

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 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 internal guidance for use by teams working on managed migration.
2. The Department for Work and Pensions (DWP) provided the complainant with 19 pieces of guidance and redacted a small amount of this information under section 31(1)(a), prevention or detection of crime.
3. The Commissioner's decision is that DWP has located all information falling within the scope of the request and is entitled to rely on section 31(1)(a) to withhold the redacted information.
4. The Commissioner does not require further steps.

Request and response

5. On 7 May 2024, the complainant wrote to DWP and requested information in the following terms:

"Please provide internal DWP guidance for use by teams working on managed migration."
6. DWP responded on 20 May 2024 and refused to comply with the request on the basis of section 14(2), repeated requests. DWP explained that this was because it had complied with the same request from the complainant in February 2024.
7. The complainant requested an internal review of the handling of their request on 20 May 2024. They explained that the circumstances surrounding the guidance had changed since the last request and therefore the requests were not duplicates.
8. On 17 June 2024, DWP provided the outcome of its internal review. It amended its position and provided 19 pieces of Universal Credit guidance. DWP explained that it had redacted one of the pieces of guidance on the basis of section 31(1)(a), prevention or detection of crime.

Scope of the case

9. The complainant contacted the Commissioner on 15 July 2024 to complain about the handling of their request for information.
10. The complainant raised concerns that DWP may have restricted its interpretation of the request to only the guidance that had been updated since the previous request rather than all guidance in use at the time. They also disputed that section 31(1)(a) was engaged in relation to the redaction of information.
11. The Commissioner therefore considers that the scope of this investigation is to determine whether DWP has, on the balance of probabilities, located all of the information falling within the scope of the request and whether DWP is entitled to rely on section 31(1)(a) to redact part of the requested information.

Reasons for decision

Section 1(1): General right of access to information

12. 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 falling within the scope of the request and, if so, to have that information communicated to them. This is subject to any procedural sections or exemptions that apply. A public authority is not obliged under FOIA to create new information in order to answer a request.
13. Where there is a dispute between the information located by a public authority and the information a complainant believes is held, the Commissioner follows the lead of a number of First-Tier Tribunal decisions and applies the civil standard of proof – ie on the balance of probabilities.
14. For clarity, the Commissioner is not expected to decide categorically whether information is held; he is only required to make a judgement on the civil standard of the balance of probabilities. That is, whether it is more likely than not that DWP holds further information than it has already provided.
15. DWP confirmed in its submissions to the Commissioner that it had not restricted the request and has provided “19 pieces of Universal Credit Guidance which covered the entirety of the request”. It also confirmed that the only information being withheld was that which had been redacted under section 31(1)(a).
16. DWP explained that its Universal Credit guidance is held on its intranet platform and that it had performed ‘key word’ searches to identify relevant content. DWP confirmed that it had also “liaised with the subject matter experts to ensure business knowledge is applied”.
17. On the basis of DWP’s explanations, the Commissioner is satisfied that, on the balance of probabilities, DWP does not hold any further information to that previously provided.
18. The Commissioner’s guidance on ‘Determining whether information is held’¹ states:

“We don’t expect you to search all of your filing cabinets or computers before determining that you don’t hold information. However, you should search those areas where it is reasonable to expect that you

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

would find the information (if it existed). The broader the request, the more areas you are likely to need to search”.

19. The Commissioner is satisfied that DWP has undertaken proportionate and adequate searches and, on the balance of probabilities, no further information is held falling within the scope of the request.

Section 31(1)(a): Prevention or detection of crime

20. Section 31(1)(a) of FOIA states:

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under the Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime”.

21. DWP confirmed in its internal review that the information related to “details of passwords used for sharing information”. DWP explained that “this could enable individuals to access customer knowledge” and “[t]he Department has to protect its systems and records and the information contained within them”.
22. Having reviewed the withheld information, the Commissioner is satisfied that section 31(1)(a) is engaged and the threshold of ‘would be likely to’ prejudice has been met. Disclosure of information relating to DWP’s passwords would be likely to increase the risk of unauthorised access to DWP’s systems and therefore prejudice DWP’s ability to prevent criminal activity or to detect it when it occurs.
23. Section 31(1)(a) is a qualified exemption. By virtue of section 2(2)(b), DWP can only rely on section 31(1)(a) as a basis for withholding the information if the public interest in maintaining the exemption outweighs the public interest in disclosure.
24. DWP acknowledged that there is a public interest in information relating to managed migration and that disclosure would ensure that the public can have confidence that it is managing information held in pursuit of Government business in line with the law and good practice.
25. DWP set out, however, that when considering arguments against disclosure it has to ensure that it is also managing information in line with the law and good practice. As set out above, DWP considered that if it had to disclose information related to passwords, this would be likely to enable individuals to access customer information.
26. DWP explained that the withheld information amounts to a small percentage of the overall guidance products provided in response to the

request and that the redaction does not restrict the ability to follow the process covered in the specific guidance document.

27. The Commissioner considers that, in the circumstances of this case, there is a very strong public interest in ensuring that DWP is able to prevent and detect fraud within its systems.
28. Whilst the Commissioner accepts that there is a public interest in disclosure of information relating to how DWP protects its own and its claimants' data, he considers that the public interest in maintaining the integrity of the systems holding this data strongly outweighs this.
29. In relation to the public interest in disclosure of information related to managed migration, he considers that this has been met by the disclosure of the remaining guidance. Having reviewed the withheld information, the Commissioner is not persuaded that the redacted information would add anything further to the public's understanding of DWP's approach to this policy.
30. The Commissioner therefore finds that DWP is entitled to rely on section 31(1)(a) to withhold the redacted information.

Procedural matters

Section 10(1): Statutory time for compliance

31. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled, subject to 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 him.
32. 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.
33. As DWP disclosed the majority of the guidance at internal review, outside of the statutory timeframe of 20 working days, it breached section 10(1) of FOIA.

Right of appeal

34. 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

35. 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.
36. 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