

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 September 2019

Public Authority: Department for Work and Pensions
Address: 4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested the information provided to the Universal Credit Programme Board for set meeting dates. The Department for Work and Pensions (DWP) withheld the information and cited section 22 'future publication' and section 40(2) 'personal data' as its basis for doing so.
2. The Commissioner's decision is that DWP is not entitled to rely on section 22 to withhold the information. The information withheld under section 40(2) is not in dispute.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information withheld under section 22 of the Act.
4. The public authority must take these steps within 35 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

5. On 24 September 2018, the complainant wrote to DWP and requested information in the following terms:

"Previously in April 2017 I asked what deliverables were provided to the Universal Credit Programme Board to allow them to review progress at the programme level and provide direction/guidance to the team.

The Department directed me to a number of large publicly available documents and refused to disclose anything else. Despite a promise to the Information Commissioner that it would disclose "something" in August 2018 nothing has appeared.

The Department's previous response lacks credibility as the seniority of the members of the programme board is such that it would not be presented with the suggested volume of information at each monthly programme board meeting.

As a direct result of the abject failure of the Department to do as it promised and the Information Commissioner to act, the information I requested is now very old. Therefore: RFI1 – Please disclose the "packs of information" provided to the UC programme board members for the purpose of the 4 most recent UC programme board meetings. If available please include any presentations made to the programme board or documents distributed "on the day". If the Department is going to provide links to large publicly available documents it must direct me to the specific parts of those documents that were presented to the programme board or confirm that the whole documents formed part of the packs I have requested.

Please note that my request is for the packs of information provided to the programme board members for each of the last 4 programme board meetings. The scope of this request therefore does not include information that is generally available to the members of the programme board (unless it was specifically referenced during the meetings)."

6. On 15 November 2018, DWP issued its response. It apologised for the delay in responding to the request. It confirmed that the papers

previously requested had been published in the House of Commons Library¹.

7. DWP explained that on 3 August 2018, in relation to a different complaint under the Act, it had advised the Commissioner of its intention to introduce a publication schedule where it will commit to publishing Universal Credit Programme Board meeting paper pack two years after the date of that Programme Board Meeting. DWP explained that this will ensure that a reasonable period of time will have elapsed for discussions to be concluded prior to publication. DWP confirmed that this letter had been shared with the complainant.
8. DWP confirmed that it was relying on section 22 of the Act to withhold the requested information as it is intended for publication at a future date.
9. DWP acknowledged that there is a public interest in information being released as soon as possible but explained that it is satisfied that there is a strong public interest in permitting public authorities to publish information in a manner and form and time of their own choosing. DWP explained that it is part of the effective conduct of public affairs that the general publication of information is a conveniently planned and managed activity within the reasonable control of public authorities and DWP is satisfied in this instance that it has a reasonable entitlement to make its own arrangements to do so.
10. The complainant requested an internal review of the handling of his request on 15 November 2018. He requested confirmation that DWP would rely on section 22 to refuse to comply with future requests for similar information and asked DWP to confirm that its reliance on section 22 was on the basis of the two year publication schedule set out in DWP's letter to the Commissioner. The complainant also cited *Department of Health v IC and Lewis [2015] UKUT 0159 (AAC)*² with regard to the public interest test.
11. DWP provided its internal review on 19 December 2018 and upheld its decision to rely on section 22 to withhold the requested information as it is intended for publication at a future date. DWP confirmed that

¹ https://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2018-11-01&td=2018-11-01&search_term=Department+for+Work+and+Pensions&itemId=119004#toggle-1083

² <http://www.bailii.org/uk/cases/UKUT/AAC/2015/159.html>

information on the publication of Universal Credit Programme Board minutes has been placed in the House of Commons Library and provided a link³.

