasons for decision**

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9. 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 the information described in the request and, if so, to have that information communicated to them.
10. This is subject to any procedural sections or exemptions that may apply. A public authority is not obliged to create new information in order to answer a request.
11. 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 decisions, applies the civil standard of proof – ie on the balance of probabilities.
12. The Commissioner will determine whether, on the balance of probabilities, DWP holds recorded information that falls within the scope of the request.

### **The complainant's position**

13. The complainant's reasons for disputing that no information is held is as follows:

"I have been seeking documents held by the team that made a crucial alteration to the criteria which decides whether a secret internal review is carried out when a claimant of benefits takes their own life. The decision to weaken these rules, so fewer reviews would be carried out,

was taken in April 2021. DWP has previously told me that it has no documents about the decision that were considered by any of its directors, claiming this was because the discussions on the move were "operational in nature as opposed to policy based". But it is now saying it doesn't even have documents held by the civil servants who actually made the decision. I find this astonishing. Either they are withholding the information, or it has been destroyed.

...

I was particularly shocked by this example, though, as the change in policy was so important and so recent (less than three years at the time I made the FOI request). I refuse to believe that nothing about this decision was recorded. If information was recorded, the decision to destroy that information must have been a breach of civil service guidance or even the law."

### **DWP's position**

14. DWP confirmed that it had undertaken searches in the following areas:
  - SharePoint sites used by the Internal Process Review (IPR) team to store all their electronic documents.
  - Legacy file folders, shared folders used by the IPR team prior to migration to SharePoint.
  - Personal one-drives and Outlook accounts of current and former senior members of the IPR team.
15. DWP explained that file by file checks were undertaken of each of the folders where it would be likely that recorded information would be held, should it exist.
16. DWP explained that, following this, full site meta-data searches were undertaken using key words which included:
  - Criteria
  - IPR Criteria
  - Referral Criteria
  - NAO report
  - National Audit Office
  - Changes to IPR

17. DWP explained that these meta-data searches return results where the key words are found within the document as well as the document title.
18. DWP explained that the initial checks were undertaken by a colleague with extensive knowledge of the IPR process and its history, and by using information gathered from other team members to help define possible search parameters. DWP confirmed that individual team members (current and former) checked their own documents and emails, and provided responses to a single contact.
19. DWP confirmed that a second independent check was conducted by another experienced IPR team member as part of the internal review.
20. DWP explained that these searches were the most likely to locate the requested information as the IPR team is a small team that provides a centralised function that covers all DWP service lines. All the documents for the team have been held in an electronic format within restricted access folders. DWP explained that, in recent years, all recorded information held by the team was migrated to SharePoint, the department's file storage system. DWP explained that the locations searched and personal folders are the only places where it would expect to find documents stored that relate to the request.
21. DWP confirmed that it was not aware of any specific information that had been destroyed or deleted that related to the request. DWP explained that this was confirmed in conversations with colleagues responsible for the IPR team during the period covered by the request.
22. The Commissioner raised the complainant's concerns that this was information that should have been recorded and retained. DWP responded:

"It is important to highlight the purpose of IPRs within the department, they are internal reviews that examine the department's interactions with individual customers, despite public misunderstanding they do not investigate the cause of a customer's death. There is no legal requirement to undertake IPR's, and there is no DWP policy that directs that they be completed. They are undertaken at an operational level, and used to support organisational learning and inform continuous improvement activities in areas where our response to a customer's circumstances may not be to the required standard.

In an operational context, many decisions are made daily, often without them being officially recorded in specific documents. These decisions may be taken during a phone conversation, or a meeting and they may be noted in an email to be followed up on, but it is likely that such

emails would not be saved any longer than the time needed to implement any individual decision. It is also worth noting the events occurring at the time in question, the department was still concentrating on supporting citizens during the pandemic and that may have impacted the decision-making process.

We have not been able to establish if recorded information, of the type the complainant is expecting to be held, was ever created, and checks undertaken cannot confirm this. However, if it was created during the period in question, we can confirm that it was no longer held when the original request was received”.

23. DWP provided the following retention periods which demonstrate that if information had been held, it would have been destroyed by the time the request was made:

- Briefings – internal      1 year
- Internal memos            1 year
- Meeting papers            1 year

24. The Commissioner asked DWP to explain how the decision to change the criteria was made and how it was communicated. DWP explained that due to a lack of documentation, turnover of staff and the time that has passed since the period in question, it was not able to provide a detailed response to this. DWP did confirm that the new criteria were posted on its intranet along with the guidance to refer a case for an IPR and that this intranet page was promoted amongst relevant colleagues.

25. The Commissioner requested further explanations regarding why DWP considered that information on this intranet page did not fall within the scope of the request.

26. DWP stated:

“We are not able to determine an exact date as to when any updates were made to the departments Intranet in relation to the IPR criteria or what was held on the page in question during the period covered by the complainant’s request, if the page was in existence at that time.

Information on the page has been updated and amended several times over recent years, but the general content has remained consistent as being a simple statement of what the IPR criteria is and how a referral can be made.

The complainant was clear in [their] original request in that [they] request "... *any documents held by the team that made this change which relate to this **change of criteria**, from 1 January 2021 to 1 May 2021*" [DWP's emphasis]. The information available on the Intranet page neither relates to the actual change in criteria, which is the focus of the complainant's request, nor is it contemporaneous with the period in which the request focuses on.

It is for these specific reasons that we believe that this specific recorded information does not fall within the scope of the request.

Additionally, we would like to advise the Commissioner that the recorded information referred to in this correspondence has been made publicly available on several occasions over recent years, including the 2022-23 (page 68)<sup>1</sup> and 2023-24 (pages 79-80)<sup>2</sup> DWP Annual Report and Accounts. It has also been published by the Work and Pensions Select Committee as part of their recent Safeguarding Inquiry (page 2)<sup>3</sup> and has featured a number of times in published responses to Parliamentary Questions.

Furthermore, this recorded information has previously been provided to the complainant as part of a response to a FoI request sent to them in July 2022.

Therefore, if this information had been deemed as being in scope of the original request made 15 March 2024, we would consider that information is exempt under Section 21(1) of the Freedom of Information Act because the information is reasonably accessible, as it is already in the public domain".

### **The Commissioner's position**

27. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public

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<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1167946/annual-report-accounts-2022-23-web-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1167946/annual-report-accounts-2022-23-web-ready.pdf)

<sup>2</sup> <https://assets.publishing.service.gov.uk/media/669e2ca2ab418ab055592996/annual-report-accounts-2023-2024-web-ready.pdf>

<sup>3</sup> <https://committees.parliament.uk/publications/44445/documents/220916/default/>

authority to check what information was held at the time of the request and any other reasons offered by the public authority to explain why the information is not held.

28. For clarity, the Commissioner is not expected to decide categorically whether information is held, he is only required to make a judgement on whether information is held, on the civil standard of the balance of probabilities. That is, whether it is more likely than not that DWP holds information relevant to the request.
29. The Commissioner considers that DWP has undertaken proportionate and reasonable searches which located no relevant information.
30. The Commissioner understands why the complainant would believe that information was held, however, the Commissioner cannot determine whether information should be held, only whether on the balance of probabilities, it was held at the time of the request.
31. In the specific circumstances of this case, the Commissioner is satisfied that, on the balance of probabilities, DWP holds no information relating to the change in criteria requested.

## Right of appeal

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32. 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)

33. 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.
34. 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**