

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 October 2023

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 the criteria against which the Department for Work and Pensions (DWP) has assessed its readiness to scale up its managed migration of benefit claimants. They also requested the assessment of this readiness. DWP withheld this information under section 22, information intended for future publication.
2. The Commissioner's decision is that section 22 is not engaged.
3. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information.
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 13 April 2023, the complainant wrote to DWP and requested information in the following terms:

On 28/03/2023 the Minister for Employment wrote to the Chair of the Work and Pensions Select Committee, the letter included the following: "The Department has put in place robust governance arrangements to assess our readiness to scale the migration of tax credit claimants to ensure it is safe and secure to proceed. We are satisfied that the right processes, resources, communications, service stability, security and other key factors are in place to begin increasing the volume of moves." <https://committees.parliament.uk/publications/34643/documents/190720/default/>

(1) Please release the criteria against which readiness to scale managed migration is being assessed.

(2) Please provide the assessment of readiness against those criteria."

6. DWP provided its response on 19 April 2023 and confirmed that it held the requested information. DWP withheld the entirety of the information under section 22 as the information was intended for future publication. DWP provided its consideration of the public interest and confirmed that it believed the balance of the public interest lay in maintaining the exemption.
7. The complainant requested an internal review of the handling of their request on 27 April 2023 and provided detailed arguments regarding why delaying publication was not reasonable and therefore the condition at section 22(1)(c) was not met.
8. DWP provided the outcome of its internal review on 15 May 2023 and upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 23 June 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of this investigation is to determine whether DWP is entitled to rely on section 22 to withhold the requested information.

Reasons for decision

Section 22: Information intended for future publication

11. 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)”.

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

13. 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?

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?

14. 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.

15. DWP confirmed that the ‘Readiness Criteria’ papers presented to the Universal Credit Programme Board (UCPB) intended to be published in full in the batch of UCPB papers due for publication in April 2024.

16. DWP confirmed that this was in line with its current publication strategy of publishing UCPB minutes and papers two years after the meeting¹.
17. The Commissioner is therefore satisfied that there was an intention to publish the requested information before the request was made.

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

18. A public authority must consider whether it is reasonable, in all the circumstances of the request, to withhold the information until the date of the publication.
19. The Commissioner asked DWP to explain why, in this case, DWP had concluded that delaying disclosure until April 2024 was reasonable. DWP's response was as follows:

"The 'Readiness Criteria' are used as an internal project control mechanism. DWP is content to publish this information as part of the routine Programme /Board [sic] paper publication exercise. DWP strongly believes that the immediate publication of internal project planning documents is not a reasonable expectation".
20. There is some overlap between the factors to consider when deciding what is reasonable and those which are relevant to the public interest test. The Commissioner has therefore included some of the 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.
21. DWP acknowledged the Social Security Advisory Committee's (SSAC) comments on promoting transparency and accountability and stated that it respected these comments.
22. The Commissioner understands that the comments in question are those cited by the complainant in the request for internal review. The SSAC stated²:

"We have been told that the UC Programme has established its own internal performance metrics and specific criteria that inform decisions about scaling up or moving on to a new phase of implementation. The

¹ [http://data.parliament.uk/DepositedPapers/Files/DEP2018-1083/Letter - Future Publication.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2018-1083/Letter_-_Future_Publication.pdf)

² <https://www.gov.uk/government/publications/the-universal-credit-transitional-provisions-amendment-regulations-2022>

Programme is also responsible for assessing how it measures up against those criteria. This information is shared with the UC Programme Board, but not published, making it difficult for interested parties to understand the progress being made or for Parliament to hold the SRO³ properly to account. In our view, this amounts to the UC Programme setting and marking its own homework.

We are conscious that there is a two-year lag on the publication of UC Programme Board minutes, but we are of the strong view that issues relating to exit criteria should be published contemporaneously. We believe that doing so would strengthen the SRO's internal and external accountabilities. In particular, this would strengthen Parliament's ability to hold the current and future SROs to account for decisions they have taken."

23. The SSAC issued a recommendation that the current criteria for moving to the next phase were published before the summer recess and subsequently within one month of amendments being agreed by the UCPB to ensure that there is transparency about the Programme's intentions.
24. DWP explained that it had considered how much added value would be provided by releasing the readiness criteria document. DWP considered that, as it is an internal project document, it offers little by the way of useful information to the public about the move of tax credit claimants.
25. DWP considered that the information already published by DWP around the process of tax credit moves demonstrates a "commendable" degree of transparency around the move of tax credit claimants. DWP stated that it does not believe that early release of the readiness criteria document will enhance public understanding on this issue.
26. In relation to the SSAC's comments, DWP confirmed that there is guidance on the role of SROs on gov.uk⁴.
27. DWP explained that the Senior Responsible Owner is accountable for programme or project meeting its objectives, delivering the required outcomes, and realising the required benefits. DWP set out that the senior responsible owner of a government major project is accountable to Parliament and this accountability is monitored by regular public

³ Senior Responsible Owner

⁴ <https://www.gov.uk/government/publications/the-role-of-the-senior-responsible-owner/the-role-of-the-senior-responsible-owner#support-and-development-for-senior-responsible-owners>

appearances before the Work and Pensions Select Committee and public appearances before the Public Accounts Committee. DWP believes that these powerful committees subjecting the SRO to regular scrutiny of project delivery is a more effective method of securing accountability than the publication of specific internal project documents.

The Commissioner's position

28. The Commissioner has considered DWP's submissions and his own guidance on this matter.

29. The Commissioner's guidance⁵ states:

"The closer to the date of publication, the more reasonable it is likely to be for the public authority to withhold the information until publication has taken place."

30. The Commissioner notes that at the time of the request, the information itself was a little over a year old and DWP did not intend to publish the information for a further year. The Commissioner does not accept DWP's argument that the "immediate publication" of the requested information is not reasonable. The Commissioner is not persuaded that disclosure of information a year after its creation could be considered "immediate" and he is further not persuaded that requiring the public to wait two years for its publication is reasonable.

31. The Commissioner has previously issued decisions regarding DWP's use of section 22 where it intends to publish information two years or more after its creation:

- <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615863/fs50820378.pdf>
- <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619655/ic-46647-y7r2.pdf>
- <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021931/ic-145903-x8d9.pdf>

32. The Commissioner considers that the amount of information available via the scrutiny processes set out by DWP does not add weight to the reasonableness argument. He considers that this reveals the importance

⁵ <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>

of the subject to the public and the need to provide this information at a sooner rather than later date.

33. 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, a year after the request was made and two years after the information's creation.
34. The Commissioner requires DWP to disclose the requested information.

Right of appeal

35. 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

36. 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.
37. 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

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
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