

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2017

Public Authority: Department for Work and Pensions

Address: Caxton House
6 -12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested the "Policy, Law and Decision Making Guidance" as used by the public authority in the assessment of child maintenance cases. The Department for Work and Pensions (DWP) relied on section 22 to withhold the requested information.
2. The Commissioner's decision is that the DWP incorrectly applied section 22 to withhold the requested information. The Commissioner requires the DWP to take the following steps to ensure compliance with the legislation.
 - To disclose the withheld information to the complainant.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

4. The Child Support Act¹ provides the legal framework for child maintenance payments through the Government's statutory child
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¹ <http://www.legislation.gov.uk/ukpga/1991/48/contents/enacted>

maintenance service. Among other things, the Act authorises the statutory services to work out and collect child maintenance.

5. The Act also says that paying parents are legally required to pay the child maintenance amounts worked out by the statutory child maintenance service, if a parent opens a case with them.
6. On 2 August 2016, regarding the guidance for decision makers for the assessment of child maintenance, the complainant made the following request for information;
 - As these instructions are not yet available online please can you send me a hard copy of these instructions by post. Or a pdf version by email.
7. On 9 August 2016, DWP replied as follows;

“Enclosed with this letter is a copy of the Child Maintenance Service Online Procedures (the Procedures) in CD-ROM format. The Procedures are a comprehensive guidance on all aspects of handling child maintenance applications including CMS procedures, policies and legislative references. The CD-ROM also contains instructions on how to open the guide”.

Request and response

8. On 6 September 2016 the complainant again wrote to the DWP and requested information in the following terms:
 - The CD-ROM repeatedly refers to the following of another manual which is needed to understand how the CMS must carry out its functions. Please send a CD with these instructions – the Policy, Law and Decision Making Guidance.
9. The DWP responded on 14 September 2016. It stated that it relied on section 22 of the FOIA to withhold the requested information.
10. Following an internal review the DWP wrote to the complainant. It stated that it upheld its position.

Scope of the case

11. The complainant contacted the Commissioner on 6 November 2016 to complain about the way his request for information had been handled, specifically the application of section 22.

Reasons for decision

12. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.
13. Section 22(1) of the FOIA states that information is exempt from the duty of communication 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 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).
14. As part of her investigation the Commissioner wrote to the DWP to provide it with the opportunity to fully lay out its final submissions regarding its decision to withhold the requested information. The DWP's submissions are comprehensively laid out in paragraphs 15 to 17 below.
15. The DWP confirmed it was withholding the requested information under section 22(1). The DWP believed that the disclosure of the information would disrupt a planned initial publication of a large range of Child Maintenance Group (CMG) decision making guidance.
16. The DWP is conducting a digital project for the purpose of developing a new internal and external internet offering of a wide range of CMG guidance. A specific element of this project relates to the provision of a new platform for instructions and Decision Making Guidance which will be published as soon as the existing guidance has been revised, assured by senior management and cleared by DWP lawyers. As part of the project, the CMG Policy Law and Decision Makers Guidance will, for the first time, be hosted online alongside the existing DWP's social security guidance. The requested information has been developed on an iterative basis to support the Pathfinder approach that CMG used to deliver the 2012 Scheme and the on-going closure of the Child Support Agency cases. As the project has moved into a stabilisation phase, work is being undertaken to review each element of the Policy Law and Decision

Making Guidance (PLDMG) to ensure that it reflects the learning from the operational experience of operating the new legislative framework.

17. The prepublication review is currently seeking legal assurance on each element of the PLDMG prior to publication. The DWP maintains the view that it is correct to manage the availability of the information in a way which ensures content is appropriately controlled so that it is fit for purpose and consistent with the existing DWP social security Decision Makers Guidance which it will be published alongside.
18. The complainant's request, of 6 September 2016, was for the "Policy, Law and Decision Making Guidance" that was (at the time of the request) being used by DWP's decision makers in child maintenance cases. He was not seeking the future guidance that the DWP may or may not issue. The DWP appears to rely on section 22 to withhold the current guidance on the basis that it may also be used in some future public guidance. This is not an interpretation of section 22 that the Commissioner concurs with. The current Policy, Law and Decision Making Guidance is primarily held to give current guidance to decision makers in their assessment of child maintenance. The fact that it may also be published is not its *raison d'être*.
19. In any event the Commissioner's view is that a general intention to publish some information will not suffice. It is insufficient (to engage the exemption) for the public authority to note that it will identify some, but not all, of the information within the scope of the request for future publication. In its correspondence² to the Commissioner, providing a copy of the withheld information, the DWP stated that the final versions may however change during the assurance process.
20. The information that the public authority intends to be published must be the specific information the applicant has requested.
21. The Commissioner, for the reasons given above, is not satisfied that the withheld information primarily existed at the time of the request with a view to it being published on a date that remained to be determined. It existed at the time of the request to provide current guidance on child maintenance payments and it is not the specific information intended to be published in the future. Accordingly the Commissioner does not find the exemption afforded by section 22 to be engaged. With no other exemption being relied on by the DWP, the Commissioner directs that the withheld information be communicated to the complainant.

² 5 January 2017

Right of appeal

22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 123 4504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

23. 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.
24. 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

Alexander Ganotis
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF