

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2023

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested the 'DWP Excellence Plan' from the Department for Work and Pensions (DWP).
2. The Commissioner's decision is that DWP does not hold any further information to that already disclosed.
3. The Commissioner does however find that DWP breached section 10 by failing to respond within the statutory timeframe of 20 working days.
4. The Commissioner does not require DWP to take any steps.

Request and response

5. On 20 November 2020, the complainant wrote to DWP and requested information in the following terms:

"The following include references to work carried out by DWP:

- The foreword to the ICE Annual Report stated that DWP are creating a vulnerable customers strategy proposal.
- SSAC occasional paper 24 (a review of the COVID-19 temporary measures) states that DWP is developing a safeguarding framework.
- Therese Coffey's letter to Stephen Timms dated 20/03/2020 refers to a DWP Excellence Plan.

Please provide the vulnerable customers strategy proposal, the safeguarding framework, and the DWP Excellence Plan.

If some of these documents are not complete then please say so.

If there are plans to publish these documents in future then please indicate this and provide rough expected dates for their publication".

6. DWP provided its response on 9 March 2021 and confirmed that it held information falling within the scope of the request. DWP confirmed that it was withholding the information under section 35(1)(a), formulation or development of government policy.
7. The complainant requested an internal review on 9 March 2021. They chased a response on 17 May 2021, 14 July 2021 and 29 July 2021.
8. The complainant complained to the Commissioner about DWP's failure to provide the outcome of its internal review. Following the Commissioner's intervention, DWP provided the outcome of its internal review on 4 October 2021. It partially upheld its original response and confirmed that it could provide some information falling within the scope of the request.
9. DWP confirmed that it was maintaining its position that section 35(1)(a) was engaged, and the public interest favoured maintaining the exemption, in relation to the DWP Excellence Plan.

Scope of the case

10. On 4 October 2021, the complainant wrote to the Commissioner to complain about the handling of their request. The complainant confirmed that they accepted DWP's position in relation to the disclosed report but disputed DWP's reliance on section 35(1)(a) to withhold the 'DWP Excellence Plan'.
11. On 1 August 2022, DWP wrote to the complainant and confirmed that it was now disclosing the 'DWP Excellence Plan'.
12. The complainant confirmed to the Commissioner that they disputed that the information disclosed was the requested 'DWP Excellence Plan'.
13. DWP located further information and disclosed this to the complainant, however, the complainant remained of the view that they had not been provided with the information requested, ie the 'DWP Excellence Plan'.
14. The Commissioner considers that the scope of the case is to determine whether, on the balance of probabilities, DWP holds any further information falling within the scope of the request.
15. The Commissioner will also consider whether DWP has complied with the procedural requirements of FOIA.

Reasons for decision

16. Section 1(1) of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request and, if so, to have that information communicated to them. This is subject to any procedural sections or exemptions that may apply. A public authority is not obliged under FOIA to create new information in order to answer a request.
17. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the Commissioner, following the lead of a number of First-Tier Tribunal (Information Rights) decisions applies the civil standard of proof – ie on the balance of probabilities.
18. In the specific circumstances of this case, the Commissioner will determine whether on the balance of probabilities, DWP holds recorded information that falls within the scope of the request.

Complainant's position

19. The complainant confirmed that they did not accept the information provided is the requested DWP Excellence Plan for the following reasons:
- "The Excellence Plan appears, from this letter¹ dated March 2020, to have been authored in 2019 (the first paragraph of the letter refers to funds having been secured for the DWP Excellence Plan – those funds were secured in September 2019 – see 2.18 here²)
 - The information provided appears to be an update on the Excellence Plan rather than the original Excellence Plan. Slide 2 provides background, slides 4-11 all provide updates. That leaves only one slide, slide 3, which might fall within the description of the Excellence Plan might consist on a single Powerpoint slide".

DWP's position

20. DWP explained that at the time the DWP Excellence Plan was being created, there was speculation in the media and lobby groups that deaths of some vulnerable DWP customers might be linked to Departmental activity.
21. DWP explained that the DWP Excellence Plan was an umbrella term covering a package of targeted measures to investigate any links, but more importantly to determine if it could alert the relevant authorities in cases of risk. The term covered activity that had already commenced and was previously referred to as "compassionate decision making" and provided additional funding to reduce the likelihood that customers will receive the wrong outcome, whatever the cause of that is.
22. DWP explained that it was made up of the five independent measures developed and delivered by other teams across the Department, eg investing in its capability to further support vulnerable customers. There was no formal project governance bringing together these activities. DWP gave the example that some of the work carried out in respect of vulnerable customers in Universal Credit was undertaken separately to other areas, although there was shared learning across the Department.

¹ The complainant provided the Commissioner with a letter from the then Secretary of State for Work and Pensions Therese Coffey to the Chair of the Work and Pensions Committee, Stephen Timms

² <https://www.gov.uk/government/publications/spending-round-2019-document/spending-round-2019>

23. DWP explained that it was never intended to be a standalone programme and as such there is no formal project management documentation. DWP considers that it is therefore not surprising that it has not been able to identify either a standalone plan or a collection of plans. DWP explained that the intention was to direct funding to existing activity, eg provide funding to enable more time to be spent with customers, or fund new activities, such as developing the 'safeguarding framework' and introducing the Serious Case Panel.
24. DWP explained that improvement activities from existing budgets had already been ongoing. DWP stated that this is because DWP continually looks at ways to support vulnerable customers, and this has always been the case.
25. DWP set out that in 2012 it centralised Peer Reviews and in October 2015 it introduced Internal Process Reviews (IPRs) to investigate cases. DWP gave another example that prior to the spending review approval, it began additional internal work looking at how it might better support vulnerable customers. DWP stated that successive Secretary of States have been committed to delivering improvements in this area and championed additional resources. DWP explained that as a result it had received an additional £36m for activity in 2020-21 through the 2019 Spending Review. DWP explained that it received confirmation of this funding in Autumn 2019 and that was available in the budget for 2020/2021. DWP explained that the five specific measures funded by the excellence plan referred to in the "Delivering our plan for DWP Excellence – SR Funding" document (provided to the complainant) would have been agreed over the Winter of 2019-2020.
26. DWP explained that it had looked around the general timeframe of the Spending Review and had not been able to locate either a copy of something titled the "DWP Excellence Plan" or a collection of documents from separate work streams that might amount to the same thing.
27. DWP explained that one of the consequences of the Excellence Plan consolidating and advancing existing work is that these activities were being carried out across the Department and at different stages.
28. DWP explained that following its searches, set out below, it believes that the closest document demonstrating the five measures covered by this funding had been disclosed. DWP confirmed that the document in question is titled "Delivering our plan for DWP excellence – SR Funding". DWP explained that beyond this there are details of the aims of the Spending Review contained in the Annual Report and Accounts 2019-20, but at this point the aim was generally referred to as delivering a culture of improvement to support the most vulnerable in society.

29. DWP explained that it considered the document already provided to the complainant should be considered the 'DWP Excellence Plan'. DWP explained that the title of the document draws a link between the plan and the spending review funding. It also set out that there are three specific pages that outline what the DWP Excellence Plan is and details of the funding secured through the spending review against the different items that are included.
30. DWP set out that it could understand the complainant's interpretation of the document as an update, however, this was incorrect. DWP stated that given the date of this document in relation to the Spending Review and that the additional funds were planned for the 2020/21 financial year, it is reasonable to assume that this might be the first document providing complete details of the plan.
31. DWP explained that the measures summarised in the "Spending Round 2019" would have been obtained from various channels, however, it had not been able to identify documents from its searches which covers the exact way these measures were developed. DWP explained that, nevertheless, the understanding was that these measures developed iteratively as a result of Secretary of State discussions with senior officials, based on existing proposals and new opportunities.
32. DWP confirmed that most of the colleagues and lead senior officials who were involved in the initial development and implementation of the Excellence Plan have now moved on from or have left DWP and it is increasingly difficult to identify documentation from the time of the initial creation of the Excellence Plan, specifically documentation from 2019 which would fall within the scope of this request.
33. DWP stated that the nature of the information in the documents released demonstrates that it has released what it has discovered. DWP set out that it may be the case that continued searching and questioning of all colleagues may reveal something relevant closer to the time of the spending review but given the scale of its searches and the background to this work, there is no reasonable expectation that anything further would come to light.
34. DWP stated that some members of the public may think that using words like "plan" or "review" mean that certain documents should be produced, especially in large organisations. DWP set out that in many instances this will be correct but in other instances they will not be correct. DWP explained that this is more likely to be incorrect when the work or projects are being undertaken in a fast-moving environment and senior leaders consider that action should be taken quickly. DWP explained that in these circumstances, the governance or approval processes will be followed but the very detailed plans etc may not

always be present to the levels that some people would like. DWP considered that this may be the case here based on what more senior colleagues have advised and because improvement work was already going on in different areas of the Department.

35. DWP explained that colleagues who have considered this complaint have made every reasonable effort to firstly locate colleagues who may have access to DWP Excellence Plan or related documents, and secondly to identify documents that falls within the scope of request.
36. DWP confirmed that it had contacted colleagues in various parts of DWP to identify any document, either individually or collectively, that may be in scope of the request for the DWP Excellence Plan.
37. DWP explained that the Customer Support Strategy Team have been consulted at various stages throughout these searches. They provided the guidance and 'DWP Excellence Plan' that have been released and searched their relevant shared folders and archives to identify this and any other related documents.
38. DWP confirmed that it had located the document titled "Delivering our plan for DWP Excellence – SR Funding" through the Head of Advanced Customer Support who search their physical work folders and identified this document. DWP confirmed that this search was in addition to looking through their own electronic files. DWP confirmed that the Head of Advanced Customer Support was not in this role at the time of the original request but is now the most senior member of the team and has been involved in this work for some time.
39. DWP confirmed that in order to identify any documents that fall within the scope of the request, the below staff were asked to search their personal work folders, work email and shared drives:
 - Grade 7 in DWP Workplace Transformation
 - Grade 6 in DWP Customer Experience
 - Grade 6 in DWP Service Planning and Delivery
 - A Grade 6 and Senior Civil Servant in DWP Financial Management and Partnering
 - Grade 6 Finance Business Partner and asked them to check the finance archives and their own shared folders. They were unable to identify any documentation that falls within the scope of this request in either of these locations.

- Grade 6 colleague who has since moved on but at the time of the request was part of the original team leading the DWP Excellence Plan Initiative. They searched their own personal folders and email as well as the Finance archives and shared folders.
- Permanent Secretary's office – two people in this office have searched the archives.
- Senior Executive Team – A senior colleague in this team has searched the archives.
- Director General, Service Excellence Office
- Customer Experience Director's Office
- Service Modernisation Programme and Health Transformation Programme who completed searches in their shared folders.

The Commissioner's position

40. On the basis of DWP's explanations, the Commissioner is satisfied that, on the balance of probabilities, DWP does not hold any further information to that previously provided.
41. The Commissioner understands why the complainant would believe that DWP would hold information setting out its specific plan for DWP Excellence'. However, he accepts that this is a term used to bring together already existing workstreams.
42. The Commissioner's guidance on 'Determining whether information is held³' states:

"We don't expect you to search all of your filing cabinets or computers before determining that you don't hold information. However, you should search those areas where it is reasonable to expect that you would find the information (if it existed). The broader the request, the more areas you are likely to need to search".
43. The Commissioner is satisfied that DWP has undertaken proportionate and adequate searches and, on the balance of probabilities, no further information is held falling within the scope of the request.

³ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

Section 10(1): Statutory time for compliance

44. Section 10(1) of FOIA states:

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

45. DWP provided its response over 15 weeks following the request and therefore breached section 10(1).

Other matters

46. While there is no statutory timeframe in which a public authority is expected to complete an internal review, the Commissioner observes that paragraph 5.4⁴ of the section 45 Code of Practice recommends that internal reviews should normally be completed within 20 working days.

47. In this case, DWP took almost seven months to conduct its internal review. The Commissioner acknowledges that public authorities were still affected by difficulties encountered by the Covid-19 pandemic, however, even in light of these exceptional circumstances, the Commissioner considers that the time taken to conduct the internal review was unacceptable.

48. The Commissioner reminds DWP of his guidance on completing an internal review which sets out the Commissioner's view that internal reviews should take a maximum of 40 working days, even in the most exceptional of circumstances.

⁴ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

49. 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

50. 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.
51. 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
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