

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

### **Decision notice**

**Date:** 24 September 2025

**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 the AI tools the Department for Work and Pensions (DWP) intended to publish via the Algorithmic Transparency Recording Standard hub.
2. DWP confirmed that it did not hold some of the information and the complainant does not dispute this.
3. DWP withheld the information that was held on the basis of section 22(1). The Commissioner's decision is that DWP is not entitled to rely on section 22(1) to withhold this information.
4. The Commissioner considers, however, that a small amount of this information does engage section 21, information reasonably accessible to the applicant, as this had been published by the time of DWP's response.
5. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation:
  - Disclose the list of all AI tools DWP plans to place on the Algorithmic Transparency Recording Standards Hub with the exception of the information already published.
6. 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.

## **Request and response**

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7. On 29 January 2025, the complainant wrote to DWP and requested information in the following terms:

"I am writing to request the following information relating to the Algorithmic Transparency Recording Standard Hub:

- A list of all AI tools the DWP plans to place on the Algorithmic Transparency Recording Standard Hub
- A copy of any document outlining the timeframe in which the DWP plans to do this
- A copy of any assessment/similar as to why the DWP has not complied with the requirement to upload records to the hub and the consequences of this.

I would like all document [sic] sent electronically please. Under section 16 of the Act I also ask that if this request cannot be fulfilled under the legislation, that you offer advice and assistance to help the request comply with the act."

8. DWP provided its response on 27 February 2025. In relation to the request for a list of AI tools to be placed on the Algorithmic Transparency Recording Standard (ATRS) Hub, DWP confirmed that it held the requested information but was withholding this on the basis of section 22(1), information intended for future publication. DWP provided its public interest considerations and confirmed that it was satisfied that the balance of the public interest lay in maintaining the exemption.
9. DWP confirmed that it did not hold information falling within the scope of the remaining two requests.
10. The complainant requested an internal review of the handling of their request. They disputed that section 22(1) was engaged and they considered that the public interest favoured disclosure. They did not reference or dispute that DWP did not hold the information falling within the last two parts of the request.
11. DWP provided the outcome of its internal review on 27 March 2025 and upheld its original position in relation to section 22(1). However, it did

confirm that one tool had had its ATRS record published since the request was made.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 28 March 2025 to complain about the way their request for information had been handled. Specifically, they considered that DWP was not entitled to rely on section 22(1).
13. The Commissioner confirmed to the complainant that as they had not disputed that DWP did not hold the information falling within the scope of the last two parts of their request, he would not investigate the handling of this.
14. The Commissioner considers that the scope of his investigation is to determine whether DWP was entitled to withhold the information on the basis of section 22(1).

## **Reasons for decision**

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### **Section 22: Information intended for future publication**

15. Section 22(1) of FOIA states that:

“Information is exempt information if –

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

16. Section 22(1) is qualified by a public interest test.

17. Therefore, there are four questions to consider:

- Was there an intention to publish the requested information at some future date?

- Was the information already held with a view to such publication at the time when the request for information was made?
- Was it reasonable to withhold the information from disclosure until the intended date of publication?
- Did the public interest favour maintaining the exemption or disclosing the information at the time of the request?

**Was there an intention to publish the requested information at some future date? Was the information already held with a view to publication at the time the request was made?**

18. In order to correctly rely on section 22, there must have been a settled intention to publish the requested information prior to the request being received.
19. DWP explained that there is a mandatory requirement to publish an ATRS record which applies to algorithmic tools that either:
  - Have a significant influence on a decision-making process with public effect, or
  - Directly interact with the general public.
20. DWP set out that the Department for Science, Innovation and Technology (DSIT) had issued guidance<sup>1</sup> which states that the ATRS has been designed to minimise likely risks that could arise from publication of records, for example, to security, privacy or intellectual property.
21. DWP explained that DSIT states that as a general rule, there is no requirement to publish information that would be subject to an exemption via access to information legislation, such as FOIA, Environmental Information Regulations or data protection legislation.
22. DWP explained that the Government Digital Service (GDS) has created a repository of published ATRS records<sup>2</sup> for various government departments, including DWP.

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<sup>1</sup> <https://www.gov.uk/government/publications/algorithmic-transparency-recording-standard-mandatory-scope-and-exemptions-policy/algorithmic-transparency-recording-standard-atrs-mandatory-scope-and-exemptions-policy>

<sup>2</sup> <https://www.gov.uk/algorithmic-transparency-records>

23. DWP set out that its response to the complainant should have set out that one tool had been published in the period between receipt of the request and the date of DWP's response.
24. DWP confirmed that its first ATRS record for Employment and Support Allowance Online Medical Matching was published on 10 February 2025. DWP explained that the ATRS record for the tool can be found by searching for "DWP" in the ATRS repository<sup>3</sup>. DWP apologised for this omission in its refusal notice.
25. DWP explained that it is actively working with DSIT and its own internal stakeholders to ensure that ATRS records are proactively published as soon as practicable. DWP provided the Commissioner with details of its internal assurance process which ensures that proper internal consideration is given to the release of ATRS records.
26. In its internal review response to the complainant, DWP had stated:

"...it is also essential to consider that the information contained in the requested documents is still in its initial stages, particularly details of tools in the proof-of-concept phase that may never be implemented."
27. The Commissioner asked DWP to explain this statement in light of the fact that the request was for the tools that DWP "planned" to publish to the ATRS hub and not all tools that were being developed.
28. DWP explained that tools that had not progressed past the concept stage by the time of the request would not have been in DWP's plan to publish. DWP stated that its response to the complainant should not have referenced tools that were at the proof of concept stage, as these were not within the scope of the request.
29. The Commissioner asked DWP to confirm what information would be published.
30. DWP confirmed that it uses DSIT's template to draft records for tools that are in scope. DWP also provided the Commissioner with a list of the AI tools that it intended to publish on the ATRS.
31. DWP provided documentation that confirmed that the listed tools had already been confirmed as requiring an ATRS record by the time of the request.

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<sup>3</sup> <https://www.gov.uk/algorithmic-transparency-records?keywords=dwp>

32. Having considered DWP's submissions and the evidence provided, the Commissioner is satisfied that there was an intention to publish the majority of the requested information before the request was made.
33. The Commissioner considers, however, that the information that had already been published by the time of DWP's refusal notice does not engage section 22(1).
34. When determining a case such as this, the Commissioner will consider how matters stood either at the date of the authority's response or the statutory date by which a response was required, whichever came earlier.
35. In the specific circumstances of this case, this means that he must consider circumstances as they were on 27 February 2025 ie 20 working days following the date of the request. By this time, the first ATRS record had been published. DWP was not, therefore, entitled to rely on section 22(1) to withhold the name of the tool that it related to. He will consider whether DWP is entitled to rely on section 21(1) later in this notice.

**Was it reasonable to withhold the information from disclosure until the intended date of publication?**

36. A public authority must consider whether it is reasonable, in all the circumstances of the request, to withhold the information until the intended date of publication.
37. There is some overlap between the factors to consider when deciding what is reasonable and those relevant to the public interest test. The Commissioner has therefore included DWP's and the complainant's public interest arguments where they are relevant to the question of whether it is reasonable to withhold the information until the future publication.
38. DWP explained that progression of ATRS records is an incremental process and is subject to an internal assurance process. It also confirmed that it is in regular contact with DSIT to progress publication.
39. DWP confirmed that as at the date of the request, there was no specific window to publish the remaining ATRS records.
40. DWP explained that it is fully committed to publishing the required ATRS records and it believes that the information should be subject to appropriate scrutiny before it does so. DWP stated that it wants to publish information at a time of its own choosing, when it is confident that the information being published is clear and not misleading.

41. DWP stated to the complainant in its initial response that it is part of the effective conduct of public matters that publication is a conveniently planned and managed activity with reasonable control given to public authorities.
42. DWP stated to the complainant in its internal review response that as it continuously reviews information prior to publication, it is crucial to maintain the flexibility to determine the appropriate timing and manner of release. DWP confirmed that the law does not mandate DWP to specify an exact publication date for information.
43. DWP explained that changes in government operations<sup>4</sup> have occurred since the announcement that publication to the ATRS hub is mandatory, resulting in delays in publishing ATRS information.
44. DWP explained to the complainant that publishing prematurely poses significant risks. It stated that the review process is crucial as it allows for a thorough analysis of tools to ensure their suitability for publication and incorporation of relevant commentary to adequately describe them. DWP further explained that an internal DWP peer assurance process ensures a sufficient rigour when deciding what to publish on ATRS.
45. DWP considered that early disclosure cannot be sufficiently mitigated by explanatory commentary alone. DWP stated that such disclosure may lead to misunderstandings since the assurance process has not yet been completed. DWP considered that it has a reasonable entitlement to make its own arrangements to publish information.
46. In its submissions to the Commissioner, DWP explained that all tools and associated ATRS reports are individual and perform different functions. DWP stated that it is important that associated material is accurate and appropriate for publication. DWP explained that each tool is subject to an internal assurance process prior to senior manager approval and, during this process, it is possible for an ATRS record to be added to or amended. DWP confirmed that when final approval is agreed, the ATRS record is submitted to DSIT for publication.
47. DWP explained that DSIT states in its 'Algorithmic Transparency Recording Standard (ATRS) Mandatory Scope and Exemptions Policy'<sup>5</sup>,

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<sup>4</sup> The Commissioner understands this to mean the change in government following the 2024 general election.

<sup>5</sup> <https://www.gov.uk/government/publications/algorithmic-transparency-recording-standard-mandatory-scope-and-exemptions-policy/algorithmic-transparency-recording-standard-atrs-mandatory-scope-and-exemptions-policy>

which was published on 17 December 2024, that "...on 6 Feb 2024 it [ATRS] was mandated across all government departments'.

48. DWP confirmed that, to its knowledge, DSIT had not made any public statements with regards to timescales for publication.
49. DWP again confirmed that it is actively working with DSIT to identify in-scope algorithmic tools, and draft and publish ATRS records for these tools.
50. The complainant considered that DWP had overstated the harm in disclosure as the information in scope is just a list of names rather than the ATRS records themselves.
51. The complainant explained that the widespread impact of some of these tools, such as the Universal Credit Machine Learning Advances Model, concern huge numbers of people. The complainant considers that the Government has decided on the ATRS as a transparency requirement and, as there are many people impacted by the tools designated for future publication to the ATRS, there is a magnified interest in disclosure of the list of tools to allow the public at least some understanding about the algorithmic tools impacting them.

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

52. In coming to his conclusion, the Commissioner has considered DWP's arguments, the complainant's grounds for complaint, DSIT's guidance on ATRS records and his own guidance on section 22(1).
53. The Commissioner's guidance<sup>6</sup> provides the following advice on assessing whether delaying disclosure until the intended publication is reasonable:

"24. When doing so, a public authority should first consider whether or not it is:

- sensible
- in line with accepted practice; and
- fair to all concerned.

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<sup>6</sup> <https://ico.org.uk/media2/xnkbxjwg/s22-and-22a-info-intended-for-future-publication-v-1-2.pdf>



25. A public authority may also wish to give thought to whether:
- it is the right decision to manage the availability of the information by planning and controlling its publication;
  - it is necessary to avoid the possibility of the requester gaining any advantage in obtaining the information prior to general publication;
  - the timetable properly requires internal or limited consideration of the information prior to its public release;
  - having decided to disclose the information, there would be real difficulties in extracting it prior to publication; and
  - this information should instead be available through the authority's publication scheme.
26. The closer to the date of publication, the more reasonable it is likely to be for the public authority to withhold information until publication has taken place".
54. The Commissioner notes in the "Publishing your ATRS record"<sup>7</sup> section of the "Algorithmic Transparency Recording Standard – guidance for public sector bodies", published by the Government Digital Service, it states:
- "Obtaining clearance**
- The ATRS team requires written confirmation that your ATRS record has gone through all appropriate internal signoff procedures before publishing it to the GOV.UK repository. At a minimum, this should include clearance by:
- The team responsible for deploying/operating the algorithmic tool
  - The SRO<sup>8</sup> for the tool (ideally the SRO listed in the Owner section)
  - The communications/press team

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<sup>7</sup> <https://www.gov.uk/government/publications/guidance-for-organisations-using-the-algorithmic-transparency-recording-standard/algorithmic-transparency-recording-standard-guidance-for-public-sector-bodies#publishing-your-atrs-record>

<sup>8</sup> Senior Responsible Officer

In certain high-profile instances it may be appropriate to seek ministerial clearance”.

