

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2022

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information on the governance of the Universal Credit Programme.
2. DWP relied on sections 22, 31, 35 and 36 to withhold the information.
3. The Commissioner's decision is that DWP is not entitled to rely on sections 22, 35 and 36 to withhold the majority of the information but is entitled to rely on section 31 and 36 to withhold a small proportion of the requested information.
4. DWP also breached sections 10 and 17 by not providing its response within the statutory timeframe.
5. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the information withheld under section 22, 35 and 36 with the exception of the information specified in Part B of the confidential annex.
6. 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 FOIA and may be dealt with as a contempt of court.

Request and response

7. On 14 November 2021, the complainant wrote to DWP and requested information in the following terms:

"Universal Credit Programme Board Papers – committed on 28 October 2021

The papers can be found here:

<https://depositedpapers.parliament.uk/depositedpaper/2283670/files>

Papers:

- 54H-UCPB_22-10-19-Paper7a-How_Effective_is_Support.pdf
- 55H-UCPB_22-10-19-Paper7b-PMIU_Report.pdf

Have been redacted relying on Section 36 FOIA. The Department has not provided any justification for its reliance on Section 36.

RFI1: Please disclose unredacted versions of these 2 papers.

Papers:

- 43F-UCPB_24_09_19-Paper_5-Remote_Digital_Identity_Verification.pdf
- 48B-UCPB_22-10-19-Paper1-Remote_Digital_ID_Verification.pdf
- 50D-UCPB_22-10-19-Paper3-Final_PB_Mins_24_Sep_2019.pdf

Have been redacted relying on Section 43 FOIA. The Department has not provided any justification for its reliance on Section 43.

RFI2: Please disclose unredacted versions of these 3 papers

Universal Credit Programme Board Papers 01 Jan to 31 August 2021

RFI3: Please disclose the Universal Credit Programme Board Papers covering the period 01 January 2021 to 31 August 2021.

Section 40 FOIA

Please note that any information exempt from publication under Section 40 FOIA is to be considered outside the scope of these requests for information."

8. On 14 December 2021, the complainant requested an internal review of the handling of the request as DWP had not yet provided its response.
9. On 14 December 2021, DWP wrote to the complainant and explained that due to an error in its registration process, it had missed the deadline of 13 December to respond to the request. DWP explained that

it had planned to confirm that it was extending the statutory timeframe to consider the balance of the public interest. DWP explained that it considered that section 36 was engaged but it required more time to consider the balance of the public interest.

10. On 15 December 2021, the complainant requested a further internal review of the handling of their request for information. The complainant disputed that section 36 applied to all of the requested information and considered that DWP had failed to respond to the request fully.
11. On 17 January 2022, DWP provided a formal refusal notice. DWP apologised for the delay in responding and confirmed that it holds the requested information.
12. Regarding 'RFI1', DWP confirmed that it was relying on section 36(2)(b) to withhold the information as disclosure would be likely to have a chilling effect on the willingness of operational arms of government to flag issues and proactively raise situations where there are risks to delivery.
13. DWP confirmed that section 36(2)(b) is a qualified exemption and, as such, a public interest test needs to be applied.
14. DWP acknowledged that there is a public interest in understanding the effectiveness with which government works and the successful delivery of key projects and programmes to time, scope and budget.
15. However, DWP considered that release of the report material and selected parts of the covering letter would not be in the public interest. DWP explained that this is because disclosure of the information would risk harming the cross government review process. DWP considered that if officials could not be sure that discussions about potential issues dealing with specified groups were protected from disclosure, there would be a strong incentive to omit, or to diminish the significance of negative information, to minimise the prejudice likely to be caused by disclosure.
16. DWP explained that even though civil servants adhere to the Civil Service Code, disclosure would create a strong incentive to use more careful language and be less robust about flagging risk. DWP therefore considered that it is reasonable to assume that these conversations would have less value.
17. DWP explained that while there is value in greater transparency, there is a need to protect the safe space in which a review team and stakeholders can identify and look to improve any operational delivery issues and it considers that this outweighs the public interest in

disclosing the material. DWP considers that disclosure would be likely to cause stakeholders to be unwilling to share insights which, if released prematurely or out of context, may have a negative effect on the quality of the report and consequently the effectiveness of the deep dive process. DWP confirmed that, on balance, it was satisfied that the balance of the public interest lay in maintaining the exemption.

18. DWP confirmed that some of the information was exempt under section 40(2) as it relates to personal information about junior civil servants.
19. Regarding 'RFI2', DWP confirmed that it was relying on section 43(2) to withhold the information as it would be likely to prejudice the commercial interests of HMRC or the Government Digital Service (GDS) in relation to GOV.UK Verify.
20. DWP explained that section 43 is a qualified exemption and that it considered the balance of the public interest lay in maintaining the exemption.
21. Regarding 'RFI3', DWP confirmed that it was relying on section 22 'information intended for future publication' to withhold the information.
22. DWP explained that it has committed to publish Universal Credit papers after two years, twice yearly in 6 month batches in the House of Commons library and provided a link to the Universal Credit Programme Board (UCPB) paper publication strategy¹.
23. DWP explained that all programmes need to strike a balance between transparency and providing a safe space for officials to give candid advice to senior programme officials. DWP considered that the two-year period specified for the UCPB papers is intended to allow this balance, and is approximately the time at which additional valid exemptions would start to lose their relevance.
24. DWP confirmed that section 22 was subject to a public interest test.
25. DWP recognised that the publication of the information requested could provide a greater understanding of the risks, issues and progress steps of the Universal Credit Programme and so help inform a wider public debate.

¹ [https://data.parliament.uk/DepositedPapers/Files/DEP2018-1083/Letter -
_Future_Publication.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2018-1083/Letter_-_Future_Publication.pdf)

26. DWP considered, however, that it has to balance this against the public interest in non-disclosure of information, where such disclosure would have an adverse effect on the free and frank provision of advice to the Board and the free and frank exchange of views between Board members and their advisers. DWP considered that there is a strong public interest in maintaining efficient and effective programme management and ensuring that resources are targeted at project delivery.
27. DWP explained that it is part of the effective conduct of public affairs that the general publication of information is a conveniently planned and managed activity within the reasonable control of public authorities.
28. DWP confirmed that it was also satisfied that the following exemptions were engaged in relation to 'RFI3':
 - Section 31 – Law enforcement
 - Section 35 – Government policy
 - Section 36 – Prejudice to the effective conduct of public affairs
 - Section 40 – Personal data
29. On 17 January 2022, DWP provided the outcome of the internal reviews requested on 14 and 15 December 2021.
30. DWP upheld the complaint with regards to the breach of section 10 as it did not provide its response within the statutory timeframe.

Scope of the case

31. The complainant contacted the Commissioner on 20 January 2022 to complain about the handling of this request.
32. The Commissioner has previously considered similar requests for Universal Credit delivery information². With DWP's agreement, the

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619655/ic-46647-y7r2.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615863/fs50820378.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617871/fs50802502.pdf>

Commissioner accepted this complaint without an internal review of DWP's substantive response.

33. During the course of the investigation, DWP disclosed the information withheld under section 43 as, due to the passage of time, the public interest no longer favoured maintaining the public interest.
34. In light of this, and the complainant's confirmation that they are not seeking personal data exempt under section 40, the Commissioner will consider the following exemptions:
 - Section 22 – information intended for future publication
 - Section 31 – law enforcement
 - Section 35 – formulation and development of government policy
 - Section 36 – prejudice to effective conduct of public affairs

Reasons for decision

Section 22 – Information intended for future publication

35. Section 22(1) of the Act states that:

“Information is exempt information if –

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)”.

36. Section 22(1) is qualified by a public interest test.

37. There are, therefore, four questions to consider:

- Is there an intention to publish the requested information at some future date?
- Was the information already held with a view to publication at the time the request was made?

- Is it reasonable to withhold the information from disclosure until the intended date of publication?
- Does the public interest favour maintaining the exemption or disclosing the information?

Was there an intention to publish the requested information at some future date? Was the information already held with a view to publication at the time the request was made?

38. In order to correctly rely on section 22, there must have been a settled intention to publish the requested information prior to the request being received.
39. DWP confirmed to the Commissioner that it has a published publication strategy for Universal Credit Programme Board (UCPB) papers. DWP explained that it has regularly published UCPB papers every six months since November 2018 and directed the Commissioner to the link provided to the complainant which shows this public commitment to publish the papers after two years.
40. The Commissioner noted that DWP has published previous UCPB papers but these have been redacted. DWP was asked to set out how it had a settled intention to publish information that may be redacted at the time of publication.
41. DWP explained that it intends that this material should be published in the future in full in line with the above schedule. DWP explained that at that point, the information will be published in full save to the extent that (a) another exemption is engaged and (b) the balance of the public interest, assessed at that later date, lies in favour of disclosure.
42. DWP considers that section 22 is engaged given that the information is clearly held at present with a view to publication. DWP noted that there is no requirement under section 22 for the date to be determined.
43. DWP explained that even if it does not publish information at the currently planned future date because it considers another exemption applies and that, at that future point, the balance of public interest lies in favour of maintaining the exemption, that does not preclude publication at some further future date.
44. The Commissioner has previously considered the use of section 22 in relation to Universal Credit information in decision notices IC-44647-Y7R2, FS50802502 and FS50820378 and found that section 22 is not engaged as he considered that delaying publication for 2 or 3 years was not reasonable in the circumstances of the requests.

45. Having considered the specific circumstances of this case, the Commissioner is not persuaded that section 22 is engaged in relation to the disputed information as DWP has not identified what information will be published, only that information may be published after two years provided that it is not exempt under another exemption. DWP has, however, identified information that it considers is currently subject to other exemptions.
46. The Commissioner does not accept that a general intention to publish information with a caveat that other exemptions may apply at the time of publication is sufficient to engage section 22. Whilst there is no requirement to have set the publication date by the time of the request, the Commissioner is not persuaded that a timeframe dictated by the expiration of another exemption constitutes a settled intention to publish the information.
47. As the Commissioner has determined that section 22 is not engaged, he will go on to consider the further exemptions cited.
48. Where no other exemptions are engaged, the Commissioner requires DWP to disclose the information withheld under section 22.

Section 31(1)(a): Prevention or detection of crime

49. Section 31(1) of the Act states:

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime”.

50. In order for a prejudice based exemption such as section 31(1)(a) to be engaged, the Commissioner considers that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view; this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

DWP submissions

51. DWP confirmed that it had made redactions to selected areas of the Fraud and Error update paper. It explained that this paper describes specific approaches to identifying and countering fraud and error. DWP considered that releasing this detail would be likely to assist malicious actors targeting the Universal Credit system.
52. DWP provided submissions regarding the specific information withheld. The Commissioner will not reproduce this in its entirety as some of DWP's explanations reveal the contents of the withheld information.
53. DWP considered that disclosure would reveal:
 - The scale of fraud and error in particular areas
 - How DWP is tackling specific areas of fraud
 - Weaknesses in its systems that would be invaluable to fraudsters
 - Detailed methodologies for various areas of concern
 - DWP's working priorities which would highlight areas to target
 - Details of counter fraud
 - Details of specific fraud attacks and potential counter measures.
54. DWP considered that the impact of disclosure should be set in context against the background of increasing fraud. DWP explained that benefit expenditure increased by £20 billion from £191.7 billion in 2019-20 to £211.7 billion in 2020-21. In 2020-21, 3.9% of benefit expenditure was overpaid due to fraud and error. DWP explained that this is an increase from 2.4% in 2019-20. The monetary value of fraud and error overpaid was £8.4 billion, an increase from £4.6 billion.

55. DWP confirmed that release of this material 'would be likely to' prejudice the prevention or detection of crime. There is a significant risk that disclosure to the world at large would undermine, in particular, the detection of crime. DWP explained that there is a plausible and clear link between disclosure of methodologies aimed at detecting fraud and the effectiveness of investigating fraud. Given that the information identifies weaknesses in the system and disclosure would make it widely available, disclosure would have a significant impact in detecting fraudulent claims.

