

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 October 2016

**Public Authority:** Department for Communities and Local Government

**Address:** Fry Building  
2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant has requested local authority data on homelessness for the financial years 2009-2010, 2010-2011 and 2011-2012. The Department for Communities and Local Government (DCLG) withheld the information under section 22 as it stated that there was an intention to publish it.
2. The Commissioner's decision is that DCLG has correctly applied section 22 to the requested information.

#### Request and response

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3. On 7 December 2015 the complainant made the following request for information:

*"Under the Freedom of Information, please could you provide me with the data supplied through P1E returns on homelessness from local authorities for each local authority for the financial years 2009/10, 2010/11 and 2011/12.*

*Data for April 2012 onwards is published as Detailed Local Authority level homelessness figures (<https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>) and this is the information I am looking for, just for earlier time periods. Please provide this information as a spreadsheet or CSV."*

4. DCLG responded on 21 December 2015, advising that the cost of locating, retrieving and extracting the information exceeded the appropriate limit of £600, and therefore section 12 applied.
5. Following some correspondence regarding the request and response, the complainant made a new related request on 30 March 2016:

*"Please could you answer the following questions:*

- *Is the relational database SQL based?*
  - *What are the primary and foreign keys for the relational database?*
  - *What are the attributes/fields for the relational database (if necessary, please provide the above across the relevant domains)*
  - *How is the data submitted by councils through P1E forms entered into the database*
  - *This What Do They Know requests suggests the summarised detailed local authority spreadsheets with data from the P1E forms were produced long before they began to be published, ([https://www.whatdotheyknow.com/request/national\\_p1e\\_statistics\\_detailin](https://www.whatdotheyknow.com/request/national_p1e_statistics_detailin)), and this is what I am requesting. Would it be possible to check if you do hold these older spreadsheets?"*
6. DCLG responded on 26 April 2016 providing answers to most parts of the request, in relation to the final question regarding older spreadsheets, it confirmed that these were held, but that there was an intention to publish them in the future, and therefore section 22 applied.
  7. The complainant requested an internal review which DCLG provided on 12 May 2016. It maintained that section 22 applied to the detailed local authority spreadsheets from 2009-2012, and also advised that section 40(2) applied in respect of the small number data.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 27 May 2016 to complain about the way her request for information had been handled. She informed the Commissioner that she did not believe that DCLG had a settled intention to publish the data at the time of her first request in December 2015. She also complained about DCLG's application of section 12 and section 40(2) to the information. In its internal review of 12 May 2016, DCLG confirmed that it was incorrect to have relied on section 12 in response to the request of 4 December 2015.

9. DCLG has confirmed that it continues to rely on section 22 to withhold the requested information at this time. Therefore, this case will consider whether DCLG was entitled to rely on section 22 in response to this request.

## Reasons for decision

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### Section 22 Information intended for future publication

10. Section 22 states that:

*(1) 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).*

11. In order to determine whether section 22 is engaged the Commissioner therefore considered the following questions:

- When the complainant submitted the request, did DCLG intend to publish the information at some date in the future?
- If so, had DCLG determined this date when the request was submitted?
- In all the circumstances of the case, was it 'reasonable' that DCLG should withhold the information from disclosure until some future date (whether determined or not)?

### **Was the information held at the time of the request with a view to its publication at a future date?**

12. DCLG explained that responsibility for homelessness statistics work within the Department changed in summer 2015. At this time, the new officer identified that DCLG receives a number of requests for local authority data older than that currently published and that, ideally, all data held that is of sufficient quality should be published. In order to achieve this, development work began on a programme which would enable the tables needed to be run straight from the statistics database.

However, DCLG does not hold any information to confirm when this work began.

13. DCLG confirmed that the complainant was informed of this programme being developed in the Department's response to her request for an internal review on 12 May 2016.
14. The Commissioner's guidance<sup>1</sup> states that although a public authority must hold the information at the time of the request with a view to its publication, the exemption does not require a set publication date in place. A public authority may still be able to apply section 22 if:
  - there is a publication deadline, but publication could be at any date before then;
  - publication will take place once other actions have been completed;
  - publication will take place by reference to other related events; or
  - there is a draft publication schedule that has not been finalised.
15. Therefore as long as the public authority has decided that it or another person will publish the information at some time in the future, the exemption may apply.
16. DCLG states that its intention is to publish the requested information once the necessary programme is developed to extrapolate the information from the current raw format and to suppress small data figures.
17. The Commissioner has considered the correspondence that has passed between the complainant and DCLG on the matter of intention to publish the information. On 23 December 2015, DCLG stated that:

*"It is likely that the Department will be publishing this data in the near future when resources allow"*
18. This is in response to the first request of 7 December 2015, not to the refined request of 30 March 2016 in which the complainant asked whether the older spreadsheets relevant to the information were held, and confirmed that this was what the focus of the request. DCLG's first reliance on section 22 came in response to this refined request on 26

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-forfuture-publication-and-research-information-sections-22-and-22a-foi.pdf>

April 2016. The complainant queried this position given the statement of 23 December 2015 that publication was "*likely*". In the internal review of 12 May 2016, DCLG stated that:

*"the Department hopes to be able to finalise this task shortly".*

19. DCLG has further confirmed to the Commissioner that it expects to be able to prioritise the production of the data at the end of September, and publication of the first datasets in October, with the process being finalised by year end.
20. DCLG has argued that as suggested in the Commissioner's guidance, there is no requirement for a publication date to have been set, and that section 22 may apply if the information is to be published once other actions have taken place. It states that the intention is to publish the information once the required programme has been developed to extract and suppress the data.
21. The Commissioner is satisfied that at the time of the refined request on 30 March 2016, there was a settled intention to publish the information. However, the same could not be said at the time of the request of 4 December 2015 as DCLG stated that it was likely, rather than certain that the information would be published.
22. The Commissioner recognises that the complainant has also argued that there was no settled intention to publish the information she requested at 4 December 2015. However, the Commissioner considers that the follow up request of 30 March 2016 replaces the earlier one as it modifies the information requested from the statistical datasets for homelessness from the PE1 forms as published for post 2012 information, to summarised detailed local authority spreadsheets from PE1 forms for the same data. Therefore in response to the 30 March 2016 request, the Commissioner is satisfied that the requested information was held at the time of the request with an intention to publish it.

### **Was it 'reasonable' to withhold the information?**

23. For the exemption to be relied on section 22(1)(c) requires that the application is 'reasonable' in all the circumstances of the request.
24. DCLG has provided details of the programme that is currently being developed. It requires the data to be downloaded from the database, a process which requires numerous queries for each quarter. DCLG then intends to import the data into a spreadsheet and format it in order to be meaningful for general publication. It estimates that the required work would take one day per quarter, roughly 12 days. It has therefore

argued that it would not be reasonable to divert resources to complete this work ahead of time.

25. In response to the Commissioner's enquiries DCLG confirmed that there was capacity for the work to be undertaken in the coming weeks, and that it expected to be able to publish the first of the datasets at some time in October 2016.
26. DCLG has accepted that it is not strictly necessary to undertake the additional formatting in order to comply with the FOIA, but it considers that providing the raw data in this case would not have been appropriate as the data in that format would not be meaningful without relevant expertise to interpret it.
27. In addition to this DCLG has explained that it is necessary to suppress small data in order to comply with section 40(2) of the FOIA. Its position in respect of personal data suppression is that those fields within the requested data which contain fewer than 5 responses, and those that contain more than 5 responses, but numbers less than 5 can be discovered through simple calculation of other figures need to be suppressed.
28. It states that this approach is in accordance with the Commissioner's *Anonymisation: managing data protection risk code of practice*, which advises for low numbers; that questions with less than 10 responses that have given an answer that identifies something factual should be suppressed.<sup>2</sup>
29. DCLG has therefore argued that it would not be reasonable to release the information before it is due to be published as it is important to ensure that small data is suppressed so as not to unlawfully disclose any personal data. It has stated that the individuals in question are private individuals and have no reasonable expectation that information about them in relation to homelessness would be disclosed to the world at large.
30. DCLG has explained that the information in question "*forms the principle evidence base for government, local authorities and the wider public as to the numbers of households becoming homeless, the types of households affected, reasons for homelessness, and numbers being housed in temporary accommodation. The data is used by central government for formulating and monitoring policy and allocating*

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

*resources, by local authorities for benchmarking and planning services, by the voluntary sector for evaluating policy and fundraising, and by the public for understanding homelessness and assessing the performance of government."*

31. The Commissioner notes that at the time of the request and review in March and May 2016, the work on publishing the requested information had not yet begun. Although DCLG acknowledges that the work to format the information is not strictly required by the FOIA, it argues that it is necessary to ensure that it is useful and intelligible both to experts and to the public. In addition to this, it is clear that some suppression needs to occur in order to comply with the *Anonymisation: managing data protection risk code of practice*. Therefore the Commissioner finds that it does seem reasonable in the circumstances to delay publication until the programme of formatting and suppression is undertaken.

### **Public interest test**

32. As section 22 is a qualified exemption, DCLG has necessarily carried out a public interest test. It has acknowledged that there are that there are clear generally applicable public interest reasons to disclose the information, not least that disclosure of information by public authorities, in general, increases transparency and accountability.
33. However, it has suggested that given the fact that there is a clear intention to publish the data in the near future, and given the time it would take to prepare the information for publication, it argues that there is no particular interest served in disclosing the information ahead of time. It finds that the public interest is best served by continuing with the planned publication of the datasets in due course rather than diverting time and resources from the delivery of DCLG's core remit.

### **Conclusions**

34. The Commissioner finds that there was no clear intention to publish the information at the time of responding to the original request on 23 December 2015. However, it is clear that at the time of the second refined request of 30 March 2016, there was a settled decision to publish the information, and work had begun on the programme required to make the information disclosure ready.
35. As to the question of whether it was reasonable in all the circumstances not to disclose the information early, the Commissioner notes that DCLG relies heavily on the time it would take to complete the process of suppressing the low numbers data in order to comply with section 40(2), and also formatting the information to as to ensure that it is useful.



36. On balancing the public interest in disclosing the information ahead of planned publication, the Commissioner finds that given the age of the information requested, and the time it would take to render the information anonymous, there is little public interest in ordering disclosure at this time when the programme of publication is due to publish the first data set in the coming weeks.
37. The Commissioner therefore finds that DCLG was correct to rely on section 22 in this case.



## Right of appeal

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38. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

39. 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.
40. 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 .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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