

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 15 July 2019

Public Authority: The Department for Work and Pensions

Address: 4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested contact details for managers involved in a complaints process. The Department for Work and Pensions (DWP) disclosed some of the requested information and withheld the remainder under section 36(2)(c) of the Act.
2. The Commissioner's decision is that, in the specific circumstances of this case, section 36 is engaged and the balance of the public interest lies in maintaining the exemption. The Commissioner does, however, find that DWP has breached section 10 by not providing the disclosed information within the statutory timeframe. No steps are required.

Request and response

3. On 5 April 2018, the complainant wrote to DWP and requested information in the following terms:

"Request1)

Under FOIA s16 could you please advise whether the following information is readily available:

The jobtitles and the relevant email-addresses of the senior managers referred to in your current complaints-procedure.

And under the FOIA

a) if they are readily available, could you please provide these;

but

b) if they are not providable within the cost-limit, then could you please just provide their jobtitles?

Request2)

Under the FOIA, could you please also either refer us to where exactly we can find the generic email-addresses relating to the current complaints-procedure? or could you simply provide them please?

Context and reason for the requests:

It is not clear (from your relevant webpage:

<http://www.gov.uk/government/organisations/department-for-work-pensions/about/complaints-procedure>) who these people (complaints-handlers and senior managers) are, or how they can be contacted in writing and by email."

4. On 2 May 2018, DWP provided its response. It stated:

"Response 1

The information currently held on GOV.UK explains:

If the Complaint Resolution Manager does resolve your complaint

If the Complaint Resolution Manager doesn't resolve your complaint, we'll ask you if you want your complaint to go to a senior manager. If you agree, the senior manager will ask for an independent internal review of your complaint. They will contact you within 15 working days to tell you the outcome or when you can expect a response, if it will take longer.

We do not hold or maintain a list of Senior Managers. This is due to the nature of our work requiring staff and roles to change frequently. Depending on the type and content of the complaint the Complaint Resolution Team determine the most appropriate Senior Manager. We are therefore unable to provide a list of email addresses or job titles.

Response 2:

Senior Leaders can be contacted by the email given in the link (above) or in writing to:

DWP complaints
Post Handling Site B
Wolverhampton
WV99 2GY"

5. On 5 May 2018, the complainant wrote to DWP and requested an internal review. He suggested that the complaints process seemed very disorganised if DWP did not know who it would refer complaints to. He asked DWP to contact the "approximately 10" complaints resolution

teams and ask them to provide the job titles of relevant or typical senior managers to whom they usually refer complaints. The complainant also confirmed that he was unable to locate an email address in the link cited and asked DWP again to provide the generic email addresses.

6. On 4 July 2018, DWP provided the outcome of its internal review. It upheld its original response to request 1 but confirmed that it had proceed an incorrect response to request 2. DWP confirmed that senior leaders could not be contacted by email and complainants can only correspond via the postal address given.

7. DWP also stated:

"Whilst I appreciate it may seem disorganised, DWP deals with a broad customer base and administers a range of different welfare benefits. Each complaint is unique and, as such, we ensure responses are provided by the most appropriate Senior Leader(s) who can explain what happened in a particular case and, where appropriate, take steps to resolve any issues identified during the course of our investigations."

Scope of the case

8. The complainant contacted the Commissioner on 9 July 2018 to complain about the handling of his request for information. The complainant disputed that the requested information was not held. He provided evidence that DWP had in 2016 held team email addresses for regional complaints resolution teams.

9. The Commissioner contacted DWP to remind it that compiling a list of managers did not constitute the creation of information as it already held the building blocks required to compile the requested list. She invited DWP to review its position.

10. DWP wrote to the complainant on 25 October 2018 to confirm that it held the job titles and email addresses of the specified senior managers and it was withholding these under section 40(2) of the Act. DWP explained that it did not have a generic email address that claimants could use and confirmed that claimants are encouraged to contact the officer they have been dealing with.

11. On 15 March 2019, DWP wrote again to the complainant to confirm that it had amended its position. DWP provided a list of the job titles and confirmed that it was now withholding the senior managers' email addresses under section 36(2)(c) of the Act.

12. On 1 May 2019, DWP wrote to the complainant and confirmed that it held generic email addresses for its complaints resolution teams by region. DWP provided a list of these email addresses.
13. As DWP has now disclosed the requested list of senior manager job titles and the generic complaint team email addresses, the Commissioner considers that the scope of this investigation is to determine whether DWP is entitled to rely on section 36(2)(c) of the Act to withhold the email addresses of the individual senior managers.

Reasons for decision

Section 36(2)(c): Prejudice to the effective conduct of public affairs

14. Section 36(2)(c) states that:

"(2) Information to which this section applies is exempt information if, in the reasonable opinion of the qualified person, disclosure of the information under this Act

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

15. Section 36(5) defines the "qualified person":

"In subsections (2) and (3) "qualified person" –

(a) In relation to information held by a government department in the charge of a Minister of the Crown means any Minister of the Crown."

16. In this case, Baroness Buscombe, Parliamentary Under-Secretary of State for Work and Pensions (Lords) provided the opinion in relation to the application of section 36(2)(c). The Commissioner is satisfied that the Minister is a qualified person for the purposes of section 36(2)(c).
17. In determining whether the exemption is engaged, the Commissioner must determine whether the qualified person's opinion was a reasonable one. In this context, an opinion either is or is not reasonable. In deciding whether an opinion is reasonable, the Commissioner will consider the plain meaning of the word, rather than defining it in terms derived from other areas of law.
18. The Commissioner considers the most relevant definition of "reasonable" in the *Shorter Oxford Dictionary* is "in accordance with reason; not irrational or absurd" - in short, if it is an opinion that a reasonable person could hold, then it is reasonable.

19. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only unreasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not even have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.
20. In determining whether the qualified person's opinion is reasonable, the Commissioner has considered all relevant factors, including:
 - whether the prejudice relates to the specific subsection of section 36(2) that is being claimed. If the prejudice or inhibition envisaged is not related to the specific subsection, the opinion is unlikely to be reasonable;
 - the nature of the information and timing of the request; and
 - the qualified person's knowledge of, or involvement in, the issue.
21. In order to assist the qualified person, DWP provided the Minister with a detailed submission on 5 March 2019. On 7 March 2019, the assistant private secretary to the Minister confirmed that the Minister approved the use of the exemption under section 36(2)(c).
22. DWP explained that the reason for the prejudice is that disclosure of the email addresses would cause disruption to the roles of the owners of the requested addresses. It explained that the individual email addresses requested are held almost exclusively for internal use and where email correspondence with customers is appropriate, shared team email addresses are used.
23. DWP estimated that approximately 200 email addresses fell within the scope of the request. These email addresses are assigned to staff across all areas of its operations directorate and at grades from executive officer up to and including director level.
24. DWP confirmed that the format of the requested email addresses is forename.surname@dwp.gsi.gov.uk, and these addresses will remain with the individual staff member throughout their career with DWP. Therefore, if the withheld information was disclosed, as these individuals move on to other roles within the department, they may still receive emails from claimants about their complaint cases. DWP explained that this could be a significant distraction from staff members' ability to carry out their new roles and it is likely that the individuals would have to change their email addresses, either of which eventualities would not be the best use of public funds.

25. DWP explained that to make corresponding with it as efficient as possible for both the business and the customer, it has already made available, on GOV.UK, the different channels available to customers when they or their representatives wish to make a complaint.
26. DWP set out that there is more than a hypothetical or remote possibility that the prejudice or harm set out above would result from release of the withheld information.
27. DWP set out that as the Act is purpose blind, disclosure is to the world at large and there is no bar on the requester choosing to publicise the list of email addresses. DWP considered that release of the withheld email addresses would risk undue interference in its handling of complaints because there is a real risk that staff may be contacted by individuals regardless of whether they have legitimate business with DWP. Complaints or queries about complaints may be misdirected to the wrong individual or inappropriate correspondence may be sent to staff.
28. DWP also explained that the withheld information included email addresses of individuals at Senior Civil Service level. As DWP is a hierarchical organisation, Senior Civil Servants are inevitably involved in the management of those involved in the complaints process. DWP considers that these members of staff would be inundated with emails from customers seeking to progress complaints or gain preferential treatment. DWP set out that this would significantly detract from their ability to deliver their day job by forcing them to undertake unnecessary administrative activity instead of providing the strategic leadership that these roles entail.
29. The complainant argued that DWP's application of section 36(2)(c) was undermined by the following:
 - Ineffective means of communication for complainants. The complainant disagrees with DWP's position that it has proactively provided sufficient contact details for claimants wishing to make a complaint. He considers that DWP's current communication methods actively stop claimants from effectively communicating with DWP.
 - Improved efficiency for service users in the conduct of their affairs with DWP. In support of this argument the complainant provided the Commissioner with his own assessment of DWP's complaints procedure.
30. Having regard to the submissions before the qualified person and the submission provided as part of this investigation, the Commissioner's view is that the opinion given is a reasonable one. The Commissioner accepts that there is a significant risk that disclosure of the email

addresses would cause disruption to DWP's ability to process complaints in a timely manner. The Commissioner acknowledges the complainant's concerns about the difficulties in contacting DWP, however, she does not consider that this is a sufficient argument to render the qualified person's opinion unreasonable. She will, however, include these concerns in her consideration of the public interest test.

31. The Commissioner notes that the qualified person's opinion was not sought within the statutory timescale, since DWP sought to claim reliance on section 36 at a late stage of the investigation. However, given that the opinion was sought at the point DWP claimed reliance on section 36, this does not mean that the opinion is unreasonable.
32. DWP did not explicitly state which level of prejudice is sought to rely on (would, or would be likely to). However, the arguments put forward by DWP, which the Commissioner has accepted, refer to a significant risk of disruption to the public authority. Therefore the Commissioner accepts that the higher level of "would prejudice" applies in this case.

Public interest test

33. Section 36(2)(c) is a qualified exemption and therefore the Commissioner must consider whether in all circumstances of the case, the public interest in maintaining section 36(2)(c) outweighs the public interest in disclosing the information.
34. In *Guardian and Heather Brooke v the Information Commissioner and the BBC*,¹ the Tribunal provided some general principles about the application of the public interest test in section 36 cases, as follows:
 - The lower the likelihood is shown to be that the free and frank exchange of views or provision of advice would be inhibited, the lower the chance that the balance of the public interest will favour maintaining the exemption.
 - While the Commissioner cannot consider whether prejudice is likely (that is for the qualified person to decide), she is able to consider the severity, frequency or extent of any likely prejudice.
 - Since the public interest in maintaining the exemption must be assessed in the circumstances of the case, the public authority is not permitted to maintain a blanket refusal in relation to the type of information sought.

¹ Appeal no EA/2006/0011 and EA/2066/0013

- The passage of time since the creation of the information may have an important bearing on the balancing exercise. As a general rule, the public interest in maintaining the exemption will diminish over time.
- In considering factors against disclosure, the focus should be on the particular interest that the exemption is designed to protect.
- While the public interest considerations in the exemptions from disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad ranging and operate at different levels of abstraction from the subject matter of the exemption.
- Disclosure of information serves the general public interest in promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation of the public in the democratic process.

35. Both DWP and the complainant provided the Commissioner with public interest arguments, as below.

Public interest in disclosure

36. DWP acknowledged that there is a public interest in increased transparency and accountability of public officials which may improve accessibility and confidence in DWP. This is especially the case when dealing with complaints from customers whose household income can be reliant on receiving the correct amount of benefits.
37. DWP also recognised that it is in the public interest to provide straightforward access to its services. However, it considered this was achieved by its publication of contact routes on the GOV.UK website.
38. The complainant provided detailed arguments in favour of disclosure: In the interests of brevity, the Commissioner has summarised these below:
- The general public interest in transparency and accountability.
 - The ability of (potential) service users to contact DWP effectively rather than relying on channels of communication that are, in his opinion, unreliable or defective.
 - The absence of relevant contact and email addresses disrupts the lives of (potential) service users by preventing them from accessing statutory services that they are entitled to claim. The complainant disagreed with DWP's assertion that claimants are already provided with sufficient contact details.