The Commissioner's position

56. Having reviewed the information withheld under section 31(1)(a), the Commissioner notes that it is not restricted to information held within the Fraud and Error update as set out by DWP. DWP has also withheld some individuals' names, stakeholder comments on Universal Credit and information referring to its fraud and error measures.
57. With regards to the first criterion, the Commissioner is satisfied that the harm envisaged relates to the interest that section 31(1)(a) seeks to protect against, specifically, the prevention or detection of crime.
58. The Commissioner next considered whether the prejudice being claimed is "real, actual or of substance", not trivial and whether there is a causal link between disclosure and the prejudice claimed. In relation to the information identified within the Fraud and Error update and the information that directly references the counter-fraud measures taken by DWP, the Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant and he accepts that it is plausible to argue that there is a causal link between disclosure of the disputed information and the prejudice occurring. The prejudice in this case would be to DWP's ability to prevent and detect fraudulent activity within its systems and claims. There is a clear causal link between the disclosure of the specified withheld information and an increased risk of fraud.
59. With regards to the remaining information withheld under section 31(1)(a), this consists of the names of report authors and quoted comments from stakeholders regarding Universal Credit. The Commissioner has specified this information at Part A in the confidential annex. Having reviewed this information and DWP's submissions, it is not apparent how disclosure would be likely to prevent DWP's ability to prevent or detect crime. The Commissioner is not satisfied that there is a causal link between disclosure of the information identified at Part A of the confidential annex and the prejudice claimed. Section 31(1)(a) is not therefore engaged with respect to this information. DWP has also applied section 36(2)(b)(i) to this information and the Commissioner will consider this below.

60. The Commissioner notes that DWP is arguing that disclosure of the withheld information would be likely to prejudice the prevention and detection of crime. In the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)* the Tribunal confirmed that, when determining whether prejudice would be likely, the test to apply is that “the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk” (paragraph 15). In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote. The Commissioner accepts that disclosure of the information within the Fraud and Error update and the information referencing counter fraud measures would be likely to prejudice the prevention and detection of crime.
61. With the exception of the information set out in part A of the confidential annex, the Commissioner finds that the prejudice test has been satisfied in the circumstances of this case and consequently the exemption at section 31(1)(a) is engaged.
62. Section 31 is a qualified exemption. By virtue of section 2(2)(b) of the Act, DWP can only rely on section 31 as a basis for withholding the information in question if the public interest in doing so outweighs the public interest in disclosure.

Public interest in disclosure

63. DWP acknowledged that there is a public interest in DWP demonstrating that there are robust processes in place to prevent fraud in the Universal Credit system in order to safeguard personal data and protect the public finances.

Public interest in maintaining the exemption

64. DWP considered that divulging the detail of counter fraud measures allows fraudsters to design methods to avoid detection and increases the probability of successful attacks on the Universal Credit system.
65. DWP stated that it had published high-level discussions around tackling fraud³ and this demonstrates that steps are being taken to prevent fraud and error. DWP considers that disclosure of the detailed counter fraud activity found in the information engaging section 31(1)(a) would be likely to provide assistance to malicious actors attempting to attack the

³ DWP did not provide any examples of this.

Universal Credit system. DWP considered that due to these factors, the public interest is best served by withholding this information.

The balance of the public interest

66. The Commissioner considers that DWP has failed to provide adequate and detailed public interest considerations. However, having reviewed the disputed information the Commissioner considers that, in the circumstances of this case, there is a strong public interest in ensuring that DWP is able to prevent and detect fraud within its systems. As DWP set out in its prejudice arguments, the cost of fraud to the public purse is significant and it is in the public interest to prevent this increasing and reduce it. The Commissioner also considers that vulnerable claimants may also be victims in this fraud and there is a public interest in preventing potential exploitation and distress.
67. Whilst the Commissioner accepts that there is a public interest in the disclosure of information demonstrating the measures DWP has taken to prevent and detect fraud, he considers that the public interest in maintaining the integrity of these measures by withholding the information outweighs this.

Section 35(1)(a): Formulation or development of government policy

68. Section 35(1)(a) of the Act states that:

“Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to –

(a) the formulation or development of government policy”.

69. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of section 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.
70. The Commissioner takes the view that the ‘formulation’ of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs and recommendations/submissions are put to a Minister or decision makers.
71. ‘Development’ may go beyond this stage to the processes involved in improving or altering existing policy, such as piloting, monitoring, reviewing, analysing or recording the effect of existing policy.
72. Whether information is related to the formulation or development of government policy is a judgement that needs to be made on a case by

case basis, focusing on the content of the information in question and its context.

73. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
- The final decision will be made either by Cabinet or the relevant Minister;
 - The government intends to achieve a particular outcome of change in the real world;
 - The consequences of the decision will be wide-ranging.

DWP's arguments

74. DWP confirmed that the information withheld under section 35(1)(a) relates to the 'Move to Universal Credit' policy.
75. DWP explained that this policy is still in development. The policy has not been delivered or fully legislated for, therefore implementation is yet to begin.
76. DWP explained that in 2019, it started a pilot to inform proposals to move claimants in receipt of one of the six main legacy benefits to Universal Credit. DWP stated that the Covid-19 pandemic caused a prolonged pause to the policy development. However, work to explore options would resume during the course of 2022. DWP confirmed that the Universal Credit (Transitional Provisions) Regulations 2022⁴ update the proposals for this process.
77. DWP confirmed that the decision on moving claimants to Universal Credit had been made. However, the approach being taken to assist legacy benefit⁵ customers to move to Universal Credit is still in the process of being developed and the final approach will require both further legislation and Ministerial sign off.

⁴ <https://www.gov.uk/government/news/the-universal-credit-transitional-provisions-regulations-2022>

⁵ Working Tax Credit, Child Tax Credit, Income-based Jobseeker's Allowance (JSA), Income-related Employment and Support Allowance (ESA), Income Support, Housing Benefit

The Commissioner's position

78. Having reviewed the withheld information and DWP's submissions, the Commissioner accepts that the 'Move to UC' policy was still being developed at the time of the request and the withheld information forms part of the development of this policy.
79. The Commissioner accepts that a large scale project such as Universal Credit will have different phases of the project at implementation, development and formulation stages. Therefore, whilst Universal Credit has been implemented for new claimants, the Commissioner accepts that DWP is still developing its policy on how and when legacy benefit claimants should be migrated to the new system.
80. The Commissioner notes that the decision to move claimants on to Universal Credit had been made, however, he accepts that the policy was still in development. Paragraph 48 of the Commissioner guidance on section 35 states:
- "In some cases the government announces a high-level policy, or passes a 'framework' bill into law, but leaves the finer details of a policy still to be worked out. The high-level policy objective has been finalised, but detailed policy options are still being assessed and debated. Later information relating to the formulation of the detailed policy will still engage the exemption".
81. The Commissioner accepts that in the specific circumstances of this case, whilst a high level decision had been made to move claimants on to Universal Credit, the decision on how claimants will be moved had yet to be taken at the time of the request.
82. The Commissioner therefore considers that section 35(1)(a) is engaged in relation to the specific withheld information. As section 35 is a qualified exemption, the Commissioner will now consider the balance of the public interest.

