

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 20 October 2021

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 held within the Department for Work and Pensions (DWP) Universal Credit Programme Assumptions log and its Issues, Risks and Dependencies registers.
2. The Commissioner's decision is that DWP has failed to fully consider all of the information specified in the complainant's request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the complainant that considers all of the information falling within the scope of the request and either disclose the information or, in respect of any information it wishes to withhold, issue a refusal notice within the meaning of section 17 of the Act providing a basis for withholding the information. Specifically, DWP should provide a fresh response in relation to the closed Risks & Issues Registers, the conceal Risk 'strand' worksheets and the closed Dependencies entries.
4. 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.

Background

5. The complainant originally made a request to DWP for its RAID logs and registers¹.
6. DWP relied on section 12 of the Act as the basis for refusing to comply with the request and, in decision notice FS50792926², the Commissioner found that it was entitled to do so.
7. The complainant subsequently submitted a new request to DWP which is the focus of this decision notice.

Request and response

8. On 31 January 2020, the complainant wrote to DWP and requested information in the following terms:

"RFI1: Please disclose the current version of the Open Universal Credit Assumptions log.

RFI2: As the Universal Credit Programme Issues, Risks and Dependencies are logged in separate Excel spreadsheets, please disclose the current versions in Excel format (this will reduce the amount of time required to provide the information as it will not need to be converted to pdf).

Please note that personal information exempt under section 40(2) FOIA is specifically excluded from the scope of my requests.

S.12 advice re: RFI2 – My request is for the current versions of the respective documents whether they contain open and / or closed entries. As I am requesting the current versions of the documents there is no need to check for accuracy, collate information / documents, cross reference information or remove anything. Please note that the costs for redaction cannot be included in an cost estimate"[sic].

¹ Risks, Assumptions, Issues and Dependencies (RAID) logs are used in programme management. Risks are events that may happen to the detriment of the programme, Assumptions are events that will be relied on for the programme's success but which have not yet been confirmed, Issues are current obstacles that will cause delay or failure to the delivery of the programme and Dependencies are required for success but out of the programme delivery's control.

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2620388/fs50792926.pdf>

9. On 24 February 2020, DWP provided its response. It confirmed that it held information falling within the scope of the request but required more time to consider the public interest. DWP confirmed that it hoped to let the complainant have its response by 23 March 2020.
10. DWP confirmed that it considered the information to be exempt under the following sections:
 - Section 31 – Law Enforcement
 - Section 35 – Government Policy
 - Section 43 – Commercial Interests
11. On 30 March 2020, the complainant wrote to DWP and requested an internal review of the handling of the request due to the delay in receiving DWP's substantive response.
12. On 31 March 2020, DWP responded and apologised for the delay in responding to the request. DWP explained that it does endeavour to respond to requests within 20 working days but the Covid-19 pandemic meant that it had not been possible to respond within this timeframe as available resources were needed on other high priority areas.
13. On 9 April 2020, DWP provided its response to the request and apologised for the delay in responding. In relation to RFI1, DWP provided two pdfs and in relation to RFI2, DWP provided six pdfs.
14. DWP confirmed that it was withholding some of the requested information under the previously cited exemptions and it was also redacting personal data on the basis of section 40 of the Act.
15. On 13 April 2020, the complainant requested an internal review of DWP's substantive response. The complainant confirmed that DWP had provided the information in the wrong format as he had requested the information in Excel format. The complainant also confirmed that he expected to see more entries within the documents given the size and complexity of the Universal Credit programme. The complainant also disputed the redactions made by DWP and made detailed arguments against withholding the information.

16. Following a complaint to the Commissioner, the internal review was added to the WhatDoTheyKnow request page on 23 December 2020³.
17. DWP acknowledged that it had provided the information in the wrong format and provided it again in Excel format. DWP confirmed that the annexes supplied were those within the scope of the request and no changes had been made except to redact the withheld information.
18. DWP confirmed that it considered that some of the entries had been incorrectly withheld and the Excel documents provided to the complainant included these entries.

Scope of the case

19. The complainant originally contacted the Commissioner on 21 July 2020 to complain about DWP's failure to provide an internal review. Following the provision of the internal review, the Commissioner commenced her substantive investigation.
20. The complainant confirmed that in addition to disputing the redactions made by DWP, he was concerned that DWP had incorrectly interpreted the request as he would expect the logs to hold more entries. The complainant explained that he had previously made a request for similar information but was not informed that DWP considered the closed entries to fall outside of the scope of the request until the case had reached the appeal stage at the Information Rights Tribunal. The complainant asked the Commissioner to confirm that DWP had not interpreted the request in the same manner.
21. During the course of the investigation, DWP confirmed that, in light of the passage of time, it now considered that the majority of the withheld information could be disclosed. DWP provided the complainant with this information.
22. In relation to the scope of the request, DWP confirmed that it had not provided the complainant with the closed entries within the requested documents as it considers that these entries do not fall within the scope of the request. DWP confirmed that it wished to maintain this position.

³ The Commissioner notes that the internal review is dated 12 October 2020. DWP has explained that it sent the internal review on this date, however, it did not appear on the WhatDoTheyKnow page. DWP confirmed that it resent the internal review following confirmation from the Commissioner that a complaint had been received.

23. The complainant withdrew his complaint in relation to the remainder of the withheld information but confirmed that he still disputed that the request had been interpreted correctly and he considered that further entries would be held by DWP.
24. In circumstances such as this, where the two parties have a different interpretation of the request and maintain those positions, the Commissioner will issue a decision notice which confirms which interpretation she considers to be the correct one. If the complainant's intended interpretation is an objective reading of the request, then the Commissioner will issue a decision notice which orders the public authority to issue a fresh response based upon the complainant's interpretation of the request. If the complainant's interpretation is not an objective reading, and the public authority's is, then the Commissioner will issue a decision notice which finds that the request has been interpreted correctly by the public authority.

Reasons for decision

Interpretation of the request

25. Section 1(1)⁴ of the Act 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".*

26. Section 8(1)⁵ of the Act states:

"In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*

⁴ <https://www.legislation.gov.uk/ukpga/2000/36/section/1>

⁵ <https://www.legislation.gov.uk/ukpga/2000/36/section/8>

- (b) *states the name of the applicant and an address for correspondence, and*
 - (c) *describes the information requested*".
27. Section 84⁶ of the Act defines "information" in this context as being information "recorded in any form".
28. Public authorities must interpret requests for information objectively. They must avoid reading into the request any meanings that are not clear from the wording. If the request clearly specifies exactly what information or documents the requester wants, then there will only be one objective reading to the request.

The complainant's interpretation

29. The complainant explained to the Commissioner that his request was deliberately specific. The complainant explained that DWP had previously confirmed that the Universal Credit Programme Risk, Issues and Dependencies are logged in individual Excel spreadsheets.
30. The complainant explained that he had requested the current versions of the individual Excel files because the Excel files used to log Risks, Issues and Dependencies often contain multiple worksheets that may hold the open and closed versions of the items or other related information.
31. The complainant explained that in an earlier request for the Universal Credit Risks and Issues (FS50460988, EA/2013/0145, 0148 & 0149⁷), DWP had misinterpreted the request to mean only open Risks and Issues fell within the scope of the request. The complainant set out that he did not find out about this until after two First-Tier Tribunal hearings and an Upper Tribunal hearing had taken place.
32. The complainant confirmed that in order to avoid this request also being misinterpreted, he asked for the actual Excel files that DWP had already confirmed existed and which he believed must be regularly updated by the programme team.

⁶ <https://www.legislation.gov.uk/ukpga/2000/36/section/84>

⁷

[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1239/Slater,%20John%20EA.2013.0145%20\(24.03.14\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1239/Slater,%20John%20EA.2013.0145%20(24.03.14).pdf)

33. The complainant considers that DWP's interpretation is flawed, particularly in light of the request specifying:

"My request is for the current versions of the respective documents whether they contain open and / or closed entries".