- The complainant considered that as some disclosures have been made, why not disclose more? The complainant considered this arguments undermines DWP's arguments against disclosure.
- The complainant stated that until DWP set up appropriate email addresses at all levels of the complaints procedure, he would "uphold" his request for the email addresses of the senior managers. By more appropriate, he confirmed that he wanted DWP to implement job title specific email addresses or generic team email addresses.
- The complainant argued that withholding the details is the wrong way for DWP to handle any potential disruption that may follow after disclosure. He considered that criminal disruption should be countered with adequate cyber security and where necessary criminal prosecution. The complainant considered that DWP must already be subject to at least the same amount of disruption caused by staff sending internal emails to people believed to still be in a particular role. In his opinion the best solution would be to keep records up to date.
- The complainant argued that misdirection of correspondence could be more appropriately avoided by DWP providing more detail about the responsibility of each of the individuals, and the circumstances when they would get involved in complaints.

Public interest in maintaining the exemption

39. The complainant acknowledged the public interest in preventing disruption by cyber-attacks and incorrect public use of email addresses, however, he disputed the severity and extent of these risks.
40. DWP referred the Commissioner to its submissions regarding prejudice, and reiterated that these arguments were relevant to the public interest in maintaining the exemption (see paragraphs 25, 26, 27, 29 and 30 above).
41. DWP argued that there was a strong public interest in maintaining the exemption, given the prejudice identified. It explained that the information in the public domain enabled claimants to pursue their benefit claims, enquiries and complaints through the Department's transparent correspondence processes. DWP also explained that customers can complain to the Independent Case Examiner² and the

² <https://www.gov.uk/government/organisations/independent-case-examiner>

Parliamentary and Health Services Ombudsman³ if they are unhappy about the handling of their case.

42. DWP explained that managing correspondence through a limited number of entry points is far more efficient, ensures correspondence reaches the correct team quickly and enables individual staff members to concentrate on their work rather than spending parts of their day finding the correct address for improperly directed correspondence.
43. In contrast, DWP set out that disclosure of the email addresses carried a high risk causing delays in responding to the complaints themselves, not just to claimants, but their representatives which include Members of Parliament, Welsh Assembly Members, Members of the Scottish Parliament, and, currently, Members of the European Parliament. DWP argued that the public interest lay clearly in avoiding this kind of delay.
44. DWP also explained that release of the emails could also lead to an increased risk of misuse of these email addresses. They may be used to harass staff if a complaint does not have a positive outcome and may also be used to enable phishing or other cybersecurity attacks. DWP explained that as it held a vast amount of personal information, it should ensure that it is not open to hacking or cyber-attacks. DWP was of the opinion that there was an overwhelming public interest in avoiding, or at least minimising, this risk.

The Commissioner's considerations

45. The Commissioner has considered both the complainant's and DWP's arguments regarding the public interest. She is also mindful of the recent First-Tier Tribunal decision *in the case of Lotz v Information Commissioner and DWP*⁴ which found that internal email addresses could be withheld under section 36 and the public interest lay in maintaining the exemption. In that case the Tribunal stated at paragraphs 27 and 28:

"We fully understand that the Appellant's approach is that the DWP should be more accessible to service users, and that he believes it is often very difficult for service users to gain access to those who make decisions about their claims. However, whatever the merits or demerits of the current DWP system of communication with claimants (about which we cannot express a view on the information we have), it is

³ <https://www.ombudsman.org.uk/>

⁴ Appeal no EA/2018/0108

impossible for us to see how the disclosure of thousands of internal email addresses could improve access, rather than cause chaos and disruption.

Thus although there is, as the Commissioner recognises, a general public interest in the disclosure of the information held by public authorities, that public interest can be eclipsed by the public interest in enabling a public authority to carry on its business without the risk of disruption from a multitude of inappropriately targeted emails from members of the public, or deliberate attempts to sabotage the running of the public authority through 'electronic disruption' attempts. We do not agree with the Appellant that, because the DWP serves the public and makes decisions about the claims of individuals, that it is automatically in the public interest to disclose internal email addresses."

46. The Commissioner considers that, despite the lower number of email addresses falling within the scope of the current request, the principles of the present case are substantially similar to the case brought before the Tribunal. Accordingly the Commissioner has borne in mind the Tribunal's comments when reaching a conclusion.
47. The Commissioner acknowledges the general public interest of disclosure of any information held by public authorities. The starting position with any request should be that the information will be disclosed unless the public authority has adequate reasons to apply an exemption. However, in the specific circumstances of this case, the Commissioner is not persuaded that any significant weight should be attached to the public interest in favour of disclosure.
48. The Commissioner considers that the complainant's aim of improving the experience of those dependent on DWP for their income is admirable, however, she disagrees that the release of this specific information will progress that aim.
49. The Commissioner is mindful that the requested information is a list of DWP employees who may, at some point, be asked to review the handling of a complaint. If the claimant relied on the requested information to identify the individual to contact in their case, they would have a one in approximately two hundred chance of selecting the correct email address to contact. This probability is based on the assumption that the list is up to date and no employee has moved roles. Despite the complainant's assertion, DWP is under no obligation to retrospectively update requesters when previously disclosed information becomes out of date. The Commissioner finds that there is little benefit to the public in disclosing a "snapshot" of contact details. This further limits the weight that can be attached to the public interest in disclosure.

50. The complainant's arguments also include comments on how potential service users can provide evidence of their submission. The Commissioner considers that this, in fact, strengthens the argument for withholding the information. As set out above, the email addresses sought belong to staff members who may be asked to review the handling of a complaint. There is nothing to suggest that sending evidence in support of a claim for benefit to anyone on this list would help the potential service-user's claim. However, should this list be available, service users may attempt to circumvent the designated process regardless of whether the staff member's role is in fact relevant to the claim or query.
51. The Commissioner does not consider claimants sending their information to a DWP staff member not authorised to review their case is in their interests. Benefit claim evidence is likely to contain sensitive information that should only be accessed by those who are required to review it.
52. The Commissioner notes that, during the course of the investigation, DWP disclosed a list of regional complaints team email addresses. The Commissioner considers that this disclosure goes some way to fulfilling the general public interest in transparency and accessibility for service users. The Commissioner respectfully disagrees with the complainant's assertion that disclosure of the withheld information would be of any further benefit to the public.
53. For the reasons set out above, the Commissioner finds that the public interest in disclosure of the withheld information is limited to the general interest in accountability and transparency. The Commissioner finds that there is however a considerable public interest in ensuring that DWP can maintain its complaints process and process complaints in a timely manner without disruption by misdirected emails. Having considered all the circumstances of this case the Commissioner is satisfied that the public interest in maintaining the exemption, and avoiding the identified prejudice, significantly outweighs the public interest in disclosure of the requested information.

Section 10: statutory time for compliance

54. Section 10 of the Act states:

"(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt"

55. As DWP provided some of the requested information during the course of the Commissioner's investigation, and therefore outside of this timeframe, it failed to comply with section 10(1) of the Act.

56. DWP also failed to comply with section 17(1) of the Act as it claimed a late reliance on section 36(2)(c). Since this was not cited in the original refusal notice, it follows that DWP did not provide the complainant with a valid refusal notice within the time for compliance.

Other matters

57. The Commissioner is disappointed that DWP did not provide the disclosed information until the Commissioner's intervention. The complainant clearly asked for general email addresses for complaints, however, DWP stated that it did not hold these, despite disclosing similar information to a different requester in 2016. DWP should take care to fully consider a request before issuing a response and ensure that all elements of the request have been responded to.

Right of appeal

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

59. 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.
60. 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

**Sarah O’Cathain
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