12. DWP confirmed that it had reviewed the Tribunal case cited by the complainant.
13. DWP explained that there is a public interest in information being released in a timely manner and providing evidence of effective governance of major projects will provide the public with assurance that key initiatives are being well managed. DWP explained that there is also strong public interest in public authorities to publish information in a coherent format and within a reasonable period of time.
14. DWP further explained that it is part of the effective conduct of public affairs that the general publication of information is a planned and managed activity within the reasonable control of public authorities. DWP explained that it is satisfied that in this instance DWP has made sensible arrangements to routinely publish Programme Board paper to contribute to the transparency of the Universal Credit Programme.
15. DWP set out that it considered the public interest is best served by the release of this information in line with the published schedule.
16. DWP also confirmed that any future requests for Universal Credit information will be considered on a case by case basis in line with the Act.

Background

17. On 5 October 2010, the then Secretary of State for Work and Pensions announced the introduction of a Universal Credit designed to simplify the benefits system and improve work incentives. It was announced that Universal Credit aimed to simplify the benefits system by moving from the multiple benefits system to a single streamlined payment. The plan was to migrate recipients from their current benefits and tax credit systems onto the Universal Credit system starting in 2013 and finishing in the next parliament⁴.

³ http://data.parliament.uk/DepositedPapers/Files/DEP2018-1083/Letter_-_Future_Publication.pdf

⁴ <https://www.gov.uk/government/news/universal-credit-introduced>

18. DWP set out its plans for Universal Credit in a November 2010 white paper⁵. This document envisaged completing rollout to around eight million households by October 2017.
19. The Universal Credit Programme Board acts as the project's main oversight and decision making body. The main purpose of the Universal Credit Programme Board is to provide advice and support to the Universal Credit Director General, who is accountable for the delivery of Universal Credit.
20. The Board has collective responsibility to:
 - Maintain an overview of the plan to deliver Universal Credit including the scope, financials and the approach and activities to ensure the plan is delivered.
 - Maintain an overview of the systems of programme control and governance including change control, risk management and stakeholder engagement.
 - Take receipt of agreed programme reporting which provides visibility of achieved and predicted progress against the plan, including all work strands, and satisfy themselves of its accuracy and robustness.

Scope of the case

21. The complainant wrote to the Commissioner on 2 February 2019 to complain about the handling of his request for information.
22. During the course of the investigation, DWP confirmed that upon publication some information would be redacted as it was personal data of junior employees. DWP confirmed that it was therefore also relying on section 40(2) to withhold a small amount of the requested information.
23. The complainant confirmed to the Commissioner that he does not dispute the application of section 40(2) and is content for this information to be redacted.

⁵ <https://www.gov.uk/government/publications/universal-credit-welfare-that-works>

24. The Commissioner therefore considers the scope of her investigation is to determine whether DWP is entitled to rely on section 22 to withhold the vast majority of the requested information.

Reasons for decision

25. Section 22(1) of the Act provides that:

"Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the 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)."*

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

27. There are, therefore, four questions to consider:

- Is 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?
- Is it reasonable to withhold the information from disclosure until the intended date of publication?
- Does the public interest favour maintaining the exemption or disclosing the information?

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

28. 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.

29. As set out in the correspondence between DWP and the complainant, DWP confirmed to the Commissioner on 3 August 2018 that it had set up a publication schedule for Universal Credit Programme Board meeting packs. In this publication schedule, DWP intended to publish the information two years after the meeting took place.
30. The Commissioner is therefore satisfied that there is an intention to publish the withheld information and the decision to publish was made before the request was made, ie 24 September 2018.

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

31. A public authority must consider whether it is reasonable, in all the circumstances of the request, to withhold the information until the date of publication.
32. There is some overlap between the factors to consider when deciding what is reasonable and whose which are relevant to the public interest test. The Commissioner has therefore included some of DWP's public interest considerations where they are relevant to the question of whether it is reasonable to withhold the information until the date of publication.
33. In its submissions to the Commissioner, DWP set out why it considered two years to be a reasonable period to wait before publication.
34. DWP explained that it believes transparency and accountability is paramount and it recognises the justifiable interest of citizens in the machinery of government and the Universal Credit Programme. Therefore, the Universal Credit Programme agreed with Ministers a publication schedule that routinely permits DWP to consider Universal Credit Programme Board papers after two years for release.
35. DWP confirmed that, with the exception of section 40(2) redactions, no other exemptions would be considered applicable to the requested information.
36. DWP set out that it needs to strike a balance between the transparency that it is committed to and the need to give space for officials to provide unfettered advice to Ministers and senior officials as the UC Programme progresses. DWP explained that to achieve this, it considers that two years is a reasonable period of time to allow the necessary space for work to be conducted and/or completed before it publishes Universal Credit Programme Board papers.
37. The Commissioner raised with DWP the complainant's assertion that previous requests confirm that each phase or stage of the rollout is six

to nine months in length and asked why DWP considers that a further 13-18 month period is a reasonable length of time to delay disclosure.