DWP's position

34. DWP confirmed that it had interpreted the request for the "current versions" of the requested documents to be "live information under active review and management e.g. for discussion at Governance Boards. For example, a summary of the key priority risks is reported to the UC Programme Board for review when it meets. These are regularly published as part of the publication of Universal Credit Programme Board papers".
35. DWP confirmed that the information that had been provided to the complainant related to the recorded information for current Universal Credit Programme Risks, Assumptions, Issues and Dependencies which had been retrieved and was available at the time of the request.
36. DWP confirmed that some of the requested documents included concealed worksheets which it considered to fall outside of the scope of the request. DWP explained that these concealed worksheets date from 2014/15 and relate to a service that was closed in 2019 and DWP does not therefore consider that this information can be classed as current.
37. DWP explained that the concealed worksheets also contain 'strand' level Risk information rather than 'Programme' level as set out in the request and it therefore considers that these concealed worksheets fall outside of the scope of the request. DWP explained that a strand level Risk primarily affects only the strand which raised the Risk and poses a significant risk to the successful delivery of the strand's objectives if it materialised, whereas a programme level Risk is one which would affect one or more strands of the Programme and would pose a serious/significant risk to the successful delivery of the programme if it materialised.
38. DWP also confirmed that in addition to the 'Strand' information, the following information had also not been shared with either the complainant or the Commissioner as DWP considers it to fall outside of the scope of the request:
- "Closed Programme Risks, Issues & Dependencies Information (at the time of the request 31 January 2020)".*
39. DWP explained that it considers that this information falls outside of the scope of the request as "current" relates to live or open information

under active review and management, where "current" is defined as "happening or being used".

40. DWP considers that closed Risks, Issues and Dependencies are by definition 'past' events, no longer impacting the programme and therefore not considered to be in scope of the request.
41. DWP considers that the information provided to the complainant was the current recorded information available at the time of the request. DWP explained that collated spreadsheets for Risks, Assumptions and Issues are not routinely maintained for the management of Universal Credit. DWP confirmed that the information is held in folders separately within the Universal Credit Risk Hub and is then retrieved when required. DWP explained that this allows officials across the Universal Credit Programme to access and update information to ensure that the material, when retrieved, is the most up to date.
42. DWP confirmed that closed Risks, Assumptions and Issues entries are held within the Universal Credit Risk Hub and are not deleted. DWP confirmed that closed Dependencies are recorded on Excel spreadsheets and are not deleted.
43. The Commissioner requested further clarification regarding how the registers and logs were updated when an entry is closed and how closed entries were recorded. DWP provide the following explanation:

"DWP removes the closed entries from the Programme Assumptions, Risks & Issues Registers, these are then added to the corresponding "Closed" Registers. The original Register is saved, but not as a new version. It is an iterative working document, which is updated on an ongoing basis i.e. it only includes the "Open" entries. So, just to be clear there are not multiple versions of the same Register, just an Open version and Closed version for each Register.

Dependencies are dealt with differently both Open and Closed Dependencies are kept on the same spreadsheet and no entries are deleted".

The Commissioner's position

44. In making her determination, the Commissioner has considered the strict wording of the request:

*"RFI1: Please disclose the **current version** of the **open** Universal Credit Programme Assumptions log.*

*RFI2: As the Universal Credit Programme Issues, Risks and Dependencies are logged in separate Excel spreadsheets, please disclose the **current versions** in Excel format...*

...

*S.12 advice re RFI2 – My request is for the **current versions of the respective documents whether they contain open and / or closed entries**. As I am requesting the **current versions** of the documents there is no need to check accuracy, collate information / documents, cross reference information or **remove anything**.” [emphasis added]*

45. The Commissioner considers that the request is clear in its scope, that is, the current **documents** for each of the specified log and registers. DWP has incorrectly applied the “current” requirement in the request to the information held within the documents when it is clear that “current” relates to the documents themselves.
46. RFI1 specifies the current version of the open Assumptions log, DWP was therefore correct when it provided the ‘open’ version of the Assumptions log.
47. RFI2, however, specifies the current versions of the Issues, Risks and Dependencies spreadsheets regardless of the status of the entries held within them.
48. DWP has confirmed that the Risks and Issues Registers have both an open version, containing only open entries, and a closed version, containing the closed entries. The request is for the current versions of each register and therefore the Commissioner considers that the closed registers fall within the scope of the request as they were current documents held at the time of the request.
49. The Commissioner also considers that as the concealed worksheets containing ‘strand’ level Risks can be found within these documents, this information also falls within the scope of the request.
50. DWP confirmed that Dependencies do not have Open and Closed versions and instead there is one document which contains both open and closed entries. As set out above, the “current” element of the request relates to the document itself and the status of the entries within the document is irrelevant to the scope of the request. The Commissioner therefore considers that all information held within the Dependencies spreadsheet falls within the scope of the request.
51. The Commissioner requires DWP to issue a fresh response which includes the following:

- The closed versions of the Risks and Issues Registers.
- The concealed 'strand' level Risks worksheets.
- The Dependencies register, including closed entries.

Right of appeal

52. 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

53. 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.
54. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF