



Neutral citation number: [2025] UKFTT 00683 (GRC)

Case Reference: FT/EA/2024/0308

**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

**Decided without a hearing
Decision given on: 12 June 2025**

Before

**JUDGE HARRIS
JUDGE FOSS
MEMBER PEPPERELL**

Between

DEPARTMENT OF WORK AND PENSIONS

Appellant

and

**(1) INFORMATION COMMISSIONER
(2) JOHN PRING**

Respondents

Decision: The appeal is Allowed.

Substituted Decision Notice:

Organisation: Department of Work and Pensions

Complainant: Mr John Pring

The Substitute Decision – IC-283014-Y6R7

1. For the reasons set out below the Department of Work and Pensions was entitled to rely on section 22 of the Freedom of Information Act 2000 to withhold the information requested by the complainant on 27 November 2023.
2. The Department of Work and Pensions is not required to take any steps.

REASONS

Background to the appeal

1. This appeal is against a decision of the Information Commissioner (the First Respondent) IC Notice IC-283014-Y6R7 made on 11 July 2024 against the Department of Work and Pensions (the Appellant) concerning information in Internal Process Reviews (“IPRs”) relating to claims for Universal Credit.
2. The complainant and Second Respondent, Mr John Pring, made a request for information from the Appellant on 27 November 2023 in the following terms:

“For each of the last four calendar years (including 2023 to date) please tell me:

- 1) *How many internal process reviews (IPRs) were completed.*
- 2) *How many completed IPRs involved the death of a claimant*
- 3) *How many completed IPRs (whether involving the death of a claimant or not) included recommendations relating to universal credit.*
- 4) *How many completed IPRs involving the death of a claimant included recommendations relating to universal credit.*

For each year, please send me all the IPR recommendations that were made relating to universal credit, noting for each one whether it related to the death of a claimant.”

3. The Appellant responded on 21 December 2023 and confirmed that it held the requested information. For questions 1 and 2, the Appellant confirmed that it was relying on Section 21 of the Freedom of Information Act 2000 (“FOIA”) to resist disclosure, on the basis that the information was reasonably accessible to the Second Respondent, providing links to the appropriate information. For the year April 2023 to the date of the request, the Appellant confirmed that it was relying on Section 22(1) of FOIA, as it intended to publish this information in its next annual report.
4. In relation to questions 3 and 4, relating to IPR recommendations, the Appellant relied on Section 22(1) of FOIA to withhold the information as it was intended for future publication. The Appellant confirmed that it was satisfied that the balance of the public interest lay in maintaining the exemption.
5. The Second Respondent requested an internal review on 21 December 2023. It accepted the Appellant’s response in relation to questions 1 and 2 but disputed that the remainder of the information could be withheld relying on Section 22(1), as it was not persuaded that the requested information would be published.
6. The Second Respondent complained to the First Respondent on 18 January 2024 and sought determination of whether the Appellant was entitled to rely on Section 22(1) to withhold the information falling within questions 3 and 4 and to refuse the request for IPR recommendations relating to universal credit.

7. The First Respondent issued a Decision Notice on 11 July 2024 in which it found that in order to rely on s.22(1), the information described in the request must be what will be published. However, it was not satisfied that the requested information was what would be published. It considered that what the Appellant intended to publish was the individual IPRs, from which the Second Respondent would be able to calculate the number sought by each question, rather than the requested totals. It therefore found that Section 22(1)(a) was not fulfilled and Section 22(1) cannot be engaged.

Abbreviations used in this decision

“FOIA” means the Freedom of Information Act 2000

“IPR” means Internal Process Review

“the last paragraph” means the final paragraph of the Second Respondent’s request to the Appellant dated 27 November 2023, which reads *“For each year, please send me all the IPR recommendations that were made relating to universal credit, noting for each one whether it related to the death of a claimant.”*

Procedural matters relating to the determination of this appeal

8. The parties opted for paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).
9. The Tribunal considered an open bundle of documents (123 pages) including a witness statement from the Second Respondent and a witness statement from Ms Stubbs, lead of the Advanced Customer Support Transformation Team within the Appellant. In this decision we refer to page numbers of documents in the open bundle with the prefix OB.
10. The Tribunal also considered a smaller closed bundle of withheld documents (80 pages). This consisted of:
11. Internal documents on which the Appellant relies to show intention to publish; and
12. Correspondence between the Appellant and First Respondent.
13. Prior to the hearing an application under rule 14 of the Tribunal Rules had been made as regards the withheld material and an order made that disclosure of the information contained in the closed bundle would defeat the purpose of the appeal
14. Having considered all the evidence, the Tribunal’s view was that the reasons for its decision could be properly set out in an open decision and therefore did not prepare a separate closed decision.