38. DWP explained that the Universal Credit Programme Board is the governance authority for the Universal Credit Programme and must consider the wider aspect of Universal Credit and not just those issues raised relating to Universal Credit rollout. The Programme Board includes discussions around risks, issues and advice to Ministers on policy issues.
39. DWP provided an explanation of the role of the Board which is set out in the Background section of this notice.
40. DWP explained that it has carefully considered the balance between its transparency commitment and the need to provide a safe space for programme and policy advice to Ministers. Discussions between experienced senior officials have concluded that the two year delay between meetings and publication of the Universal Credit Programme Board papers effectively strikes this balance.
41. DWP considers that the complainant is wrong to draw the conclusion that as rollout schedules are six to nine months long, a two year rollout schedule is excessive. It considers this is best illustrated by the consideration of the regulations to underpin the next phase of Universal Credit, 'managed migration'. These were first considered by Programme Board in December 2017 and, at the time of DWP's submission, the regulations have not completed Parliamentary passage. They have been withdrawn, re-laid and subject to a legal challenge and Government is considering what to do. As this has occurred within the two year timescale, DWP considers that six to nine months would be too short a period in which discussion could be had and completed.
42. The Commissioner raised with DWP that previous meeting information had been disclosed earlier than the intended two year schedule and asked for evidence of any detriment experienced by publishing the information less than 2 years following the meetings.
43. DWP confirmed that the 2017 Universal Credit Programme Board meeting papers were published more than a year after the date of the meetings. It stated that there was some negative publicity claiming that the minutes revealed that Universal Credit was planning to replace contributory disability benefits. DWP explained that this interpretation of the minutes was not correct. DWP stated that the minutes did discuss the Universal Credit approach for dealing with claims from customers receiving disability benefits in addition to their contributory benefits.

44. DWP explained that officials do, from time to time, discuss a number of possibilities but is it Ministers who make policy and announce it to Parliament, if necessary taking it through legislation, where those policies are debated.
45. DWP considers that one of the risks of early publication of Programme Board papers is that these early discussions by officials are made more visible. DWP explained that scholars of the Programme Board papers need to bear in mind that at all times policy is agreed by Ministers and that discussions amongst officials are just that.
46. DWP explained that the negative publicity following the publication of the 2017 Universal Credit has contributed to the wider media criticism of Universal Credit and this background of unbalanced negative coverage has contributed to the current perception, in some quarters, of Universal Credit as a problem rather than a solution.
47. DWP explained that it has not yet been able to present the regulations required to enable the next phase of Universal Credit⁶ to progress and the negative publicity following the publication of the 2017 Universal Credit Programme Board papers has been a factor that has contributed to this delay.
48. DWP acknowledged that it could provide explanatory notes with the requested information in order to put it into context and prevent misinterpretation. However, DWP explained that given the amount of information published in the Programme Board papers this would put an unhelpful burden on DWP to explain the many complex and technical issues discussed at the Programme Board. DWP considers that this would not be the best use of government resources and that releasing the Programme Board papers at two years reduces the risk of misunderstanding as at one year or closer, significant amounts of "*explanatory/context*" would be required. DWP believes that after two years the increased amount of Universal Credit information in the public domain is likely to decrease the burden of producing explanatory content.
49. DWP had previously confirmed that it will publish the Programme Board papers in twice-yearly batches. DWP explained that rather than provide a partial picture by publishing individual Universal Credit Programme Board minutes on a monthly basis, it would publish batches of six months twice a year.

⁶ 'The Universal Credit (Managed Migration) Regulations 2018'

50. DWP considers that this approach will provide a more holistic view of the issues discussed by the Programme Board and will allow readers to discern a wider picture of the Programme than could be gleaned from an isolated set of meeting minutes.
51. DWP confirmed that the papers would be published two years following the date of the last meeting. Therefore, the two year period is a 'not before' date rather than a 'no later than' date, meaning that some papers in the batch will be more than two years old.
52. DWP also confirmed that there is currently "*copious information on the performance of the Universal Credit Programme already in the public domain.*"
53. DWP confirmed that it publishes monthly statistics regarding Universal Credit which include the number of people and households on Universal Credit, number of Universal Credit claimants in work, number of people receiving payments for housing, number of people in private rented accommodation, number of people in social rented accommodation and payment timeliness data⁷.
54. DWP also confirmed that the National Audit Office had published a detailed report "Rolling out Universal Credit" in June 2018. This report provided comprehensive data on the rollout of Universal Credit, which included how DWP's plans for Universal Credit has evolved, whether its adaptive and incremental approach is ensuring Universal Credit works for claimants and the organisations supporting them and the prospects for Universal Credit achieving its aims.
55. DWP explained that it has answered more than 500 parliamentary questions on Universal Credit since November 2018 as well as more than 150 requests under the Act. It also confirmed that, as set out above, the Programme Board papers are routinely published after two years and the last set of papers from 2017 were published in January 2019.
56. DWP also explained that the Work and Pensions Select Committee has shown a keen interest in Universal Credit and have undertaken a number of inquiries. The below list includes recent Universal Credit related inquiries:
 - Universal Credit and Support for Disabled people

⁷ <https://www.gov.uk/government/collections/universal-credit-statistics>

- Universal Credit and Childcare costs
- Managed Migration
- Natural Migration
- Two child limit
- Benefit Cap
- No DSS: Discrimination against benefit claimants in the housing sector
- Universal Credit and Survival Sex: Sex in exchange for meeting survival needs

The Commissioner's position

57. The Commissioner has considered DWP's submissions and her own guidance on this matter.
58. She is not persuaded by DWP's submissions that, in the circumstances of this case, it would be reasonable to withhold the requested information until the intended publication date.
59. The Commissioner acknowledges DWP's concerns regarding the negative publicity that may occur following publication of the Programme Board minutes, however, DWP has not provided any evidence as to why providing context to this information "*would not be the best use of government resources*".
60. The Commissioner does not accept that the possibility of negative publicity is sufficient in this case to delay disclosure of the information. Universal Credit has been in the public consciousness since its announcement in 2010 and concerns have been raised by various charities and news agencies. The Trussell Trust has reported a correlation between the rollout of Universal Credit and the increase in Foodbank use⁸, and, as set out above, the Work and Pensions Select Committee has launched an inquiry into reports that claimants are

⁸ <https://www.trusselltrust.org/what-we-do/research-advocacy/universal-credit-and-foodbank-use/>

resorting to exchanging sex for basic survival needs such as money, shelter and food⁹.

61. The Commissioner considers that the concerns and negative publicity already exist in the public domain and withholding the information will not reduce this.
62. The Commissioner does not consider it reasonable to ask the public to wait for two years (potentially two and a half years) to view information on the decision making process for Universal Credit.
63. She understands that there may be information contributing to policy formulation held within the information, however, withholding the entirety of each of the Programme Board packs under section 22 is not the appropriate approach in this case. The Commissioner notes that DWP confirmed that no other exemption applied to the information in scope of the request.
64. The Commissioner considers that the amount of information available via Parliamentary Questions, requests under the Act and Select Committee inquiries does not add weight to the reasonableness argument. She considers that this reveals the importance of the subject to the public and the need to provide this information at a sooner rather than later date.
65. The Commissioner considers that DWP has not demonstrated that it would be reasonable to refuse to provide the requested information until the intended publication date, two years after the information creation date.
66. The Commissioner requires DWP to disclose the requested information with the exception of the information redacted under section 40(2).

⁹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2017/universal-credit-survival-sex-launch-17-19/>

Right of appeal

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)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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.

Signed

Jonathan Slee
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