

## Freedom of Information Act 2000 (the Act)

### Decision notice

**Date:** 12 May 2021

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### Decision (including any steps ordered)

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1. The complainant has requested information regarding specific scenarios that may be encountered when calculating child maintenance payments.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) does not hold information falling within the scope of the request.
3. The Commissioner does not require DWP to take any steps.

#### Request and response

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4. On 11 February 2020, the complainant wrote to DWP and requested information in the following terms:

*"Please could you provide information relating to your HMRC-linked interface. In particular, in situations where the NRP<sup>1</sup> is employed through their own company and data is missing for one tax year, but is available for other years either side, does this mean that both a tax return and PAYE data was not submitted to HMRC for that year?"*

*For example:*

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<sup>1</sup> Non-resident parent

*2013/14: X Income  
2014/15: Y Income  
2015/16: No data  
2016/17: Z Income*

*Would the income later show up in the system if the tax return and/or PAYE data was submitted late? If so, how long after submission of the tax return and/or PAYE data would it take for the income to display in the system?"*

5. DWP provided its response on 25 February 2020. DWP clarified the remit of the Act and confirmed that it gives any person the legal right of access to any and all recorded information which is held by a public authority. DWP explained that the Act does not oblige a public authority to create new information to answer questions or give advice, opinions or explanations in relation to issues or policies.
6. DWP explained that where a question is asked, it will provide the requester with the recorded information that best answers that question, to the extent that such information is held. DWP confirmed that it holds no recorded information falling within the scope of the request relating to how information would be treated and recorded by HMRC on its systems and advised that the complainant may wish to direct his request to HMRC.
7. The complainant requested an internal review on 25 February 2020 and disputed that DWP does not hold any information falling within the scope of the request. The complainant considered that due to the number of cases handled by the Child Maintenance Service (CMS), they would expect this scenario to have occurred multiple times and that DWP must therefore hold this information.
8. The complainant also explained that there is Upper Tier Tribunal case law that confirms that it is not solely the responsibility of HMRC to check the income figures where disputes arise. The complainant considered that the CMS is duty bound to check figures where queries arise relating to child maintenance cases.
9. DWP provided the outcome of its internal review on 20 April 2020. It upheld its original response and explained that the HMRC interface provides CMS with a historic income figure, the latest available tax year that they have a record for back to a maximum of six years. DWP confirmed that the CMS system would hold whatever information HMRC holds on its system for the latest available tax year.
10. In relation to the complainant's assertion that DWP has a duty to investigate potentially inaccurate records, DWP confirmed that when

child maintenance caseworkers are alerted to any potentially fraudulent or criminal behaviour, they can refer the case and available evidence to the financial investigation unit.

## Scope of the case

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11. The complainant contacted the Commissioner on 17 May 2020 to complain about the way his request for information had been handled, specifically they disputed that DWP does not hold any information falling within the scope of the request.
12. Having reviewed the correspondence between the complainant and DWP, the Commissioner considers that there is a difference of opinion in the interpretation of the request and she will consider this before going on to determine whether, on the balance of probabilities, DWP holds any recorded information falling within the scope of the request.

## Reasons for decision

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### *Section 8: Request for information*

13. Section 8(1) of the Act states:

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

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested"*

14. In this case, the complainant made his request in writing, stated his name and gave an address for correspondence. Therefore the requirements of section 8(1)(a) and (b) are satisfied.
15. The Commissioner considers that a request will meet the requirements of section 8(1)(c) as long as it contains a sufficient description of the information required. Each request has to be judged on its individual merits as to whether there were sufficient indicators provided to enable the information requested to be adequately described for the purposes of section 8. As long as the request attempts to describe the information, it is likely to meet the requirements of Section 8(1)(c) as it

is always open to the public authority to seek further clarification to identify the information.

