

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

### **Decision notice**

**Date:** 30 March 2023

**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 submitted three identical multi-part requests in a ten-day period to the Department for Work and Pensions ('DWP') requesting a wide range of information about their and other individuals' transfer from a legacy benefit to Universal Credit and about DWP's computer systems.
2. DWP refused the first request on the basis of section 12(1) (costs exemption) of FOIA and the second and third requests on the basis of section 14(2) (repeat requests) of FOIA.
3. The Commissioner's decision is that DWP has correctly cited section 12(1) of FOIA in response to the first request and that it also complied with its obligations under section 16 of FOIA to provide adequate advice and assistance to the complainant. However, section 14(2) of FOIA does not apply to the second and third requests and therefore DWP is not entitled to rely upon it to refuse those requests.
4. In the particular circumstances of this case, however, the Commissioner has exercised his discretion and does not require DWP to take any steps. Even if he had ordered DWP to respond to the second and third requests again, without relying upon section 14(2) of FOIA, as both those requests are identical to the first request, they would also engage section 12(1) of FOIA.

5. Therefore, the Commissioner does not require the public authority to take any steps.

## **Request and response**

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6. On 21 October 2022, the complainant wrote to DWP and requested the following (the 'first request'):

"I request the statistics for those who have been moved from a legacy benefit to UC and stated that they did not apply for UC, split by those who appealed the decision and those who did not appeal the decision over the last five years, on a monthly basis.

I request the name and the age of the software computer system and the type and age of the computer system hardware that you were using in March 2020 and the details of the company that provides and maintains the software.

I request the trace of the UC application that was used when processing my so-called application, i.e., the computer it was linked to and the precise time of the UC application.

I request the physical address of the computer that was made in making the UC application.

If there was more than one logging on of the UC application that I supposedly made, I would like the details, areas and addresses of all the UC applications that I supposedly logged on to.

I request details 2 regarding any other cases that people have stated they have been transferred without actually applying to do so.

I request the numbers of computer software changes that were made to the system during lockdown, in particular January, February, March, April, May, June and July of 2020 due to policy or other reasons, with details of those changes.

I would also request the statistical data on the mistakes made by the DWP on cases and the cost of such mistakes, on a year-by-year basis for the past five years.

There is only electronic data and no actual physical evidence that a UC application was made. I would like to know the statistics and all cases of hacking into the DWP computer system in the past 5 years on a yearly basis.

I would also like to know any and all problems relating to the software that you have been using for the past five years on a year-by-year basis.”

7. The complainant made an identical request to DWP on 27 October 2022 (the 'second request') and another identical request on 31 October (the 'third request').
8. The DWP treated each request separately and responded to the first request (FOI2022/84322) on 21 November 2022. DWP stated that while it held the information requested, it was exempt from disclosure by virtue of section 12 of FOIA. DWP suggested ways the complainant may wish to consider narrowing the request. As regards the requested statistics on the mistakes made by the DWP on cases and the cost of such mistakes for the past five years, DWP explained that it published annual official error rates and, outside of FOIA, provided links containing this information. DWP noted that any of the complainant's personal data it held in relation to the first request could be dealt with by a subject access request ('SAR').
9. Three days later on 24 November 2022, DWP responded in separate letters to the second (FOI2022/85744) and third requests (FOI2022/86616). DWP refused both requests, citing section 14(2) of FOIA as its basis for doing so, and stated that DWP “will not be responding [to] this subsequent request any further.”
10. On 6 December 2022, the complainant contacted the Commissioner to complain about the way their requests for information had been handled. They provided copies of DWP's responses to the first and third request. They said:

“I ask that you give an informed judgement on whether there is a breach of the rules.... the 21st November 2022 letter states that I need to re-send the letter in a shorter format and the 24th November 2022 letter states they will not be responding to my requests any further. This has been taken to mean that any further emails/letters from me will be ignored.”

11. The Commissioner advised the complainant to request an internal review. The complainant did so for the first request on 14 December 2022 and the second and third requests on 16 December 2022<sup>1</sup>.
12. DWP provided its internal review, combined to respond to all three requests, on 12 January 2023. It upheld its original positions.

### **Scope of the case**

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13. The complainant contacted the Commissioner again on 12 January 2023 to complain about the way their requests for information had been handled. They said:

“...Just to make it clear, they have said 1. that I need to modify my FOI request, and three days later, 2. that I can no longer make FOI requests to the DWP. If this is not breaking the law, I don't know what is...”

14. The Commissioner therefore considers that the scope of this case is to consider first whether section 12 of FOIA was cited correctly by DWP to refuse to respond to the first request. Second, he will consider whether section 14(2) of FOIA was cited correctly by DWP to refuse to respond to the second and third requests. Third, as the Commissioner recognises that all three requests are identical, the Commissioner will go on to consider the most pragmatic way of dealing with the particular circumstances of this case.

