

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 July 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 information regarding meetings held between the Department for Work and Pensions (DWP) and Maximus UK Service Limited (CHDA).
2. DWP refused to comply with the request on the basis of section 14(1) as it considered that the burden of complying with the request was grossly oppressive.
3. The Commissioner's decision is that DWP has not demonstrated that section 14(1) is engaged in relation to this request.
4. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation.
 - Provide a fresh response to the request that does not rely on section 14(1) of FOIA.
5. 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

6. On 17 October 2022, the complainant wrote to DWP and requested information in the following terms:

"Re: Agreement relating to health and disability assessments with Maximus UK Service Limited

The contract documents in the public domain between the Secretary of State for Work and Pensions and Maximus UK Services Limited for the delivery of health and disability assessments prescribe a number of obligations in respect of governance.

S.8.1 (Governance) prescribes that Management Groups shall be formed and regular meetings held. The membership and scope of said meetings is prescribed in section 4. It is reasonable to assume that a records of the meetings and any documents presented to the Management Group are retained by the DWP.

RFI1: For the period 01 August 2021 to 31 August 2022 please disclose the minutes of the Management Group meetings that took place as well as any papers presented to the attendees.

S.8.1 (Governance) also prescribes that a HDAS Deliver Board shall be created. The role of the HDAS Deliver Board is described in section 6. It is reasonable to assume that a records of the meetings and any documents presented to the HDAS Deliver Board are retained by the DWP.

RFI2: For the period 01 August 2021 to 31 August 2022 please disclose the minutes of the HDAS Deliver Board meetings that took place as well as any papers presented to the attendees.

Please note that the time period for RFI1 and RFI2 has been chosen to allow adequate time for any 'live issues' to be resolved.

The Department may wish to note that I have allowed a longer period for any 'live issues' to be addressed than First-Tier Tribunal's has considered reasonable."

7. DWP provided its response on 11 November 2022 and confirmed that it held information falling within the scope of the request. DWP explained that it was relying on section 14(1) to refuse to comply with the request. DWP explained that responding to this request would be burdensome in terms of resources, as staff would be diverted away from completing their daily tasks. This is due to the amount of information that has been

requested and the substantial number of document redactions that would be required.

8. DWP explained that within the requested period, there were 22 meetings with 107 associated documents. DWP set out that each document, some of which are packs, would require review by the assessment provider, DWP performance team, DWP Commercial Team and DWP Briefings and Correspondence Team, to consider relevant exemptions. DWP considered that this alone would take a substantial amount of time; however, further time would then be required to redact the documents.
9. DWP provided a list of documents associated with the meetings and advised the complainant that they may wish to refine their request, narrowing the time period and restricting the amount of documentation required, for example requesting specific documents associated with each meeting.
10. The complainant requested an internal review on 11 November 2022 and disputed that section 14(1) was engaged.
11. DWP provided the outcome of its internal review on 12 December 2022 and upheld its original response.

Scope of the case

12. The complainant contacted the Commissioner on 16 January 2023 to complain about the way their request for information had been handled. Specifically, they disputed that DWP was entitled to rely on section 14(1) to refuse to comply with the request.
13. The Commissioner considers that the scope of his investigation is to determine whether section 14(1) is engaged in the specific circumstances of this case.

Reasons for decision

Section 14: Vexatious Requests

14. Section 1(1) of 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”.

15. Section 14(1) of FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

16. The term “vexatious” is not defined within FOIA. However, the First-Tier Tribunal in *Salford City Council v ICO and Tiekey Accounts Ltd* (EA/2012/0047) held that a request could engage section 14 purely because the burden of complying with that request would be grossly oppressive and that:

“a disproportionately high cost would be incurred for any minimal public benefit flowing from the disclosure”.

17. The Commissioner’s guidance¹ advises public authorities to rely on section 12 of FOIA when refusing burdensome requests wherever possible. However, he recognises that there will be a small number of cases where a public authority can identify and extract information within scope reasonably quickly so section 12 cannot be cited, but where responding would nevertheless impose a grossly oppressive burden. Generally this will be due to the time that the public authority believes it will be necessary to spend on work relating to citing exemptions from part II of FOIA and separating exempt information from disclosable information. Time spent on such work cannot be taken into account in relation to section 12.