15. Following the hearing, the Appellant notified the Tribunal that there had been an inaccuracy in the information provided in Ms Stubbs' witness statement concerning the date of intended publication. The Appellant provided further CLOSED evidence to the Tribunal on 20 May 2025 addressing this point. Having considered this, the Tribunal concluded that this additional evidence did not affect the Tribunal's previous decision.

The Appeal

16. The Appellant appealed the First Respondent's decision to the Tribunal on 8 August 2024 and submitted separate grounds of appeal. The Appellant accepted the First Respondent's findings in relation to questions 3 and 4 and agreed to provide this material to the Second Respondent. However, it disputed the findings in relation to the final paragraph of the request (which we refer to in this decision as the "last paragraph"), namely *"For each year, please send me all the IPR recommendations that were made relating to universal credit, noting for each one whether it related to the death of a claimant."* It argued that this should be dealt with separately from questions 3 and 4.
17. The Appellant set out the following grounds of appeal:
18. The effect of focusing its reasoning on questions 3 and 4 means that the First Respondent provided no reasons in relation to the last paragraph, which was an error of law.
19. The reasons provided in relation to questions 3 and 4 cannot be applied by extension or implication to the last paragraph without leading to irrationality.
20. The Appellant had at the time of the Decision Notice (and continues to have) a clear intent to publish the precise information sought by the Second Respondent. No redactions are needed for information within the scope of the Second Respondent's request.

The First Respondent's response

21. The First Respondent provided a Response to the appeal on 25 September 2024 in which it articulated its position that it does not consider it reasonable to delay the release of the IPR recommendations and that Section 22 is accordingly not engaged. It made the following points:
22. The First Respondent accepted that it did not set out reasons supporting the finding that Section 22 was not engaged in relation to the last paragraph. However, it argued that the absence of such reasoning is not a matter for the Tribunal.
23. It argued that the First Respondent did in fact consider the last paragraph as part of its decision.

24. It stated that it is open to the Tribunal to carry out a full merits review of the First Respondent's decision to decide whether it is in accordance with the law. The First Respondent provided a commentary in support of its decision. This includes considering:
25. Whether there was an intention to publish the information;
26. Whether the information was already held with a view to publication at the date of the request.
27. Whether it is reasonable in all the circumstances to withhold the information from disclosure until the intended date of publication.
28. Does the public interest favour maintaining the exemption or disclosing the information.

The Appellant's Reply

29. The Appellant filed a Reply to the First Respondent's response on 10 December 2024. It adopted the First Respondent's summary of facts and the four questions set out above to frame its Reply.
30. The Appellant confirmed that it had an intent to publish the information at the time of the request. It argued that it was reasonable and in the public interest for the material to be disclosed. We discuss the submissions further below.

The legal framework

31. Section 1 FOIA creates a duty to disclose information held by public authorities. That duty exists whether that information is accurate or not; if it is held it is subject to the regime in FOIA albeit the accuracy of the information may be relevant to any balance of the public interests.
32. The duty to disclose information held by public authorities is subject to exemptions. There are two types of exemption: absolute and qualified. An exemption will be "qualified" where, if the exemption is engaged, the relevant public interests must be balanced to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosure pursuant to section 2 FOIA. An absolute exemption will not require the balancing of the public interests.
33. Following the cases of R (Evans) v Attorney General [2015]UKSC 21 and Montague v The Information Commissioner and Department for International Trade [2022] UKUT 104 (AAC) and [2023] EWCA Civ 1278 it is clear that the Tribunal should apply the public interest balance at the date of refusal, not at the date of an internal review, and thus not at any later date such as where there is a later reliance on additional or different exemptions.

34. Section 22 of FOIA provides a qualified exemption as follows:

"Information intended for future publication.

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)."

35. The Tribunal's powers in this appeal are set out in section 57 and 58 of FOIA. If we are satisfied that the Information Commissioner's decision notice is in error of law or involves an inappropriate exercise of discretion then we will allow the appeal and may substitute a decision notice for that of the Information Commissioner.

36. The powers of the Tribunal were considered by the Upper Tribunal in Information Commissioner v Malnick and the Advisory Committee on Business Appointments [2018] UKUT 72 (AAC) who confirmed that the Tribunal conducts a full merits review of the Commissioner's decision albeit the starting point was the Commissioner's decision. The Tribunal will give such weight as it considers fit to the Commissioner's views and findings; and will determine whether the Commissioner's decision was in accordance with the law. The appeal process is not adversarial, it is inquisitorial by nature.

37. FOIA is concerned with information and not documents, the provisions of section 11 means that information contained in documents may be communicated other than by providing a copy of the document that holds it, for example by extracting the text of the information to be communicated.

The issues

38. The key issue in dispute is whether or not Section 22(1) of FOIA is engaged and whether the Appellant was correct to rely upon it to resist disclosure of the information sought.

39. The information sought which has not already been disclosed by the Appellant is that set out in the last paragraph of the Second Respondent's request, namely:

40. The IPR recommendations themselves

41. An indication of whether each IPR recommendation related to the death of a claimant.

42. The points on which the Tribunal must decide have been articulated by the parties as the following four questions, which mirror the wording of the relevant statutory provision in Section 22(1) of FOIA:
43. Whether there was an intention to publish the information;
44. Whether the information was already held with a view to publication at the date of the request.
45. Whether it is reasonable in all the circumstances to withhold the information from disclosure until the intended date of publication.
46. Whether the public interest favours maintaining the exemption or disclosing the information.
47. We deal with each of these below.

Discussion and conclusions

Whether there was an intention to publish the information and whether the information was already held with a view to publication at the date of the request

48. It appears to the Tribunal that these two points can be dealt with together, because if there is evidence of the information being already held with a view to publication at the date of the request, it must follow that there was an intention to publish.
49. The Decision Notice at paragraph 27 (OB5/pdf8) states "*DWP intends to publish individual IPRs.*" It appears from this that the First Respondent accepts that the Appellant had an intention to publish the information sought in the last paragraph. This is supported by paragraph 19 of the First Respondent's Response which states "*The Commissioner understands...that there is an intention to publish the entirety of the requested information at some future date.*"
50. Having considered the closed material in detail, we are satisfied that there was a settled intention by the Appellant to publish the information held which was responsive to the last paragraph of the Second Respondent's request. The question then becomes whether that information was held with a view to publication at the time of the request on 27 November 2023.
51. Again, the First Respondent appears to accept this as it says at paragraph 22 of the Response "*the Commissioner notes the Appellant's submissions during his investigation confirm that the intention existed at the time of the request*".
52. The witness statement of Ms Stubbs (page OB C6/pdf117) at paragraph 15 states "*I am aware that the DWP has previously submitted that at the relevant time of the Original Request it already had a clear and agreed intent to publish the exact information (the recommendations) which was being sought. This agreement was obtained from DWP's Serious Case Panel, which is chaired by a Non-Executive Director and is comprised of the*

Permanent Secretary and all Directors-General". We gave significant weight to the evidence of Ms Stubbs. Her evidence summarises much of the closed material dealing with this point, particularly insofar as it shows that the matters were being discussed internally for publication. It also reflects that because of her role and responsibilities she was involved in the process of determining what was to be published, so she is appropriately qualified to comment on what the intention of the Appellant was at the material time. The Tribunal reviewed the closed material at length and decided that whilst the supporting material may have been incomplete and did not by itself demonstrate conclusively everything said by Ms Stubbs in her statement, there was nothing in her statement which was inconsistent with the underlying evidence and no reason to disbelieve what she said. We therefore accepted her evidence and concluded that the Appellant did have a settled intention to disclose the information sought by the last paragraph at the time of the Second Respondent's request.

Whether it is reasonable in all the circumstances to withhold the information from disclosure until the intended date of publication.

53. The Appellant at paragraph 8 of its Reply expressed the concern that the material would *"be disclosed to the public at large in a way which is out of context and disaggregated from its source, which:*
 54. *Reduces the opportunity for the public to understand the information in context;*
 55. *May increase existing misconceptions around the work of the IPR team;*
 56. *Contains information and acronyms not easily understood by the general public; and*
 57. *Could engender public distrust in the DWP, ultimately creating a risk that vulnerable people will not approach the Appellant when they most need to."*
58. The First Respondent's position, set out at paragraph 29 of its Response, was that it is open to the Appellant to provide whatever accompanying detail or documentation it considers necessary to set the disclosure of the requested information into context. Similarly, it could provide a key or summary to any in-house terms or acronyms used within the disclosure to enable easy comprehension by members of the public. The First Respondent said it was currently unclear how the disclosure of the information could prevent vulnerable people from contacting the Appellant to access its services if the same were required.
59. Responding to this (paragraph 10 of the Reply) and acknowledging that it is technically open to it to do so, the Appellant was concerned that by doing as the First Respondent suggested it would lose control over the ability to show a full and accurate picture in its proper context through a planned and managed publication in relation to any onward disclosure or publication by the recipient.
60. The First Respondent also stated at paragraph 31 of the Response that it considers that the arguments put forward by the Appellant in its own refusal notice best sum

up why it would not be reasonable to delay the release of the material, namely that there is a public interest in the work of the IPR team and publication could increase transparency and public understanding of how the Appellant uses continuous improvement. The First Respondent considered that this was particularly so because the information relates to recommendations in relation to the handling of Universal Credit claims which affect millions of people of whom many are particularly vulnerable. It therefore concluded that it was not reasonable to delay publication.

61. We considered the arguments put forward by both the Appellant and the First Respondent and the relevant material in both the open and closed bundles.

62. We also considered the First Respondent's published guidance on Section 22, particularly paragraphs 22-26 which says:

"22. A public authority must consider whether it is reasonable, in all the circumstances, to withhold information until the date of publication.

23. There is some overlap between the factors to consider when deciding what is reasonable, and those which are relevant to the application of the public interest test. However, before applying the public interest test, a public authority must first determine whether or not it is reasonable, in all the circumstances, to withhold the information.

24. When doing so, a public authority should first consider whether or not it is:

63. *sensible;*

64. *in line with accepted practices; and*

65. *fair to all concerned.*

25. A public authority may also wish to give thought to whether:

66. *it is the right decision to manage the availability of the information by planning and controlling its publication;*

67. *it is necessary to avoid the possibility of the requester gaining any advantage in obtaining the information prior to general publication;*

68. *the timetable properly requires internal or limited consideration of the information prior to its public release;*

69. *having decided to disclose the information, there would be real difficulties in extracting it prior to publication; and*

70. *this information should instead be available through the authority's publication scheme*

26. The closer to the date of publication, the more reasonable it is likely to be for the public authority to withhold the information until publication has taken place."

71. We considered in all the circumstances that it was sensible, in line with accepted practice and fair to all concerned to publish the information sought by the last paragraph of the request. We considered that there had been significant care applied by the Appellant in deciding whether or not to delay publication rather than publish IPRs when requested. We noted that disclosure under FOIA is disclosure to the world at large and we considered that releasing this information in isolation would raise substantial difficulties. For example, if there are IPRs relating to individual deaths, there may be processes attendant on this such as coroner's inquests which would mean that releasing the information after a period of time would be fairer on and cause less distress to the families of the deceased than immediate disclosure upon request.

72. We also considered the Second Respondent's witness statement at OB C3/pdf 114 and why he said he wanted the information to be disclosed. What he says is:

"The reason I was so insistent on DWP releasing the recommendations on universal credit made by the IPRs was because information relating to its safeguarding flaws has continued to emerge over the last three years. I believe it is critical that the public, politicians, disabled people's organisations, and welfare rights organisations are aware of the recommendations that have been made internally to improve the universal credit process following suicides and other deaths of claimants. This is so they can hold the department to account over whether those recommendations have been implemented. The lives of claimants are at risk and DWP shows no sign of accepting that the system needs through reform so that safety is its number one priority".

73. We considered that, through this lens, the main value of the release of IPR recommendations lies in the patterns that it would show in terms of how the recommendations were implemented by the Appellant. In order for meaningful patterns to emerge, it is fair to allow the Appellant a period of time in which it can consider the information which individual IPR recommendations raise, analyse them in the wider context of the Appellant's responsibilities to see what patterns emerge, decide how best to act upon them and have an opportunity to put any consequent steps in place. We noted from paragraph 17 of Ms Stubbs' witness statement that the Appellant envisaged that *"the publication will additionally include further information that was not requested but which we are publishing to increase the transparency and understanding of these cases, specifically related to the improvements that DWP has made to its services because of them"*.