### **Reasons for decision**

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#### **Section 12 – cost of compliance exceeds the appropriate limit**

15. The following analysis sets out why the Commissioner has concluded that DWP was entitled to rely on section 12(1) of FOIA to refuse to respond to the first request.

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<sup>1</sup> Note: DWP have explained to the Commissioner that the complainant sent seven emails requesting Internal Reviews on 16 December, single emails on 21 December 2022, 2 January 2023 and a further four emails on 9 January 2023. These all related to the three FOIs. DWP only registered one Internal Review request against the three original FOI requests. As such DWP emailed the complainant on 9 January 2023 that it had already begun actioning his Internal Review requests from 14 and 16 December 2022 and that it would respond to all of them by 17 January 2023 (20 working days from 14 December 2022)

16. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for public authorities such as DWP.
18. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) FOIA effectively imposes a time limit of 24 hours for DWP to deal with this request.
19. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".
20. DWP considers that the cost of complying with the first request would exceed the appropriate cost limit under FOIA. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit of 24 hours.
21. The complainant submitted a multi-part request for statistics and information about their and other individuals' transfer from a legacy benefit to Universal Credit and a wide range of information about DWP's computer systems.
22. Broadly, DWP explained that to provide the statistics for the requested scenario<sup>2</sup> it would need to manually check individual claims to Universal Credit in order to determine whether the scenario specified by the complainant has occurred. Therefore, each Universal Credit claim would have to be examined individually to identify, and then extract, the in-scope material. This is because DWP does not collate statistics for the requested scenario. As it was not held centrally, DWP, therefore, would

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<sup>2</sup> For example : "those who have been moved from a legacy benefit to UC and stated that they did not apply for UC, split by those who appealed the decision and those who did not appeal the decision over the last five years, on a monthly basis"

have to manually review 5 years' worth of Universal Credit claim records to identify information within the scope of the requested scenario in order to provide the requested information.

23. DWP explained this in its response to the complainant dated 21 November 2022, and again in the internal review. DWP estimates that this search would take over 24 hours and exceed the appropriate cost limit in FOIA. Further, DWP explained that most of the requested information is not held centrally but is held across multiple systems by a number of different teams.
24. The Commissioner accepts that DWP is unable to collate the information falling within the very specific scenario set out in the request without individually reviewing each case. It is at DWP's discretion how it records the information it holds to meet its business and statutory requirements. The Commissioner cannot require DWP to hold information relating to Universal Credit cases in formats that can be electronically searched by specific scenario.
25. As the scope of the request covers multiple topics and a lengthy time period of 5 years, the Commissioner considers that DWP has estimated reasonably that the cost of complying with the request would exceed the appropriate limit of 24 hours, or 1440 minutes. The Commissioner accepts that it would not be possible to collate the requested information within the appropriate costs limit.
26. Therefore, the Commissioner's decision is that DWP has estimated reasonably and cogently that to comply with the complainant's request would exceed the cost limit of 24 hours. DWP was therefore entitled to rely on section 12(1) of FOIA to refuse to comply with the first request.

### **Section 16 – advice and assistance**

27. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.
28. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so.
29. The Commissioner notes that, as regards the first request, DWP suggested several ways that the complainant may wish to consider refining the first request in its response to the complainant on 21 November 2021, and again in the internal review. The Commissioner considers these were appropriate responses in the circumstances given

the broad nature of the first request and the way DWP holds its information.

### **Section 14(2) – repeat requests**

30. The Commissioner notes that three days after DWP refused to respond to the complainant's first request by citing section 12(1) of FOIA, DWP responded in separate letters to the identical second and third requests by citing section 14(2) of FOIA. DWP said in both letters that it, "will not be responding [to] this subsequent request any further."

31. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

32. Section 14(2) of FOIA states:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

33. As covered in the Commissioner's guidance<sup>3</sup> on section 14(2), a public authority may only apply section 14(2) to a request where it has either previously;

- provided the information to the same requester in response to a previous FOIA request; or
- confirmed that the information is not held in response to an earlier FOIA request from the same requester.

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<sup>3</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-repeat-requests/>

34. The ICO guidance clearly states that if neither of these conditions apply, then the public authority must deal with the request in the normal manner.
35. DWP argues that it complied with the first request made by the complainant on 21 November 2022. DWP considers that the second and third requests to be for the same information.
36. Having viewed all of the requests, the Commissioner considers that the requests were all submitted by the same person and that all three requests were for identical information.
37. However, DWP appears to have misinterpreted the meaning of 'complied' with a request for information in this instance.
38. In the specific context of section 14(2), for a public authority to have 'complied' with the previous request (here, the first request) it is not sufficient for it to have issued a refusal notice (here, DWP refused the first request on the basis of section 12). DWP must have either provided the information to the requester or told the requestor that it does not hold any relevant information.
39. Since DWP did not disclose any information in response to the first request, the second and third requests cannot represent repeat requests under section 14(2) of FOIA.
40. Therefore, the Commissioner's decision is that DWP incorrectly applied section 14(2) to the second and third requests. DWP should have dealt with these requests in the normal manner (or, the Commissioner considers that it would have been appropriate in the circumstances to have combined the three requests and responded in one refusal notice).
41. As the Commissioner recognises that all three requests are identical, the Commissioner will now go on to consider the most pragmatic way of dealing with the particular circumstances of this case.
42. In such cases, where the Commissioner's decision is that a public authority has incorrectly relied on a procedural section to refuse to comply with a request, the Commissioner's usual approach is to require a public authority to take steps to ensure compliance with the legislation and to respond to the requests again, without relying upon section 14(2) of FOIA.
43. However, in this particular case involving three identical requests and with a view to proportionality, therefore, the Commissioner has exercised his discretion in accordance with the approach confirmed in the Upper Tribunal decision in *Information Commissioner v HMRC &*



Gaskell ([2011] UKUT 296 (AAC)),<sup>4</sup> to not require any steps to be taken by DWP in relation to the second and third requests.

44. Even if the Commissioner had ordered DWP to respond to the second and third request again and without relying upon section 14(2) of FOIA, the second and third requests would, in his opinion, also engage section 12(1) of FOIA (and he would also find that section 16 had been complied with). This is because, as the second and third requests are identical to the first request, the Commissioner accepts that it would have been reasonable for DWP to also estimate for the second and third requests that the cost of complying with those requests would exceed the appropriate cost limit in section 12(1) of FOIA.
45. The Commissioner therefore requires no further action to be taken by DWP in relation to the second and third requests.

### **Other matters**

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46. The decision in this case has been reached on the particular facts of this case and the fact that the Commissioner has not ordered any steps should not be considered binding on or persuasive for future decision notices or Information Commissioner procedure when deciding subsequent cases.
47. The Commissioner has concerns regarding the handling of this request. The Commissioner would expect a public authority with DWP's resources and expertise to understand the basic principles of FOIA and the Commissioner is concerned that DWP is continuing to rely on section 14(2) in the way it has done in this case. DWP has been informed by the Commissioner on several occasions that it cannot rely on section 14(2) unless the information has been disclosed or isn't held. The Commissioner expects DWP to take steps to ensure that it is not disadvantaging requesters by misapplying sections of FOIA.

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<sup>4</sup> See <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/>

48. The Commissioner also notes he has recently issued a practice recommendation<sup>5</sup> about DWP's request handling (albeit not specifically this issue).
49. In addition, the section 45 Code of Practice<sup>6</sup> says:
- “... a request for a person’s own personal data should be dealt with under the subject access provisions of the Data Protection Act 2018. Sometimes it may be necessary to consider a request under more than one access regime.”
50. It is not clear whether DWP has already dealt with as a SAR the relevant parts of the requests for the complainant’s own personal data. The Commissioner cannot require a public authority to deal with requests as a SAR in a FOIA decision notice, but he would strongly recommend that DWP now reconsider the requests under the subject access provisions of data protection legislation and respond accordingly (if DWP has not already done so).
51. The Commissioner recognises that many requestors are unaware of the nuanced differences between the various information access regimes. When a requestor makes an information request, they simply want the information and are (usually) unconcerned about the method by which it reaches them. It is for the public authority to determine, in the first instance, which information access regime(s) is likely to be most generous to the requestor and deal with the request via that route.
52. The Commissioner understands that the complainant has not yet made a narrowed request for the information requested. Although he considers that this was largely due to the complainant’s belief that they were prevented from doing so due to DWP’s responses to the second and third requests, in the circumstances, the Commissioner suggests that the complainant may now wish to submit a narrowed request for the information to DWP. The Commissioner recommends that the complainant should base any narrowed request on the section 16 advice previously provided by DWP about how to narrow his original request,

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<sup>5</sup> <https://ico.org.uk/media/action-weve-taken/4024649/dwp-practice-recommendation-20230323.pdf>

<sup>6</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

and noting, in particular, the Commissioner's advice set out in para 53 below. The complainant should also note, however, that other FOIA exemptions may apply in any response provided by DWP to a narrowed request.

53. The complainant may also find it helpful to note for future reference that, unless a reasonable adjustment is required or in place to enable the complainant to access DWP services, sending three identical requests to DWP and seven identical internal reviews may have the potential to be regarded as 'vexatious' under FOIA. DWP may become overwhelmed, if numerous identical requests are made in quick succession before DWP has had the opportunity to address an earlier identical request. The same advice applies for requests for internal review. The complainant should note that ICO Guidance states that DWP may be entitled to refuse any FOIA requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress. There is more information about this in ICO guidance<sup>7</sup>.

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<sup>7</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/what-does-section-14-1-of-foia-say/>

**Right of appeal**

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

55. 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.

56. 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  
Wycliffe House  
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Wilmslow  
Cheshire  
SK9 5AF**