18. The Commissioner considers that such a situation is likely to occur where:

- The requester has asked for a substantial volume of information; and
- The public authority has real concerns about potentially exempt information; and
- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

19. There is no time or cost limit which determines whether section 14 is or is not engaged. The Tribunal in ‘Salford’ considered that the £600 limit,

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

the equivalent of 24 hours of staff time which is applied in relation to section 12, was "helpful in considering whether the scale of costs might be proportionate"². However, the Commissioner considers that it should not be assumed that a burden which exceeds £600 would be grossly oppressive. Where there is a significant public interest in disclosure of the requested information, the burden that a public authority would be expected to accept will be higher and there is therefore a balance to be struck between the burden of complying with a request and the public interest in complying with the request.

The complainant's position

20. The complainant confirmed that they were seeking information about the governance meetings and associated documents of the contract between DWP and Maximus³ to provide health assessments for the social security benefits Employment and Support Allowance (ESA) and Universal Credit (UC). The complainant set out that the cost of this contract to the public purse is significant and a 16 month extension in 2019 was reported to be worth £236.4 million⁴.
21. The complainant considered that the contract awarded to Maximus to carry out the Work Capability Assessments (WCA) for ESA and UC remains expensive and controversial. The complainant states that questions about the performance of Maximus are often reported in the media⁵ and that Maximus is one of the companies bidding for the new five year contracts, worth £2.8 billion, to carry out the combined Personal Independence Payment (PIP) and Employment Support Allowance (ESA) assessments.
22. The complainant considered that it is clearly in the public interest to have clarity about the performance of Maximus against the contract it has been awarded.
23. The complainant explained that having read the obligations prescribed by the contract documents, they submitted their request as they

²

<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i873/20121030%20Decision%20amended%2031-10-12%20EA20120047.pdf> paragraph 16

³ The Commissioner notes that the complainant refers to Maximus while DWP refers to CHDA. The Commissioner understands that Maximus has been contracted to undertake WCAs and does so under the name of Centre for Health and Disability Assessments

<https://chdauk.co.uk/>

⁴ <https://www.birminghammail.co.uk/news/midlands-news/private-companies-given-600million-dwp-16392913>

⁵ <https://www.disabilitynewsservice.com/tag/maximus/>

believed the 12 month period would provide a fair and balanced view of the performance of Maximus and DWP.

24. The complainant disputed that the burden claimed by DWP was reasonable. They disputed DWP's assertion that Maximus would need to review the information as it is not a public authority and therefore has no role in selecting exemptions.
25. The complainant also considered that the number of teams that DWP claims must be involved in reviewing the information was excessive. They disputed that the Briefings and Correspondence team would need to be involved for the purposes of FOIA.
26. The complainant considers that the request has a clear value as the WCA contract and the performance of Maximus is highly controversial and expensive. The complainant stated that stories repeatedly appear in the media about the harm caused by the WCA carried out by Maximus and in some cases it has led to suicide or people starving to death⁶ when their benefits were subsequently terminated by DWP. The complainant considers that appeal success rates for ESA and UC are high at 62% and 55% respectively and stated that accusations of 'dirty tricks' by Maximus Assessors were raised with MPs in July 2022⁷.
27. The complainant explained that the data published about appeal success rates and the stories in the media sit in stark contrast to what little information DWP places in the public domain about the performance of Maximus. The complainant considers that this is even more shocking when the value of this contract is considered. They explained that the contract has been extended twice by DWP without competition and they believed this is worth approximately £1 billion. The complainant considers that it "cannot be right" that this amount of public funds is paid to Maximus without open discussion and scrutiny of its performance.
28. The complainant considers that the requested information will give an accurate picture of what is actually happening with the WCA contract. The complainant believes that it should reveal the quality of the contract management by DWP as well as the issues facing Maximus and what

⁶ <https://www.disabilitynewsservice.com/dwp-hounded-disabled-woman-for-years-before-her-starvation-death-papers-show>

⁷ <https://www.disabilitynewsservice.com/dwp-contractors-carry-out-secret-tricks-on-disabled-claimants-tory-mp-has-been-told/>

both organisations are doing to fix them. The complainant considers that this will allow scrutiny by the public, media and elected representatives.

DWP's position

29. DWP explained that it, and its assessment provider Centre for Health & Disability Assessments (CHDA), had undertaken a sampling exercise to ascertain the volume of documents in scope of the request, the approximate length of time to review the relevant documentation and obtain senior management sign off, plus the length of time to redact the information that DWP and CHDA considered to be exempt under section 36⁸, section 40⁹ and section 43¹⁰ of FOIA.
30. DWP explained that it would need to redact information under section 36 as the documentation contains conference telephone numbers that would allow individuals from outside DWP to dial in to sensitive conference calls.
31. DWP explained that it would need to redact the names of individuals below the grade of Senior Civil Servant under section 40(2) of FOIA.
32. DWP explained that it would need to make redactions under section 43(2), commercial interests, as disclosure would or would be likely to prejudice the commercial interests of DWP and its providers.
33. DWP confirmed that it had undertaken a sampling exercise and reviewed one month's documents from October 2021 as there were an average number of documents produced for this meeting (10) which varied in size and detail. DWP confirmed that there were two Delivery Boards during October 2021.
34. DWP explained that the sampling exercise involved different separate teams within DWP and its provider CHDA:
 - DWP Health & Disability Assessment Services (HDAS) Account Team
 - DWP Commercial Team
 - DWP Contract Management & Partner Delivery (CMPD) Ministerial Briefings and Correspondence Team (MB&C)

⁸ Prejudice to the effective conduct of public affairs

⁹ Personal data

¹⁰ Prejudice to commercial interests

- CHDA
35. DWP explained that CHDA authors the documents presented for discussion at the Delivery Board and is the data controller, on behalf of DWP, for the data within the documents.
36. DWP provided breakdowns of how long each team was estimated to spend on each document. The HDAS estimate was further broken down into the following activities for each document:
- Undertake primary review of document
 - Mark up all areas where potential redaction required
 - Undertake review with CHDA stakeholders – senior colleagues x 2
 - Update document
 - Request approvals to submit to DWP – director level x 2
 - Discuss with DWP and respond to any clarifications or provide amended document
37. DWP provided the following explanations for the tasks required to be undertaken by the HDAS team:
- Primary review and mark up of potential redactions: DWP explained that the primary review is undertaken to identify the material requiring redaction. DWP explained that the mark up of potential redactions takes place during the primary review. DWP confirmed that the total time for the review is the primary review time and the mark up time together.
 - Review with CHDA and updating document: DWP explained that the review is carried out to assure CHDA that the information being released does not contain anything that they feel should be redacted. DWP confirmed that updating the document would be done at the same time as the review with CHDA and the two items would be the total time.
 - Senior approval: DWP explained that CHDA considers that the individuals conducting the initial review have the right level and experience to do this, but do not have sufficient seniority to authorise the release of the documents particularly when considering their sensitivity. DWP considered that it is therefore reasonable to include this as a step in the timings process.

- Discuss with DWP and respond to any clarifications or provide amended document: DWP explained that the review by CHDA of these meeting minutes will be conducted by those with the relevant knowledge of the subjects discussed during the meetings. DWP set out that they may have some working knowledge of FOIA but this would not be a key responsibility of their daily role. DWP set out that it takes its responsibilities to provide accurate responses to FOI requests seriously. DWP explained that upon receipt of the suggested redactions from CHDA, DWP ensures that these are carefully checked and provide clarification on any redactions CHDA is unsure about. DWP will also request CHDA remove any redactions where they have been made for information that could be released. DWP explained that if any amendments need to be made following this discussion, CHDA will make them and supply an amended version of the document to DWP.
38. DWP explained that the timings from the HDAS Account team and the documents sampled by DWP Commercial team and the CMPD MB&C team led DWP to conclude that to commit the resources for the amount of time that would need to be spent reviewing and redacting all the requested documentation and complying with the legally mandated 20 working day limit to respond to FOI requests would have a negative impact on the day to day roles and responsibilities of the individuals and teams that would undertake the required work.
 39. DWP confirmed that following its response to the complainant, it had come to its attention that one of the meetings in August 2021 had documentation produced but the meeting was cancelled. DWP confirmed that the number of meetings is therefore 21 and the number of documents is 105.
 40. DWP explained that the majority of the related documents are in PowerPoint with graphs and charts that have been copied and pasted from Excel. DWP explained that the 'find' and 'replace' function will not work. DWP set out that the only option available to ensure all redactions are accurately made and the correct exemption applied is to manually review and redact them.
 41. DWP explained why it considered the teams that participated in the sampling exercise were required to do so.
 42. DWP explained that it and its providers consider commercial and contract information to be sensitive. DWP explained that the HDAS

contract is published online¹¹ but within this publication information is redacted to maintain commercial confidentiality.

43. DWP explained that within DWP and its providers, access to commercially sensitive information is limited to the commercial teams that manage the contracts.
44. DWP explained that the day to day management of these contracts requires experienced commercial managers. DWP explained that due to the size and scale of contracts, each contract will have its own commercial management team. DWP explained that when an FOI is received that requests information related to the contracts, it requires the specialist knowledge of these commercial managers within DWP and its providers to ensure that any information considered to be commercially sensitive is redacted.
45. DWP explained that after the initial redactions have been completed, a senior manager or director in both DWP and CHDA will need to complete a review of the redactions to ensure that they are accurate and provide sign off to enable the redacted documents to be released.
46. DWP explained that, additionally, it has specialist teams that draft responses to FOI requests and provide expert advice to the commercial teams on FOIA. DWP explained that these teams will also review the documentation to ensure the correct exemption has been applied to the redacted information and ensure none have been missed or that exemptions have been incorrectly applied and information should be released. DWP explained that they will also complete the redactions on the documentation that will be released to the requester.
47. DWP explained that before the redacted documents are released, they will need to be reviewed by a senior manager in the CMP MC&B team to ensure the accuracy of the redactions and any advice and guidance given in the response is correct and consistent with FOIA.
48. Due to the sensitivity and complexity of these requests, DWP considers it would not be appropriate to assign this work to anybody in DWP that works outside of these specialist areas.
49. DWP provided detailed explanations of the roles and responsibilities of DWP's Commercial team, Ministerial Briefing and Correspondence team, HDAS Account team and the team at CHDA. DWP explained that as per

¹¹ <https://www.contractsfinder.service.gov.uk/notice/9bdd9fa5-0a4c-4484-a853-702b9683db80?origin=SearchResults&p=1>

these roles and responsibilities, the day to day work of the teams involved covers a broad range of areas and responsibilities and therefore undertaking any exercise to redact information for an FOI request would impact on the normal day to day work that is still required to be completed by the limited resources on each of the teams.

50. DWP explained that given the number of documents in the timeframe requested and the time it would take to complete the review and redaction of the documents, the teams required to complete the FOI would not be able to maintain the level of service required in their day to day role.
51. DWP confirmed that all the individuals and teams involved will need to review the entirety of each document. DWP explained that the amount of documentation being requested, and the large volume of information contained within, makes it highly likely that a single individual will either fail to identify all the information that DWP considers exempt under FOIA or could misidentify information as exempt. DWP therefore considered that it is reasonable to have multiple individuals reviewing the documents to mitigate any risks.
52. DWP provided the Commissioner with a breakdown of how long it estimated each team would need to review the requested information and this gave an overall estimated time of 250 hours and 55 minutes. DWP explained that given a standard working week of 37 hours, this equates to approximately 6.75 weeks of work across the teams.
53. DWP considered that due to the requirement to use specialists on small teams to ensure the accuracy of documents for release, the amount of time it would take to comply with this request creates a disproportionate burden on the individual and their teams after weighing up the interests and value to the public.
54. The Commissioner provided DWP with the complainant's reasons why they consider that the value and purpose of the request mean that the associated burden is not disproportionate.
55. DWP confirmed that the timeframe in the request is not the reason for engaging section 14(1), it is the volume of documents contained in that period. DWP explained that it had previously complied with a different request from the complainant where they asked for documentation over a longer period. DWP confirmed that it is the volume of documents and the amount of time required to redact these that DWP considers is vexatious in this case.
56. In relation to the complainant's arguments regarding the value and purpose of the request, DWP explained that whilst WCA appeal rates

may seem high, context needs to be added in terms of the number of appeals compared to the workload. DWP provided a link regarding the outcomes of Employment Support Allowance Work Capability Assessments and "the historically low number of appeals"¹².

57. DWP explained that there is limited resource within DWP with the skills and experience to be able to effectively consider and accurately redact the information within the 105 documents. DWP explained that the resources would have to be dedicated fully to the task of looking at the documents to ensure it complies with its statutory 20 working day deadline to respond to FOI requests and this would be to the detriment of all other work they are required to do.
58. DWP also considered that there would be an impact on DWP claimants as a result of CHDA resources being required to focus their attention elsewhere. DWP stated that CHDA resource being offline to complete this activity means they are not focusing on delivery of the health assessments service. DWP set out that whilst DWP is not paying specifically for someone to do this work, it does pay the costs for the contract which ultimately impacts the value of the contract on the tax payer.
59. DWP provided the Commissioner with examples of the documents that would need to be reviewed. DWP considered that some of the information had no material value to the public due to changes in circumstances, lack of context or the extent of the redactions. The documents did not, however, contain any redactions or evidence of the extent of the redactions.

The Commissioner's position

60. The Commissioner considers that DWP has not demonstrated that complying with the request would have imposed a burden which was grossly oppressive.
61. The Commissioner has considered the samples provided by DWP. He notes that they do contain personal data and telephone numbers which is likely to be exempt information. The Commissioner notes however that whilst DWP has stated that there would be redactions under section

¹² <https://www.gov.uk/government/statistics/esa-outcomes-of-work-capability-assessments-including-mandatory-reconsiderations-and-appeals-march-2023/esa-outcomes-of-work-capability-assessments-including-mandatory-reconsiderations-and-appeals-march-2023#appeals-clearances-and-outcomes-for-initial-esa-claim-which-started-up-to-december-2021>

43, the Commissioner has not been provided with any evidence of the extent of these redactions.

62. As set out by DWP, a significant part of the estimate relates to different teams undertaking duplicate reviews of the same information. In particular, the Commissioner notes that DWP has included detailed reviews by CHDA and the CMPD MB&C teams. Whilst DWP may choose to take this approach, this would not be a requirement of FOIA. The Commissioner acknowledges that where a public authority intends to rely on section 43, it is expected that they would be able to provide evidence of a third party's views where it is claimed the third party's commercial interests would be prejudiced, however, there is no requirement to undertake detailed reviews of the information by the third party. The Commissioner also understands that DWP may wish to seek senior sign off when disclosing information, however, this is an internal operational task and not a requirement under FOIA. The Commissioner does not therefore consider it reasonable to include in an estimate of the burden of complying with a request.
63. Whilst DWP did provide breakdowns of how long it estimated each team would need to review the individual documents, he notes that these figures have been provided with no explanation or context other than redactions under sections 36, 40 and 43 may need to be made.
64. In view of the non-essential activities that DWP has included in its calculations, the Commissioner has difficulty accepting that the estimate is robust and he is unable to extract a more accurate estimate from the information provided.
65. Whilst the Commissioner accepts that the burden would necessarily fall upon a relatively small number of people who are familiar with the contracts, given that DWP is a large public authority with considerable resources, he is unable to give much weight to such an argument.
66. The Commissioner accepts the complainant's argument that the request has clear value as it allows the scrutiny of a large public contract that relates to a significant proportion of the public, some of whom are the most vulnerable members of society.
67. The Commissioner is concerned that DWP appears to consider that some of the information is no longer of value to the public due to the changes in circumstance now that Covid restrictions have been removed. The Commissioner considers that scrutiny of how public bodies reacted to the global pandemic and the subsequent easing of safety measures is clearly of significant public interest.

68. The Commissioner accepts that responding to the request would require DWP to spend time considering and applying exemptions. However, his view is that the time required for this would be considerably shorter than DWP has estimated. Combined with the valid public interest in complying with the request, the Commissioner is not persuaded that the request would be so burdensome as to make it vexatious. He therefore finds that the request does not engage section 14(1).

Right of appeal

69. 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

70. 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.
71. 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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