

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2014

Public Authority: Department for Work & Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested information about the Universal Jobmatch Privacy Impact Assessment. The Department for Work & Pensions (DWP) refused to provide the requested information. It cited as its basis for doing so the exemption under section 22 of the FOIA (information intended for future publication).
2. The information was contained in draft versions of a document that the DWP intends to publish in the future. The Commissioner's decision is therefore that the DWP correctly engaged section 22 and the public interest favours maintaining the exemption.
3. The Commissioner does not require the public authority to take any further action.

Request and response

4. On 27 May 2013, the complainant wrote to the DWP and requested information in the following terms:

I want a copy of your Privacy Impact Assessment for Universal Jobmatch, by email, which you have previously stated you had intended to publish in 2012.

5. The DWP responded on 19 June. It refused to provide the requested information as it intended to publish the information in the future and cited the exemption under section 22 of the FOIA.

6. Following an internal review the DWP wrote to the complainant on 25 July, maintaining its original position.
7. On 19 June the complainant also requested the following supplementary information about the Universal Jobmatch Privacy Impact Assessment:
 - 1.1 *How many pages does it contain?*
 - 1.2 *How many versions or revisions exist and what dates did they get created?*
 - 1.3 *What is the name(s), job title(s) and DWP department or external department or organisation of the authors?*
 - 1.4 *What is the name of any external organisations consulted on or involved in commissioning it?*
 - 1.5 *Information held that shows any specific past or future dates to publish it?*
8. Section 10 of the FOIA requires a public authority to respond to a request for information no later than the 20th working day following the date it received the request. On 25 July the complainant contacted the DWP as it had not provided a response to the supplementary set of questions, and requested an internal review.
9. The DWP provided a response to the supplementary request on 26 July and a response to the request for an internal review on 5 August. It acknowledged that its response to the supplementary request had not been provided within 20 working days and apologised for the delay.

Scope of the case

10. The complainant contacted the Commissioner on 29 July to complain about the way their request for information had been handled.
11. DWP failed to deal with the supplementary request within 20 working days and therefore it breached section 10 of the FOIA. However, the complainant was prepared to accept that the DWP's subsequent provision of both the information and an internal review satisfied the second part of their complaint to the ICO: *"A request the DWP has not responded to within 20 days"*.
12. The Commissioner therefore focussed his investigation on the DWP's application of the exemption at section 22 to the information the complainant requested on 27 May.

Reasons for decision

13. Section 22 of the FOIA says that information is exempt if, at the time a public authority receives a request for it:
 - the public authority holds it with a view to its publication;
 - the public authority or another person intends to publish the information at some future date, whether determined or not; and
 - in all the circumstances it is reasonable to withhold the information prior to publication.
14. In order to determine whether section 22 is engaged the Commissioner therefore considered the following questions:
 - Did the DWP hold the requested information?
 - When the complainant submitted the request, did the DWP intend to publish the information at some date in the future?
 - If so, had the DWP determined this date when the request was submitted?
 - In all the circumstances of the case, was it 'reasonable' that the DWP should withhold the information from disclosure until some future date (whether determined or not)?
15. Section 22 provides a qualified exemption, so public authorities must consider whether the public interest in applying the exemption is greater than the public interest in providing the information. The Commissioner has also therefore considered the public interest arguments in this case.

Did DWP hold the requested information?

16. It is important to keep in mind that the FOIA is about the release of information, not the release of documents.
17. At the time of the complainant's request, the DWP said in its submission to the Commissioner that it held the information in draft versions of the Privacy Impact Assessment (PIA) document related to Universal Jobmatch.
18. Universal Jobmatch is the DWP's jobsearch website. Its Privacy Impact Assessment is a policy process for identifying, assessing, and mitigating risks to the privacy of people using the site.

19. Universal Jobmatch, launched in November 2012, is a pivotal element of the Government's strategy for supporting jobseekers into work. The DWP says that it is important that all aspects of the site are rigorously assessed and impacted in the associated PIA. The PIA has therefore been subject to considerable review and revision as the policy underpinning Universal Jobmatch has developed incrementally over time.

20. The ICO's guidance on section 22 says that:

Documents can go through many drafts before they are finalised. If the intention or expectation, in producing any one of those drafts, is to publish the information in it, the exemption can be considered.

21. The Commissioner is satisfied that, at the time of the request, the DWP did hold the requested information and considers it probable that it held the information in draft documents.

Did the DWP intend to publish the information at some date in the future?

22. In its submission to the Commissioner, the DWP said that at the time of the request, it did have a settled intention to publish a final version of the Universal Jobmatch PIA.

23. DWP said that this was because of the high level of interest in Universal Jobmatch that there had been since its launch – evidenced through separate FOIA requests. An audit trail of these requests would demonstrate that the intention to publish the PIA had been there at the time of the complainant's request on 27 May.

24. DWP also considered that publishing the PIA would help reassure the public that it had appropriately mitigated any privacy risks.

25. Having considered these arguments, the Commissioner is satisfied that the DWP had intended to publish the information at a future date.

Had DWP determined a publication date?

26. At the time of the request, DWP says it had not confirmed a date when the PIA would be published. In its submission to the Commissioner, DWP said that this was because the job seeking policies that underpinned Universal Jobmatch were still being developed. This remains the case now as the draft PIA is still being reviewed and revised as Universal Jobmatch is assessed.

27. The date that information is going to be published does not need to be definite, however, for the section 22 exemption to apply. What is important is that, at the time an information request is made, a settled

intention to publish the information in the future exists. This has been discussed in paragraphs 22 – 24.

28. The Commissioner is satisfied that not having settled on a specific publication date would not prevent the DWP withholding the requested information under section 22.

In all the circumstances, is it 'reasonable' for the DWP to withhold the information until some future date?

29. The ICO's guidance on section 22 explains that there is some overlap between the factors public authorities should take into account in deciding what is reasonable, and those which are relevant in balancing the public interest test.
30. A public authority has, however, first to determine whether or not it is reasonable in all the circumstances to withhold the information in order to apply the exemption, before considering whether there is a public benefit in providing the information prior to publication. Public authorities should consider whether or not it is sensible, in line with accepted practices and fair to all concerned.
31. In considering what is reasonable in all the circumstances, a public authority may also wish to consider whether it is the right decision to manage the availability of the information by planning and controlling its publication.
32. In this case, the purpose of a PIA is to reassure the public. The DWP says that publishing a series of iterative versions of the PIA before it is finalised would undermine the Assessment's purpose, by potentially misinforming or misleading the public.
33. DWP argues that it is therefore reasonable for it to plan and control the PIA's publication since publishing an unfinished PIA could undermine public confidence in Universal Jobmatch.
34. The Commissioner acknowledges that this argument is a legitimate one for DWP to make and, having also considered whether withholding the information is sensible, fair and in line with accepted practices, is prepared to accept that it is reasonable in all the circumstances for the DWP to withhold the information.

The public interest test

35. When a public authority wishes to withhold information under a qualified exemption such as at section 22, it must carry out a two-stage process. First, it must decide that the exemption applies to the requested information. Then it must carry out the public interest test. This means

that it must decide whether the public interest is better served by maintaining the exemption (and so withholding the information) or by disclosing the information.

36. Having decided that the exemption under section 22 applied to the information that the complainant had requested, the DWP then went on to consider the public interest arguments.
37. The DWP argues says that public affairs are conducted more effectively when authorities have a reasonable degree of control over the way information is made publically available, and are permitted to release it in a planned and managed way.
38. The DWP says that the PIA is still in development. As discussed at paragraph 19, Universal Jobmatch is a central part of the government's strategy for supporting jobseekers into work and so it is essential that when the PIA is published it has been thoroughly tested and is accurate.
39. The DWP argues that the public interest is therefore served by it being permitted, as a large public authority, to publish a final PIA in a manner and form, and at a time, of its own choosing.
40. The DWP accepts that there is some public interest in the Universal Jobmatch website, particularly from jobseekers who use the site and who are concerned about how their personal data will be handled.
41. It therefore acknowledges an argument in favour of disclosing a draft version of the PIA. To do so could improve transparency by making the process behind, and features of, the PIA more clear at an earlier stage, and would satisfy to a degree the interest that Universal Jobmatch has generated.
42. Having considered the public interest arguments in favour of both withholding and disclosing the information however, the Commissioner considers that the arguments in favour of maintaining the exemption, and so withholding the information, outweigh the arguments in favour of disclosing it.
43. Public authorities must have the freedom to determine their own publication timetables rather than have that timetable determined by individual requests for information. This allows them to appropriately manage the preparation, administration and context of publication.

Summary:

44. At the time of the complainant's request, the Commissioner accepts that the DWP held the information in draft PIA documents, a final version of which the DWP intended, and still intends, to publish in the future. He

considers it is reasonable in all the circumstances for the DWP to withhold the information until some future date. For these reasons, the Commissioner considers that the DWP correctly applied the exemption under section 22 of the FOIA to the information.

45. He also considers that, on balance, the public interest is best served by DWP publishing the information in a planned way, in an accurate, final version of the PIA document. The Commissioner has therefore decided that the DWP is correct to withhold the requested information.

Right of appeal

46. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. 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.
48. 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

Pamela Clements
Group Manager – Complaints Resolution
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