

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

### **Decision notice**

**Date:** 1 August 2017

**Public Authority:** The Department for Work and Pensions

**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### **Decision (including any steps ordered)**

1. The complainant has requested information relating to a settled personal injury claim against his previous employer.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) is entitled to rely on section 14(1) of the FOIA in relation to one element of the request.
3. The Commissioner considers that the rest of the request is exempt from disclosure under section 40(1) of the FOIA.
4. The Commissioner requires no steps be taken to ensure compliance with the FOIA.

## Background

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5. The Commissioner has referred to decision notice FS50463281 for the following background information<sup>1</sup>.
6. The complainant made a claim against the British Coal Corporation (BCC) for an accident he had whilst working in a BCC mine in 1991. This claim was settled in 1996.
7. In 1998, the liabilities of BCC were transferred to the Secretary of State for Trade and Industry and were subsequently transferred to the Department for Business, Enterprise and Regulatory Reform (BERR). In 2008, the liabilities were transferred to the newly created Department of Energy and Climate Change (DECC). In July 2016, DECC became part of the Department for Business, Energy and Industrial Strategy (DBEIS).
8. On 5 April 1996, the out of court settlement figure was agreed to be £50,000. This compensation was to be paid after benefit deductions had been made and paid to the Compensation Recovery Unit (CRU) at DWP. The deductions were the amount that had been paid to the complainant in industrial injury benefits since the accident. The remainder was to be paid to the court for the complainant.
9. Had the £50,000 been awarded on 5 April 2016, the amount to be deducted would have been £30,768.18 and the complainant would have received £19,231.82.
10. However, the payment was not made until 11 April 1996. By this later date, the complainant had received a further benefit payment of £157.92. The amount to be deducted for the CRU had therefore risen by £157.92 to £30,926.10.
11. Because of the delay, on 11 April 1996 the final settlement figure of £50,000 plus £157.92 (£50,157.92) was paid. The deduction of £30,926.10 was paid to the CRU. The remainder which was paid to the complainant therefore remained at £19,231.82.
12. As the amount of total compensation paid on 11 April 1996 rose by the same amount as the deduction to be paid to the CRU (£157.92), the

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2013/817518/fs\\_50463281.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2013/817518/fs_50463281.pdf)

amount left to be paid to the complainant on 11 April 1996 was the same as the amount due to be paid on 5 April 1996.

13. The compensation payment certificate (subject to deduction) was calculated for the week up to 5 April 1996 and not subsequently adjusted to the later date of 11 April 1996. It therefore refers to £50,000.
14. The complainant submitted a complaint to an Independent Tribunal and the Upper Tribunal decision also refers to the sum of £50,000.
15. It is this discrepancy between the amount originally agreed (£50,000) and the amount stated to have been paid (50,157.92) which is the basis of the complainant's concern. The complainant asserts that £50,000 was paid into court and the figure of £50,157.92 is an inaccurate record.

## Request and response

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16. On 18 July 2016, the complainant wrote to DWP and requested information in the following terms:

*"Please obtain the instruction from Centrica claims March/April 1996 and answer the following under FOIA:*

  - (a) If £50,000 is incorrect personal data. Then under the FOIA provide the incorrect figures in [named solicitor]'s letter (6).*
  - (b) [Named solicitor]'s letter was given to HMCTS (7) by the CRU therefore it has no data protection. Under the FOIA provide the figures in [named solicitor]'s letter (6) "note" as you can see the Judge was interested as well.*
  - (c) The CRU provided two different settlements of £50,000 and £50,157.92 to HMCTS, neither hearing was a closed hearing. Under the FOIA which settlement was correct?*
  - (d) Who are British Coals Claims data controllers?"*
17. DWP responded on 29 July 2016 and refused to provide the requested information. It cited section 14 and stated that a public authority is "not obliged to comply with a request for information if that request is vexatious". DWP explained that the complainant had made requests for the same or similar information, all of which had been answered in accordance with the FOIA and the Data Protection Act (DPA). DWP explained that all recorded information had been provided and DWP would not process the complainant's request further.

18. The complainant wrote to DWP on 29 July 2016 to request an internal review. He also made a subject access request for all data held on him under the DPA.
19. On 31 July 2016, the complainant wrote to DWP again to provide arguments against the application of section 14.
20. DWP wrote to the complainant on 17 August 2016 to provide the outcome of the internal review. DWP upheld its application of section 14 and explained to the complainant that it had previously confirmed that it no longer held any information in relation to his claim. DWP also set out that it considered the complainant was already aware of the data controller as he had confirmed this in previous correspondence.