The public interest in disclosure

83. The complainant explained that there is considerable weight in the public knowing about the activities of DWP and Universal Credit. The complainant referred to critical reports in the media and "damning reports" by the Work and Pensions Committee and the Public Accounts Committee (PAC).

84. In particular, the complainant provided a link to a report detailing how some women have to resort to “survival sex”⁶ to get enough money to live. The complainant considers that the conclusions and recommendations of the Work and Pensions Committee are damning and show the mindset and culture which operates within DWP. The complainant directed the Commissioner to paragraphs 16 and 17 of this report:

“16. The Department’s initial written evidence submission to our inquiry sought to disprove the presence of a “direct causative link” between Universal Credit and “survival sex”. In taking this approach, it missed the wider point. The fact that people with complex needs and precarious financial situations turned to sex work before Universal Credit does not mean that the design of Universal Credit does not present additional problems for people who are already vulnerable.

17. The Department’s initial submission displayed little interest in the lived experience of claimants and would be claimants. People with first hand, personal experience told us and widely available media sources that Universal Credit was a factor in their decisions to turn to, or return to, sex work. The Department also chose not to make use of the expertise and experience of multiple support organisations. Its initial written response was defensive, dismissive, and trite”.

85. The complainant drew the Commissioner’s attention to a report by the Committee of Public Accounts dated 17 November 2021⁷ on fraud and error in the benefits system. The complainant stated that this report is highly critical of DWP in general and quoted the report in respect of Universal Credit:

“4. The Department has lost a grip of Universal Credit overpayments which account for most of the £3.8 billion increase in fraud and error and are now at the highest overpayment rate of any benefit. The Department estimates it overpaid £5.5 billion of Universal Credit in 2020-21, which is equivalent to 14.5% of its overall Universal Credit expenditure and £3.8 billion more than 2019-20. This compares to the previous peak of 9.7% overpayments in Tax Credits in 2003-04”.⁸

⁶ <https://publications.parliament.uk/pa/cm5801/cmselect/cmworpen/1225/122502.htm>

⁷ <https://publications.parliament.uk/pa/cm5802/cmselect/cmpubacc/633/report.html>

⁸ The Commissioner notes that these figures and those provided in paragraph 54 appear to differ.

86. The complainant stated that a reduction in fraud is one of the items in the Universal Credit business case. The complainant considered that if DWP has lost its grip of this element of its business case, then it should be queried as to what else DWP is failing to deliver.
87. The complainant considered that one area where there is ever growing concern is claimants that are sick and/or disabled. The complainant stated that for more than three years, DWP has been talking about "managed migration" of people onto Universal Credit. The complainant set out that some organisations, such as Child Poverty Action Group (CPAG), had expressed serious concerns about the process. The complainant provided a CPAG briefing document from March 2019 which called for migration to Universal Credit to be suspended⁹.
88. The complainant explained that DWP had "rebranded" managed migration as 'Move to UC' and ran a pilot in Harrogate¹⁰. The complainant stated that:
- "Despite years of work and planning by the DWP the pilot only involved 80 people and according to the Minister for welfare reform only around 13 people actually 'moved' onto Universal Credit".
89. The complainant explained that Universal Credit is running seven years later than the original completion date and stated that problems are still regularly reported in the media about it and other benefits such as ESA and Personal Independence Payments (PIP).
90. The complainant directed the Commissioner to an article which reports that DWP wants to merge PIP with Universal Credit¹¹. The complainant considers that those in receipt of PIP would want to know if this is planned before it becomes a fait accompli.
91. The complainant explained that DWP has been working on Universal Credit for more than 10 years and there are still stories in the media, critical reports from respected charities (eg CPAG and the Trussell Trust) and "damning" reports from select committees such as the Work and Pensions Committee and the Committee for Public Accounts. The

⁹ <https://cpag.org.uk/policy-and-campaigns/briefing/natural-migration-universal-credit>

¹⁰ <https://www.yorkshirepost.co.uk/news/uk-news/universal-credit-pilot-scheme-harrogate-only-involves-80-people-says-government-minister-1743581>

¹¹ <https://www.disabilitynewsservice.com/civil-servant-says-dwp-wants-to-merge-pip-and-universal-credit/>

complainant considers that the rising levels of fraud suggest that DWP still has not got basic requirements such as claimant identity verification resolved.

92. The complainant quoted Lord Bingham in *R v Shayler* [2002] UKHL 11, [2003] 1 AC 247¹², a case regarding the Official Secrets Act:

“Modern democratic government means government of the people by the people. But there can be no government by the people if they are ignorant of the issues to be resolved, the arguments for and against different solutions and the facts underlying those arguments. The business of government is not an activity about which only those professionally engaged are entitled to receive information and express opinions. It is, or should be, a participatory process. But there can be no assurance that government is carried out for the people unless the facts are made known, the issues publicly ventilated. Sometimes, inevitably, those involved in the conduct of government, as in any other walk of life, are guilty of error, incompetence, misbehaviour, dereliction of duty, even dishonesty and malpractice. Those concerned may very strongly wish that the facts relating to such matters are not made public. Publicity may reflect discredit on them or their predecessors. It may embarrass the authorities. It may impede the process of administration. Experience however shows, in this country and elsewhere, that publicity is a powerful disinfectant. Where abuses are exposed, they can be remedied. Even where abuses have already been remedied, the public may be entitled to know that they occurred”.

93. DWP recognised that transparency in policy leads to greater public understanding of the process and informs the public debate. It is in the public interest that development of the ‘Move to Universal Credit’ policy includes detailed consideration of the challenging task of moving legacy benefit customers over to Universal Credit in the most effective and customer friendly way and that the Universal Credit Programme demonstrates that a variety of potential policy have been explored.

Public interest in maintaining the exemption

94. DWP explained that a public debate about the detail of the process used to move the large numbers of vulnerable customers from legacy benefits to Universal Credit will constrain DWP’s ability to test a variety of options and gather evidence to support the adoption of the optimum approach to transfer customers to Universal Credit. DWP explained that

¹² <https://publications.parliament.uk/pa/ld200102/ldjudgmt/jd020321/shayle-1.htm>

there is a significant public interest in the policy working effectively given it impacts on vulnerable people.

95. DWP explained that the Move to UC policy is still under development. It set out that there is a significant challenge to move several million customers from legacy benefits to Universal Credit. DWP explained that in these circumstances, it is vital that various options are trialled and developed to ensure the effective delivery of the Move to UC policy.
96. DWP stated that it is confident that the public interest is best served by this information not being in the public domain.

The balance of the public interest

97. The Commissioner is disappointed at DWP's generic and superficial arguments regarding the balance of the public interest.
98. The Commissioner accepts that significant weight should be given to safe space arguments – ie the concept that the government needs a safe space to develop ideas, debate live issues and reach decisions away from external interference and distraction – where the policy making is live and the requested information relates to that policy making. The Commissioner also accepts that a large scale project such as Universal Credit will have its challenges. However, DWP has not provided sufficiently specific arguments as to why disclosure of the particular requested information would not be in the public interest.
99. The Commissioner is mindful that Universal Credit has been in the public consciousness since its announcement in 2010 and concerns have been raised by charities and in media coverage including:
- "Universal Credit: What is it and what exactly is wrong with it?" 25 January 2018, The Guardian¹³
 - The Trussell Trust has issued several reports, including its analysis of the link between the roll out of Universal Credit and increased foodbank use¹⁴.

¹³ <https://www.theguardian.com/society/2018/jan/25/universal-credit-benefits-scheme-iain-duncan-smith>

¹⁴ <https://www.trusselltrust.org/what-we-do/research-advocacy/universal-credit-and-foodbank-use/>

- The Work and Pensions Select Committee report on Universal Credit and 'survival sex'¹⁵
- "Effects on mental health of a UK welfare reform, Universal Credit: a longitudinal controlled study" Sophie Wickham PhD et al¹⁶

100. The Commissioner considers that there is clearly a strong public interest in disclosure of information that would improve the public understanding and allows scrutiny of the government's approach to migrating legacy benefit claimants onto Universal Credit.

101. The Commissioner considers that there is a very significant and weighty public interest in understanding, and scrutiny of, a policy that will affect millions of people, including the most vulnerable in society. The Commissioner considers that the public is entitled to be well informed as to the reasoning behind policy decisions which are likely to shape British society. Disclosure of this information would allow the public insight into the decision making process and an understanding of the decisions made and challenges overcome.

102. Having reviewed the disputed information, the Commissioner is not persuaded that DWP's generic public interest arguments in favour of maintaining the exemption are sufficient to outweigh the public interest in disclosure of the requested information.

103. The Commissioner requires DWP to disclose the information withheld under section 35(1)(a).

Section 36: Prejudice to the effective conduct of public affairs

104. Section 36(2) of the Act provides that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to, prejudice the effective conduct of public affairs.

105. In order to establish that the exemption has been applied correctly, the Commissioner considers it necessary to;

- ascertain who acted as the qualified person;

¹⁵ <https://publications.parliament.uk/pa/cm201919/cmselect/cmworpen/83/8302.htm>

¹⁶ [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30026-8/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30026-8/fulltext)

- establish that an opinion was given by the person;
- ascertain when the opinion was given; and
- consider whether the opinion was reasonable.

106. Requests "RFI1" and "RFI3" have individual opinions and the Commissioner will consider each in turn.

RFI1

107. DWP provided the Commissioner with the qualified person's opinion and the submission provided to aid this opinion.

108. The submissions and request for opinion was sent on 24 September 2021 and the then Secretary of State for Work and Pensions, Therese Coffey, provided her opinion on 4 October 2021 which essentially confirmed that she agreed with the points set out in the submissions. The Commissioner has inspected the submission and accompanying information provided to the qualified person.

109. Section 36(5) of the Act sets out who may act as the qualified person in relation to a public authority. In the case of government departments, any Minister of the Crown may act as the qualified person.

110. The Commissioner is therefore satisfied that the Secretary of State was authorised to act as the qualified person in this case.

111. The Commissioner notes that the Qualified Person's opinion was obtained prior to the request being made on 14 November 2021.

112. Section 36 specifies that information can be withheld where the Qualified Person is of the opinion that disclosure would or would be likely to prejudice the effective conduct of public affairs.

113. Shortly before the complainant submitted their request, DWP published Universal Credit papers in line with its publication schedule. DWP treated this publication in the same way as a request under FOIA. As DWP did not intend to publish the disputed information, it proactively obtained the Qualified Person's opinion and confirmed in the publication its reasoning for not disclosing the disputed information.

114. The complainant used their right of access under FOIA to request the information that DWP did not publish and disputed DWP's reasoning for not publishing, ie that section 36 was engaged.

115. DWP has relied on the proactively obtained Qualified Person's opinion rather than seeking another opinion following the receipt of the request.

116. In the specific circumstances of this case, the Commissioner is satisfied that section 36 can be engaged on the basis of this opinion. In light of the short period of time between the proactive opinion being sought and the request being made, he accepts that this opinion can be used as evidence of the Qualified Person's opinion on disclosure of the information at the time of the request. He also considers that as the request is for the information that was not published on the basis of this proactive opinion, it would be appropriate to accept this original opinion as the complainant has disputed its use.
117. In determining whether the exemption is engaged, the Commissioner must nevertheless consider whether the qualified person's opinion was a reasonable one.
118. The Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable. 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 have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.
119. DWP confirmed that it was relying on both section 36(2)(b)(i) and section 36(2)(b)(ii).
120. In its submission to the Qualified Person, DWP explained that it had contacted 'Delivery Unit' colleagues¹⁷ who advised that they do not routinely publish deep dive reports. DWP stated that it was the Delivery Unit's view that releasing this type of report, or information about its content, would be likely to have a chilling effect on the willingness of operational arms of government to flag issues and proactively raise situations in which they are unable to deliver which in turn would limit the Government's ability to address delivery issues.
121. The submissions also set out that the Delivery Unit believe that releasing this information would harm the trust on which the Delivery Unit relies to honestly and accurately advise the Prime Minister and

¹⁷ The Commissioner notes that the report and covering paper were authored by the Prime Minister's Implementation Unit (PMIU) and understands that this refers to the same team.

other Ministers. The submission stated that the deep dive process relies on the co-operation of wider government in collecting data, as well as the free and frank views of those on the front line of delivery. The submission explains that a commitment to confidentiality of views is needed as part of the review process. The submission states that both of the above are instrumental in identifying the root cause of delivery issues.

122. The submission advised that the whole of the PMIU report and selected parts of the covering paper should be withheld under section 36(2)(b)(i), the free and frank provision of advice and section 36(2)(b)(ii), the free and frank exchange of views for the purposes of deliberation. The Qualified Person was provided with the withheld information.
123. As set out above, the Commissioner is of the view that in assessing the qualified person's opinion, 'reasonableness' should be given its plain and ordinary meaning. An opinion that a reasonable person in the Qualified Person's position could hold will suffice. The opinion is not rendered unreasonable simply because other people may have come to a different and equally reasonable conclusion.
124. The Commissioner considers that the exemptions at section 36(2) are about the processes that may be inhibited, rather than focussing only on the content of the information. The issue is whether disclosure would inhibit the processes of providing advice or exchanging views. In order to engage the exemption, the information itself does not necessarily have to contain views and advice that are in themselves free and frank. On the other hand, if the information only consists of relatively neutral statements, then it may not be reasonable to think that its disclosure could inhibit the provision of advice or the exchange of views. Therefore, although it may be harder to engage the exemptions if the information in scope consists of neutral statements, circumstances might dictate that the information should be withheld in order not to inhibit the free and frank provision of advice and the free and frank exchange of views. This will depend on the facts of each case.
125. The Commissioner considers that the nature of the withheld information is largely as would be expected, varying from fairly anodyne information to potential issues and concerns. The Commissioner considers that, in relation to the process of giving advice and having frank discussions, it is not unreasonable to conclude that there is a real and significant risk that officials would be less candid in future when offering similar information should they consider that this information could be disclosed. The severity and extent of the impact this is likely to have on the quality of such advice is, however, another matter. This is not significant in assessing the reasonableness or otherwise of the Qualified

Person's opinion in the circumstances of this case. They are, however, relevant in assessing the balance of the public interest which the Commissioner has considered below.

126. Section 36(1) makes clear that section 36 can only be engaged where the information does not also engage section 35. Having reviewed the information, the Commissioner accepts that the information does not engage section 35 and therefore section 36 can be engaged.
127. The Commissioner considers that section 36(2)(b)(i) and 36(2)(b)(ii) are engaged to the relevant withheld information.

Public interest test

128. As mentioned, the exemption is subject to the public interest test set out in section 2(2)(b) of the Act. Therefore, the Commissioner must also consider whether, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosing the withheld information.

Public interest in disclosure

129. The complainant's public interest arguments set out in section 35 are also relevant to the public interest considerations here. To aid brevity, the Commissioner will not repeat these arguments.
130. DWP acknowledged that transparency, in the way in which government operates and increased accountability of Ministers and public officials, increases public trust in the governmental processes. In particular, DWP considers that there is a public interest in understanding the effectiveness with which government works and the successful delivery of key projects and programmes to time, scope and budget.

Public interest in favour of maintaining the exemption

131. DWP explained that the release of this report and the selected parts of the covering letter would not serve the public interest. DWP considered that disclosure of the information would risk harming the deep dive process. If officials could not be sure that discussions about potential issues around dealing with vulnerable claimants were protected from disclosure, there would be a strong incentive to omit, or to diminish the significance of negative information, to minimise the prejudice likely to be caused by disclosure.
132. DWP explained that even though civil servants adhere to the Civil Service Code, disclosure creates a strong incentive to use more careful language and be less robust about flagging risk. DWP considers that it is reasonable to assume that these conversations would have less value.

133. DWP explained that although there is merit in greater transparency within government, the need to protect the safe space in which the Delivery Unit and its stakeholders can identify and look to improve any operational delivery issues, outweighs the public interest in disclosing the material. DWP considers that it would be likely to make stakeholders reluctant to share insight into any aspect of the subject, which released prematurely or out of context, may have a negative effect on the quality of the report and consequently the effectiveness of the deep dive process.

Balance of the public interest

134. If the Commissioner finds that the Qualified Person's opinion was reasonable, he will consider the weight of that opinion in the public interest test. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would be likely to occur but he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test favours disclosure.
135. There will always be a general public interest in transparency. In particular, there is a significant public interest in understanding how government projects are implemented, as DWP has acknowledged. However, the Commissioner considers that DWP has failed to acknowledge the strong public interest in disclosure of information relating to the Universal Credit roll out and implementation.
136. As set out in the section 35 public interest considerations, the Commissioner is mindful that Universal Credit has been in the public consciousness since its announcement in 2010 and the concerns that have been raised regarding its implementation.
137. The withheld information is a report, and part of the covering paper, on how effective Universal Credit support is for vulnerable claimants. The Commissioner considers that there is a strong public interest in scrutiny of the analysis of support for vulnerable claimants and DWP's actions in light of this.
138. The Commissioner considers that the public interest in disclosure is particularly strong in the circumstances of this case. In order for the Commissioner to determine that DWP is entitled to withhold the information, he must determine that the public interest in maintaining the relevant exemption outweighs the strong public interest in disclosure.
139. The Commissioner considers that DWP has failed to provide persuasive public interest arguments in favour of maintaining the exemption.

140. With regards to DWP's chilling effect arguments, having considered the withheld information, the Commissioner is not persuaded that disclosure of the majority of the information would cause this effect to a significant degree.
141. The Commissioner has issued guidance on 'chilling effect' arguments in relation to section 36¹⁸. Civil servants and other public officials are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure. It is also possible that the threat of future disclosure could actually lead to better quality of advice.
142. Chilling effect arguments operate at various levels. Whether it is reasonable to think that a chilling effect would occur would depend on the circumstance of each case including the timing of the request, whether the issue is still live, and the actual content and sensitivity of the information in question.
143. The Commissioner notes that, at the time of the request, the report was over two years old.
144. Having reviewed the withheld information, the Commissioner considers that a significant proportion of the withheld information includes fairly high level recommendations, overall findings and factual statements which are not attributable to any individual. For this reason, and those set out in the preceding paragraphs, the Commissioner is not persuaded that disclosure of this information would cause officials to provide lower quality advice in future is a particularly compelling argument.
145. The Commissioner also considers that there is a strong public interest in disclosing these findings and recommendations to allow scrutiny of the quality of the research and report and whether, two years following the report, any progress on the recommendations had been made.
146. The Commissioner does accept that a small amount of the withheld information would be likely to cause a chilling effect as it names individuals, directly quotes contributors and gives case studies related to specific job centres. This information is set out in Part B of the confidential annex. For this small amount of information, the Commissioner is satisfied that the public interest in preventing this

¹⁸ <https://ico.org.uk/media/for-organisations/documents/2260075/prejudice-to-the-effective-conduct-of-public-affairs-section-36-v31.pdf>

prejudice is sufficient to outweigh the strong public interest in disclosure.

147. For the remaining information, the Commissioner considers that, having reviewed the information and in light of DWP's generic public interest arguments, the public interest in maintaining the exemption does not outweigh the strong public interest in disclosure.
148. The Commissioner requires DWP to disclose the report and covering paper with the exception of the information set out in Part B of the confidential annex.

"RFI3"

149. DWP advised the Commissioner that a submission regarding section 36 was sent to the Qualified Person, Baroness Stedman-Scott, Parliamentary Under Secretary of State for Work and Pensions, on 4 January 2022. The Minister provided her opinion on 17 January 2022 which essentially confirmed that she approved the use of section 36 on the basis of the submission provided. The Commissioner has been provided with a copy of the submission and accompanying information provided to the qualified person.
150. The Commissioner is satisfied that Baroness Stedman-Scott was authorised to act as the qualified person in this case.
151. The Commissioner notes that the Qualified Person's opinion was obtained outside of the statutory timeframe prescribed by section 10(1). The Commissioner addresses this issue further in his section 17 considerations below. However, he does not consider that obtaining the opinion late renders the opinion unreasonable.
152. DWP confirmed that it was relying on section 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) and provided an annotated copy of the withheld information setting out which limb of the exemption applies to the various elements of the information.
153. The submission to the Qualified Person broke down DWP's recommendation by document: Programme Board Minutes, Programme Board Dashboard and standalone papers.
154. With regard to sections 36(2)(b)(i) and (ii), DWP considers that these exemptions are engaged as comments and updates would be likely to have been inhibited if there was an expectation that the discussions would be made public before the planned publication date. DWP also explained that it is its view that if Programme Board Dashboards were released before the planned publication date, there is a likelihood that the key information highlighted in the dashboard would be sanitised,

inhibiting urgent and necessary discussions and decisions. DWP considers that if officials expected the information provided would be put in the public domain before the planned publication date, there would be a danger that the true reflection of project progress would not be presented accurately. DWP set out that this potential for an 'optimism bias' which can exist in major projects has been highlighted previously by the National Audit Office.

155. DWP also included arguments regarding the specific information withheld; the submission to the Qualified Person provides examples of information and the reasons why the specified prejudice would be likely to occur. The Commissioner will not reproduce these arguments as to do so would reveal the contents of the withheld information and negate the purpose of the exemption.
156. With regards to section 36(2)(c), DWP provided specific arguments that, as above, reveals the content of the withheld information and the Commissioner will not therefore reproduce these arguments in this notice.

The Commissioner's position

157. As set out above, the Commissioner is of the view that in assessing the qualified person's opinion, 'reasonableness' should be given its plain and ordinary meaning.
158. Section 36(1) makes clear that the exemption applies only to information which is "not exempt information by virtue of section 35". The Commissioner has reviewed the information withheld under section 36 falling within the scope of "RFI3" and he notes that a significant proportion of the information relates to the "Move to UC" policy. The Commissioner has previously found that this policy is government policy which was being developed at the time of the request and therefore section 35 is engaged.
159. For the information regarding the "Move to UC" policy, section 36 is not engaged as this information falls within the class described by section 35. The Commissioner has proactively considered this information under section 35 and for the reasons set out above, considers that the public interest favours disclosure.
160. The Commissioner is satisfied that the remaining information can be withheld under section 36 as it relates to the implementation of Universal Credit and therefore is not exempt under section 35.
161. With regards to the remaining information withheld under section 36, DWP did not confirm whether it was relying on the 'would' or 'would be

likely to' threshold of prejudice. The submissions to the Qualified Person uses both terms. The Commissioner has considered the withheld information, and DWP's submissions, and he accepts that the Qualified Person's opinion is reasonable on the basis of the 'would be likely to' prejudice threshold.

162. As set out above, the severity and impact of this prejudice will vary and this will be considered in the balance of the public interest.
163. The Commissioner is satisfied that DWP is entitled to engage sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) in relation to the remaining withheld information.

Public interest test

164. As mentioned, section 36 is subject to the public interest test set out in section 2(2)(b) of the Act.

Public interest in disclosure

165. The Commissioner has included the public interest arguments provided by the complainant in his considerations. As these have been set out above, these will not be repeated.
166. DWP's submissions regarding the public interest in disclosure were as follows:

"There is a public interest in demonstrating that the allocation of limited development resources is planned to achieve the optimal design solutions and that these decisions are carefully considered".
167. Despite the Qualified Person's opinion only relating to whether section 36 is engaged and not the balance of the public interest, DWP set out its public interest considerations in the submission to the Qualified Person.
168. The Commissioner has included the public interest arguments set out in DWP's submission to the Qualified Person in his considerations.
169. DWP recognised that transparency in the way in which government operates, and increased accountability of Ministers and public officials, increases public trust in the governmental processes. In particular, there is a public interest in understanding the effectiveness with which government works and the successful delivery of key projects and programmes to time, scope and budget.
170. DWP recognised a public interest in the governance of major government programmes being transparent.

171. The submissions also included a short public interest consideration which reveals the contents of the withheld information. As above, this will not be reproduced in this notice.

Public interest in maintaining the exemption

172. DWP provided the Commissioner with a brief explanation that revealing the details of future operational plans presents a significant risk of industrial action. DWP stated that maintaining effective delivery in light of the increasing pressure on the Universal Credit system is clearly in the public interest.
173. DWP considered that any disruption to the service provided to Universal Credit claimants caused by industrial action, eg payment timeliness would not be in the public interest.
174. The Commissioner has also considered the public interest arguments set out in DWP's submission to the Qualified Person.
175. DWP considered that the release of the individual papers or packs of papers would not serve the public interest in transparency. Rather, disclosure would risk harming the Universal Credit Programme as the papers that were presented to the Programme Board at the January, March, May and July 2021 meetings considered highly sensitive issues.
176. DWP considered that if officials could not be sure that discussions were protected from disclosure before the planned publication date, there would be a strong incentive to omit, or to diminish the significance of negative information, to minimise the prejudice likely to be caused by disclosure. DWP explained that even though civil servants adhere to the Civil Service Code, disclosure could create a strong incentive to use more careful language and be less robust about flagging risk. DWP considered it reasonable to assume that if there was an expectation of imminent publication, these conversations would have less value.
177. DWP considered that premature release of the detailed metrics contained in the Programme Board dashboard would not be in the public interest as exposure of this data, in the dashboard format, would not be likely to provide useful insight into the delivery of the Universal Credit Programme. DWP was of the view that there is also a significant risk that selective presentation of the detail provided could be used to misrepresent the progress of the Universal Credit Programme.
178. DWP explained that the prioritisation of system development resource requires careful balancing of the benefits of delivering various new policy initiatives whilst ensuring that the system maintains its efficient performance and continuing to improve its effectiveness at reducing

fraud and error. DWP considers that revealing the detail of these discussions before the planned publication date, when these issues are still live, would be highly likely to reduce the free and frank exchange of views required to reach optimal outcomes on these sensitive decisions.

Balance of the public interest

179. There will always be a general public interest in transparency. In particular, there is a significant public interest in understanding how governmental projects are implemented. However, the Commissioner considers that DWP has again failed to acknowledge the strong public interest in disclosure of information relating to the Universal Credit roll out.
180. As set out above, the Commissioner is mindful that Universal Credit has been in the public consciousness since its announcement in 2010 and various charities and media coverage have raised serious concerns regarding increases in poverty in areas in which it has been implemented. The Commissioner is also mindful that the implementation of Universal Credit not only affects a significant proportion of the population, including the most vulnerable in society, it could potentially affect any member of the public below pensionable age should they need to submit a claim during their working life.
181. The Commissioner therefore considers that the public interest in disclosure is particularly strong in the circumstances of this case. In order for the Commissioner to determine that DWP is entitled to withhold the information, he must determine that the public interest in maintaining the relevant exemption outweighs the strong public interest in disclosure.
182. DWP's arguments largely relate to the 'chilling effect' of disclosure. Paragraphs 141 & 142 above confirm the Commissioner's position on 'chilling effect arguments.
183. The Commissioner notes that at the time of the request, Universal Credit had been implemented for all new claims and for people needing to make a new claim due to a change in circumstances.
184. The minutes falling within the scope of the request were between four and eleven months old.
185. DWP's arguments regarding the chilling effect are fairly generic and simply state that if officials thought that the information may be disclosed, they may not have been as robust in their advice. DWP did not explain why disclosure of the specific information would cause a

chilling effect, instead relying on the generic arguments that disclosure would lead to a reduction in frankness.

186. The Commissioner does not accept DWP's argument that disclosure of dashboard metrics could be used to misrepresent the progress of the Universal Credit Programme. It is well established that the Commissioner does not accept arguments that information may be misunderstood or misinterpreted by the public; DWP would have the opportunity at the point of disclosure to put the withheld information into context and DWP has not provided any explanation why it would be unable to do so in this case.
187. The Commissioner also does not consider that DWP's arguments regarding industrial action carry much weight. DWP has not provided any detail regarding why this disclosure would lead directly to industrial action or why it would not be possible to, for example, liaise with the relevant trade unions prior to any ballot for industrial action.
188. DWP's generic arguments are not sufficient to persuade the Commissioner that the public interest favours maintaining the exemption. The Commissioner has considered the withheld information itself and he has not identified any information for which the public interest would clearly favour maintaining the exemption.
189. As set out above, the Commissioner is mindful of the high profile of the Universal Credit programme and its potential to affect millions of individuals. He recognises that this creates conditions where frank analysis and the identification of risks need to be protected whilst they are being addressed. However, he is also mindful of the accountability and transparency that is important with such a programme, especially one that has been subject to a number of high profile concerns.
190. The Commissioner notes that the Universal Credit Programme has been subject to scrutiny from the National Audit Office and the Work and Pensions Select Committee. However, it is clear that the requested information provides valuable information on the implementation of the Universal Credit programme. The minutes and reports go beyond what is already available in the public domain and provide useful information about the Universal Credit programme, which allows for greater transparency into the workings of the programme and greater understanding of the difficulties that are encountered.
191. The Commissioner recognises that some of the information will have been only four months old at the time of the request and that this will increase the public interest in protecting the safe space to discuss the project. However, he does not consider that this is sufficient to outweigh

the significant public interest in disclosure, particularly when considered alongside DWP's generic public interest arguments.

192. The information withheld under section 36 in "RFI3" provides a much greater and up to date insight than the information already available about the Universal Credit programme; there are strong arguments for transparency and accountability for a programme which may affect millions of UK citizens and process billions of pounds.
193. The Commissioner's decision is that the balance of the public interest favours disclosure of the information withheld under section 36.
194. The Commissioner requires DWP to disclose the information withheld under section 36 which falls within the scope of "RFI3".

Section 10 & 17: Statutory timeframe

195. Section 1(1) of FOIA states that:

"Any person making a request for information to a public 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".

196. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of the receipt".

197. Section 17(1) of FOIA states that:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies".

198. As DWP failed to confirm that it held the requested information and that it was withholding the information within the statutory time for compliance, it has breached sections 10(1) and 17(1).

Other matters

199. DWP's submissions to the Qualified Person, when obtaining their opinion, included the consideration of the public interest. While the Commissioner does not consider that this inclusion would render the opinion unreasonable, he does remind DWP that the Qualified Person's opinion relates specifically to whether section 36 is engaged. The public interest should be considered **after** the Qualified Person has given their opinion that section 36 is engaged.
200. The Commissioner also notes that, on 14 December 2021, DWP explained to the complainant that it had intended to rely on the permitted extension under section 17(3) to extend the time for response in order to consider the public interest but due to an error, it had not informed the complainant within the statutory timeframe.
201. The Commissioner notes that DWP did not seek the Qualified Person's opinion until 4 January 2022. It therefore appears that DWP had not ascertained that section 36 was engaged in relation to "RFI3" by the time that it intended to rely on section 17(3) to extend the time for compliance.
202. The Commissioner reminds DWP that the permitted extension under section 17(3) allows public authorities additional time to consider the balance of the public interest only. Public authorities cannot use this time to determine whether the exemption is engaged.

Right of appeal

203. 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

204. 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.

205. 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