74. In our view, the value of being able to identify and deal with patterns arising from IPR recommendations, in the wider context of the changes these necessitate to the way the Appellant deals with claimants, outweighs the value of releasing individual IPR recommendations, from which such patterns may be difficult to discern. The Appellant is best placed to conduct the analysis of this, and it would be more difficult

for someone just looking at the IPR recommendations in isolation to work out what change is required and how best it should be implemented.

75. We concluded that the decision of the Appellant to withhold the information until the intended date for publication was a reasonable response for it to make in these circumstances and that accordingly publication along the timelines described in paragraphs 17-20 of Ms Stubbs' witness statement was reasonable for the purposes of section 22(1).

Does the public interest favour maintaining the exemption or disclosing the information?

76. In its initial refusal to the Second Respondent dated 21 December 2023 (OB B3/pdf91), the Appellant accepted that there was a public interest in favour of disclosure, but also that there were good reasons for maintaining the exemption. It explained *"when considering arguments against disclosure, there is clearly a strong interest in allowing the DWP, to publish information in a format and at a time that presents the greatest opportunity for the public to receive the information in the context in which it was recorded. Furthermore, as documents created for an internal DWP audience, they contain information and acronyms not easily understood by a public audience without a framework built around the contents. An ad hoc release of the requested information into the public domain could engender public distrust in the DWP. This is because the information may become disassociated from the circumstances around which it relates... At this time there are misconceptions present amongst the general public as to the purpose of the IPR team and the work it produces and so it is in their interest to be able to receive this information in such a way as would allow them to make an informed view of the work the DWP is undertaking. Therefore, the release of the information being requested, disaggregated from its source, will only serve to increase those incorrect views and it would not be in the public interest for that to happen. It is part of the effective conduct of public affairs that the general publication of information is a convenient planned and managed activity within the reasonable control of public authorities. Therefore in this instance the Department has a reasonable entitlement to make its own arrangements to publish information."* It concluded that the public interest in maintaining the exemption outweighed the public interest in disclosure.
77. In its Reply, at paragraph 11 the Appellant accepted, as it had in its original refusal, that there is a public interest inherent in the receipt of the information and in transparency surrounding the work of the Appellant and IPR team. It went on to say *"However, that public interest is best served by having a full, accurate and complete picture, and piecemeal disclosure of the kind sought by this request would undermine, not serve, that public interest. The risk of public misunderstanding, and the damaging effect that may have on public trust, is precisely the thing which the exemption contained within section 22 is designed to avoid."*
78. It continues at paragraph 12: *"It is this misunderstanding and damage to public trust which the Appellant has in mind when it describes the risk of creating a situation where vulnerable people will not approach the department when they need it most. This is a point*

which the Information Commissioner states he was unclear as to the meaning of. The risk, as the Appellant sees it, is this; published selectively and isolated from its proper context, there is a risk that the requested information, which concerns what might be termed the “worst case scenario” may create a false or misrepresentative impression, either by implying that these results are more common (relative to the numbers of cases which are dealt with by the team), or that the Department is in some way blase or unconcerned with what is clearly a very serious issue. Either of these impressions may have a “chilling” effect on people’s willingness to come forward when they have issues with which the Department could assist.

79. At paragraphs 31 and 32 of the Response, the First Respondent quotes the Appellant’s refusal notice and says that there is clearly a public interest in providing information which could increase transparency and understanding of how the Appellant uses the process of continuous improvement. It goes on to say *“This is particularly so where the requested information related to recommendations in relation to the handling of Universal Credit claims which affects millions of people of whom many are especially vulnerable”*.
80. We considered that there is clearly a public interest in the information sought by the last paragraph being disclosed, but that on balance the public interest would be better served by such disclosure happening in a controlled way and with care. This will allow for transparency and so that patterns which emerge from the information are considered and acted upon, enabling the public to understand how processes have been and will continue to be improved. The piecemeal release of individual IPR recommendations will not give this balanced view which takes into account the wider context of the system which the Appellant operates. We consider it is fair to give the Appellant an opportunity to scrutinise the data, identify the patterns it shows and scrutinise its progress before making the information available.
81. In all the circumstances we therefore decided that the public interest lay in favour of maintaining the exemption. Accordingly, we determined that Section 22(1) was engaged and that the Appellant was correct to rely on it to resist disclosure of the information sought by the Second Respondent in the last paragraph of his request.
82. The decision notice IC-283014-Y6R7 is in error of law and thus the appeal is allowed. We have substituted a decision notice which is to be found at the start of this judgment.

Signed Judge Harris

Date: 11 June 2025