### **Scope of the case**

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21. The complainant contacted the Commissioner on 5 September 2016 to complain about the way his request for information had been handled. He confirmed to the Commissioner that he only wished to complain about requests (b) and (d).
22. DWP originally confirmed to the Commissioner that it was relying on section 14(2) 'repeated requests' for both requests, however, during the course of the investigation, DWP changed its position and informed the Commissioner that it wished to rely on section 14(1) 'vexatious requests' in respect of request (d).
23. Having considered the request, the Commissioner's view is that request (b) falls to be considered under the Data Protection Act 1998 (DPA) as it is a request for the complainant's personal data. The Commissioner has therefore exercised her discretion to consider exemptions not cited by the public authority.
24. The Commissioner has not considered the handling of this request under the DPA as it is a separate legal process from a section 50 complaint, however, she does note that DWP had previously confirmed to the complainant that it no longer held any information relating to his complaint and referred to this confirmation in its response.
25. The Commissioner considers the scope of the investigation to be to consider whether the information requested in request (b) is exempt under section 40(1) 'applicant's own data' and to determine whether DWP is entitled to rely on section 14(1) in respect of request (d).

## Reasons for decision

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### Section 40(1): the applicants personal data

26. Section 40(1) of FOIA provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because there is a separate legislative access regime for an individual's own personal data, namely the right of subject access under section 7 of the DPA. The exemption is absolute, which means that there is no requirement to consider the public interest.
27. The definition of personal data is given in section 1(1) of the DPA:
- 'personal data' means data which relate to a living individual who can be identified:*
- (a) from these data, or*
  - (b) from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller.*
28. The Commissioner is satisfied that the complainant is, or would be if information were held, the subject of the information requested in request (b). This is because the information requested is in relation to a claim brought by the complainant.
29. The complainant has explained that he considers the information to be in the public domain as it was submitted as evidence in an open tribunal hearing. He therefore considers that it should not be exempt under the FOIA.
30. As set out in paragraph 26, the right of access to an individual's personal information is via a subject access request under the DPA, regardless of whether this information is in the public domain. Section 40(1) of the FOIA exempts *"any information"* which is the applicant's own data from disclosure under the FOIA.
31. The Commissioner does, however, note that information and documents provided to court are not necessarily deemed to be in the public domain. While the hearing may be open and the information referred to by the relevant parties, information provided to the judiciary as evidence for their consideration may not automatically be in the public domain. The

Commissioner considers that information in the public domain should be accessible to the general public rather than the small number of individuals attending a tribunal<sup>2</sup>.

32. In light of the above, the Commissioner is satisfied that the exemption at section 40(1) is engaged with regards to request (b).

### **Section 14(1): Vexatious requests**

33. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
34. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>3</sup>. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
35. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
- (i) The burden imposed by the request (on the public authority and its staff);
  - (ii) The motive of the requester;
  - (iii) The value or serious purpose of the request; and
  - (iv) Any harassment or distress of and to staff.
36. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1204/information-in-the-public-domain-foi-eir-guidance.pdf>

<sup>3</sup> <http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

*“importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45)*

37. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
38. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests<sup>4</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All of the circumstances of a case will need to be considered in reaching a decision as to whether a request is vexatious.

### **Is the request obsessive?**

39. The Commissioner would characterise an obsessive request as one where the requester is attempting to re-open an issue which has already been comprehensively addressed by the public authority or otherwise subjected to some form of independent scrutiny.
40. In the Commissioner’s view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence, then it may form part of a wider pattern of behaviour that makes it vexatious.
41. The Commissioner accepts that, at times, there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.

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<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

42. The Commissioner has reviewed the information provided by the complainant and DWP. The complainant appears to have unsuccessfully appealed or attempted to appeal the settlement amount on no fewer than eight occasions to various tribunals. The complainant has complained to Action Fraud, who referred his case to Northumbria Police. The Police reviewed the complaint and explained that it was a civil matter and no further enquiries would be made. The complainant has also complained to the PHSO who explained it could not investigate his complaint as it was against his previous employer.
43. The Commissioner also notes that the decision notice issued on case FS50463281 which upholds DBEIS' application of section 14(1) is regarding the same issue.
44. From the information provided by the complainant and DWP, the complainant has been corresponding with various public authorities, including DWP, regarding this issue since the claim's settlement in 1996.
45. The complainant was informed, in response to his previous subject access requests, that DWP did not hold information relating to his claim. The complainant then made two requests under the FOIA for information relating to his claim for information.
46. The Commissioner has taken into account the context and background of the request, the correspondence provided by the complainant and DWP and considers that the complainant is attempting to use the FOIA to re-open an issue that has already been comprehensively addressed by DBEIS and DWP, and has been subjected to independent scrutiny by various independent bodies including the Tribunal service.
47. The Commissioner considers that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