55. The Commissioner accepts that DWP considers its decision to withhold the information is in line with the guidance on publishing ATRS records and it considers that it is reasonable to ensure that the publication of official information is a properly planned and managed process.
56. The Commissioner recognises that DWP is mindful of the need to protect its ability to use staff resources in a way that avoids undermining its publication timetables. The Commissioner has also taken into account DWP's assurances that it will publish ATRS records for the relevant tools.
57. However, in reaching his decision in this matter, the Commissioner has given particular weight to the fact that the requested information is not for the ATRS records which are subject to the above assurance process, but is simply for a list of tools that will eventually have an ATRS record. The Commissioner recognises that DWP is concerned that it would have to provide explanatory commentary that could potentially undermine the authorisation process of ATRS publication. However, the Commissioner is not persuaded that DWP would need to provide explanations to this level.
58. The Commissioner notes that, at the time of the request and DWP's response, some of the tools were in use or close to being tendered for. The Commissioner considers that the public has the right to scrutinise and have insight into these tools and their privacy and data protection implications, especially when these are in use or due for imminent use. Whilst the list will not provide the same level of detail as the future ATRS records, it will provide insight into the tools' use and give the public the reassurance that detailed ATRS records about them will be made public in the future.
59. The wording of section 22(1) does set out that the publication date does not have to be set in order to engage the exemption. However, as the exemption is subject to a reasonableness test, the Commissioner considers that it is clear that this is not open-ended and as the Commissioner's guidance states, the closer the date of publication, the more likely it is to be reasonable.
60. In the specific circumstances of this case, the Commissioner considers it is not reasonable to withhold the names of the tools that will be published on the ATRS hub. Whilst DWP has provided assurances that the withheld information will be made available as it publishes the associated ATRS record, it appears that this publication will be in a piecemeal manner over an undefined amount of time. As these records relate to tools that are already in use or progressing towards use, the

Commissioner is not persuaded that delaying disclosure indefinitely would be “fair to all concerned” as set out in the Commissioner’s guidance.

61. The Commissioner therefore considers that section 22(1) is not engaged and requires DWP to disclose the information withheld on the basis of section 22(1).

**Section 21: Information already reasonably accessible to the applicant**

62. The exemption at section 21 provides that information which is reasonably accessible otherwise than under section 1 is exempt information.
63. As set out above, the Commissioner considers the circumstances at the date of the public authority’s refusal notice or when the refusal notice should have been issued, whichever is earlier. By the date the response should have been issued, ie 27 February 2025, the ATRS record for Employment and Support Allowance Online Medical Matching had been published.
64. Information can be said to be reasonably accessible if it has been placed in the public domain and can be obtained by the applicant without the need for a specific request under section 1.
65. The Commissioner recognises that DWP did not inform the complainant of this until the outcome of the internal review. However, given the complainant’s knowledge of the ATRS Hub and the subject of AI in general, he accepts that the published record was reasonably accessible to them<sup>9</sup> by the time of DWP’s duty to respond to the request.
66. The Commissioner therefore considers that the name of the AI tool that had had its ATRS record published on 10 February 2025 was reasonably accessible to the complainant by the time DWP was required to respond to the request.

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<sup>9</sup> Section 21 states that the information must be reasonably accessible to the applicant; therefore the Commissioner can take into account the individual circumstances of the requester when considering whether the information was reasonably accessible to them.

## Right of appeal

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67. 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)  
General Regulatory Chamber  
PO Box 11230  
Leicester  
LE1 8FQ

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)

68. 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.
69. 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**  
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**SK9 5AF**