**Does the request lack any serious purpose or value?**

48. The guidance is clear that the FOIA is not generally concerned with the motives of an applicant. However, if a request clearly lacks a serious purpose or value, it may support an argument that it is vexatious.
49. The complainant has provided arguments regarding the value and serious purpose of his request. He stated in his complaint to the Commissioner that his request was due to a *"disagreement as to material fact"*.
50. The complainant also sets out various arguments regarding the purpose of his request. These include:



- The figure of £50,157.92 has been created to prevent DWP from having to disclose the *"incorrect"* figure of £50,000.
  - The request is necessary to ascertain who the data controller was in order to ascertain which figure is correct.
  - The complainant states that there has been at least four data controllers at various times and it is vital to know who they were and when.
51. Regarding the complainant's assertion that the figure of £50,157.92 has been created in order to avoid disclosure of the *"incorrect"* figure of £50,000; under both FOIA and DPA, the right of access is to information held at the time of the request and there is no exemption under which information can be withheld due to accuracy. The DPA places a duty on an organisation to maintain accurate records but this does not extend to withholding information it considers to be inaccurate.
52. The Commissioner also notes that in his complaint to her, the complainant states *"I know who the data controllers were that the CRU dealt with"* and confirmed the name of the organisation. The complainant also provided the Commissioner with a letter from this named organisation which confirms that it is the data controller and claims handler on behalf of DECC.
53. The complainant also states in his complaint to the Commissioner: *"Granted the DWP do not hold any information, however they have sent all my correspondence to [named solicitor]'s Solicitors where...it can be accessed at any time"*.
54. It appears from the information provided by the complainant that he is requesting information that he already holds and is aware that DWP does not hold the requested information. The Commissioner considers it likely that the complainant's motive behind making the request is to force DWP to 'admit' that the previously stated settlement figure is incorrect rather than a serious intention to obtain information.

**Will the request create an unreasonable burden on the public authority?**

55. Public authorities must keep in mind that meeting their underlying commitment to transparency and openness will require accepting a level of burden in responding to requests for information. However, the Commissioner does not consider that public authorities should be expected to accept disproportionate levels of burden such that the FOIA itself becomes a burden.

56. DWP has confirmed to the Commissioner that the request itself would not be burdensome to respond to. However, DWP explains that the pattern of correspondence received by the complainant indicates that the complainant is unlikely to be satisfied should DWP respond and will continue to make requests regarding the same issue.
57. The Commissioner has reviewed the correspondence between the complainant and DWP, including correspondence received after the date of the request.
58. The complainant made a request for personal data relating to his claim on 5 April 2016 and DWP responded on 7 April 2016 stating that it no longer held information relating to his claim due to the time elapsed. DWP explained that its retention policy allowed documents to be destroyed 14 months after the end of a claim. The complainant then made another request for information relating to his claim which DWP responded to on 6 June 2016, again confirming that it no longer held information relating to his claim and setting out DWP's retention principles.
59. On 6 July 2016, the complainant requested information under the FOIA, DWP explained on 13 July 2016 that personal information is exempt under section 40(1) of the Act and advised that no information was held under DPA.
60. On 18 July 2016, the complainant made the request considered in this decision notice, to which DWP applied section 14.
61. On 30 November 2016, during the course of the Commissioner's investigation, the complainant contacted DWP and requested a copy of its submission to the Commissioner. The complainant also made a separate request for *"all covert correspondence between DWP and DTI/BERR/DECC and its solicitors over the last 21 years"* regarding him on the same day.
62. On 13 January 2017, the complainant submitted a further request for information relating to his claim and again on 6 February 2017. On 5 March 2017, the complainant requested a copy of a recorded Tribunal decision of a claim he had brought against CRU/DWP.
63. The complainant explained to the Commissioner that he considered the request would not create a burden on DWP as the information is easily accessible.
64. The complainant stated on multiple occasions that DWP has the power of inspection under section 110 of the Social Security Administration Act 1998 (SSAA). He, therefore, considers that DWP is able to access the

information he requires by invoking this power of inspection in relation to documents held by two named companies.

65. The right of access under the FOIA is to recorded information held by the public authority at the time of the request. Public authorities are not obliged to create or obtain information in order to fulfil a request for information. The power of inspection conferred at section 110 of the SSAA is used at DWP's discretion and the FOIA provides no obligation on DWP to use that power to fulfil a request for information.
66. The Commissioner requested clarification of the named third parties' relationships with DWP. DWP explained that the third parties had been engaged, separately, as legal representatives and claims handlers on behalf of British Coal Claims. DWP confirmed that the parties had liaised with DWP regarding compensation claims but did not perform any functions of DWP or hold information on behalf of DWP.
67. In considering the issue of burden in this case, the Commissioner looked to the Dransfield Upper Tribunal Decision for guidance. Paragraph 70 addresses the issue of future burden.
68. The Commissioner considers future burden to be one of the key issues in this case. DWP has provided evidence of the pattern of correspondence and the Commissioner has considered the correspondence provided by the complainant.
69. When considering whether a public authority has complied with the legislation, the Commissioner will normally have to return to the circumstances as they were presented at the time a request was made. However, this is not a hard and fast rule, which was a point expressed by the First-tier Tribunal in *Gregory Burke v The Information Commissioner* (EA/2015/0050, 19 September 2014):

*15. In his decision notice, at paragraph 22 the ICO, in commenting on submissions made by CCNI noted:- "that some of the supporting evidence provided by the Charity Commission post-dates the requests and must therefore be immediately disregarded." This is a clear error. In deciding whether or not section 14(1) is applicable to a request for information a public body needs to consider all the relevant circumstances. If it reasonably apprehends (for example) that the request is part of a pattern of repeated requests of little value which is likely to continue, then in responding to a subsequent investigation by ICO the existence of subsequent requests may provide a degree of confirmation of the reasonableness of its apprehension. Subsequent events should not therefore be "immediately disregarded" by the ICO in his investigation.*

70. Following the approach of the Tribunal, the Commissioner accepts that it may be appropriate to consider the evidence in the round in order to confirm whether a public authority's argument for vexatiousness has validity.
71. Having reviewed the correspondence provided, the Commissioner considers that history of the complainant's correspondence demonstrates that the complainant is unlikely to ever be satisfied with DWP's response. She considers that if DWP had complied with the request, there is a high likelihood that correspondence would continue with no end in sight for DWP. The Commissioner is satisfied that providing a response to this request would prolong correspondence and places an unfair burden on DWP in a manner which would be disproportionate to the value of the request.

**Will the request cause disruption or harassment of staff or the public authority?**

72. DWP explained to the Commissioner that the complainant persistently requests information despite explanations that DWP no longer holds any information in relation to his claim. DWP set out that the complainant has been in contact with DWP over a number of years regarding his claim but in the last year, the complainant has been in contact with DWP on an almost monthly basis.
73. DWP did not provide any further explanation or evidence of disruption or harassment, however, the Commissioner has reviewed the correspondence between the complainant and DWP and she notes that the complainant makes various accusations directed at DWP.
74. In the complainant's request for information, he states that he requires the information to prove DWP has committed perjury by providing "false" information to a previous tribunal. He also accuses the named solicitors of stealing medical records and accuses DWP of "covering up" for them.
75. The complainant again accuses DWP of perjury in his request for internal review dated 30 July 2016. He also requests DWP supply him with all "*covert correspondence*" with DBEIS (and its predecessor departments) and states that DWP should not deny its existence as he has a friend who works as a communications officer at DBEIS and provides a screenshot of a Facebook "friend request" as evidence of his contact at DBEIS.
76. In his complaint to the Commissioner, the complainant repeats these accusations and includes further accusations of DWP not investigating

the named third parties' involvement in mass murder, grievous bodily harm and fraud. He also accuses DWP of giving insurance companies a "free hand" to use illegal practices to secure the maximum amount in recovered monies.

77. The complainant has explained to the Commissioner that he has been placed on a single point of contact when communicating with DWP and therefore he considers that he cannot cause distress or harassment to a single member of staff.
78. It is clear to the Commissioner that the complainant is not satisfied with the handling of his claim and how the various public authorities and organisations have conducted themselves. The Commissioner considers that allegations of misconduct by those in public office should not be dismissed lightly, especially when of as serious a nature as those allegations made by the complainant. However, in this instance, the complainant has provided no evidence in support of these allegations beyond information relating to the discrepancy in the settlement figures.
79. The Commissioner also considers that whilst public authorities should be subject to scrutiny and held to high standards, they should not be forced to endure allegations of the nature stated above. The complainant has referred his concerns to multiple independent bodies who have not upheld his complaints or appeals.

## **Conclusion**

80. In light of the provided information, and on the basis of her own analysis of the context in which the request was made, the Commissioner's decision is that DWP are entitled to refuse this request under section 14(1) of the FOIA.
81. The complainant has been corresponding with various areas of DWP for many years on the same issue and the Commissioner considers this case fulfils the criteria for an obsessive request which, if complied with, would place a disproportionate future burden on DWP with likely protracted correspondence which is unlikely to ever satisfy the complainant.

## **Other matters**

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82. The Commissioner notes that in its response to the complainant, DWP cited section 14 and did not specify whether it was relying on the application of section 14(1) or section 14(2). The Commissioner notes that DWP state that section 14 provides that a public authority is not obliged to respond to a request that is vexatious, however, the

Commissioner would like to remind DWP that it has a duty to cite the specific exemption it is relying on under section 17(1)(b).

## Right of appeal

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83. 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)

84. 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.
85. 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 .....

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**