16. The Commissioner's published guidance<sup>2</sup> states:

*"Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way ...*

*This is not a hard test to satisfy. Almost anything in writing which asks for information will count as a request under the Act. The Act contains other provisions to deal with requests which are too broad, unclear or unreasonable".*

17. The Commissioner has considered the wording of the request in this case. She is satisfied that, although phrased as questions, the wording of the request was sufficiently descriptive to allow DWP to identify the information sought. For example, it is reasonable for DWP to check whether it holds relevant information in guidance or policy documents. The Commissioner therefore considers that DWP's approach in considering whether it held any recorded information that may answer the question was the appropriate approach in this case.
18. Having regard to the wording of the request, the Commissioner notes that the request is seeking a confirmation of the reason why a specific scenario would occur and information setting out the timeframe in which this would be rectified. The Commissioner therefore considers that the objective interpretation is that the request is for general information that would explain why a year may be missing and the timeframes in which this will be rectified.
19. The Commissioner notes that the complainant sets out in their request for internal review that due to the number of cases that the Child Maintenance Service actions, this situation must have occurred on several occasions. She does not consider that the request is for information on the specific circumstances that has led to missing data in individual child maintenance cases or how long each case took to be provided with the missing data.

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<sup>2</sup> "What makes a request valid?" <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/#1>

*Section 1(1) – General Right of Access*

20. Section 1(1) of the Act 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 the Act to create new information in order to answer a request.
21. Where there is a dispute between the information located by a public authority and the information the complainant believes is held, the Commissioner, following the lead of a number of First-Tier Tribunal (Information Rights) decisions applies the civil standard of proof- ie the balance of probabilities.
22. In circumstances of this case, the Commissioner will therefore determine whether, on the balance of probabilities, DWP holds any recorded information that falls within the scope of the request.

**DWP's position**

23. DWP confirmed to the Commissioner that it did not hold any guidance or required actions for CMS caseworkers when faced with missing data on the HMRC linked interface. DWP explained that the annual review request and receipt of HMRC data is automatic and will be automatically populated in the child maintenance system by the HMRC interface. Following this, a letter is issued to the parent to notify them of the figure received and advises them to contact DWP if they believe the figure to be incorrect.
24. DWP explained that there is no specific guidance on taking action where a year is missing. DWP confirmed that there is guidance available which advises that the HMRC income figure is for the latest available tax year. This guidance further advises that the information available may not be the latest or most current tax year. DWP confirmed that this guidance advises caseworkers that the HMRC figure provided is acceptable if it is for any year within the last six years. DWP confirmed that this guidance had previously been shared with the complainant.
25. DWP confirmed that this guidance, the "Annual Income Summary update", states:

*"The system will automatically interface with HMRC to obtain the latest earned income details they hold for the paying parent. This element is fully automated, there is no caseworker action required at this point. Any income details returned can be viewed in the paying parents customer profile. HMRC hold income details up to six years old that can*

*be used for annual review and other assessments. When HMRC provide income information it'll always be a complete tax year.*

*Internal HMRC working practices can mean that when the child maintenance group (CMG) request earnings for an annual review, if HMRC are investigating a tax year or are still awaiting information, although this tax year was a complete tax year when CMG requested it, it no longer would be, so HMRC will provide the next previous complete tax year".*

26. DWP explained that searches were carried out of its policies and procedures via the internal intranet as well as with its Design and Digital colleagues.
27. DWP confirmed that its search terms included HMRC, tax, income, PAYE and that the whole of the complainant's request was shared with the relevant officers performing the searches.
28. DWP explained that the request was in relation to the timing of the submission of tax returns and PAYE returns submitted to HMRC. DWP confirmed that CMG does not have access to guidance relating to HMRC processes or timescales.
29. DWP explained that its guidance is generic and cannot cover many different scenarios; where a case is complex such as in the requested scenario, this will require a case by case review.
30. DWP explained that it previously advised the complainant that where child maintenance caseworkers are alerted to any potentially fraudulent or criminal behaviour, it can refer the case and available evidence to the Financial Investigation Unit (FIU). DWP confirmed that it had previously provided the complainant with nine pieces of guidance which covered FIU referrals, variations in payment following incorrect information supplied and what variations may apply.

### **The Commissioner's position**

31. The Commissioner is satisfied that, on the balance of probabilities, DWP does not hold any information falling within the scope of the request. The Commissioner considers that the searches undertaken by DWP were logical and proportionate for information of the type requested. The Commissioner accepts that these searches failed to locate any information relevant to the request and, in her view, there are no further steps that DWP could reasonably be expected to take to locate the requested information.
32. The Commissioner notes, however, that in his request for internal review, the complainant states that due to the number of cases that the

CMS handles, this scenario must have occurred multiple times and therefore DWP must hold information relating to this request. They also consider that DWP is duty bound to investigate whether individuals have provided accurate information or have taken steps to conceal income.

33. It is not within the Commissioner's remit to dictate to a public authority what information, policies or procedures it should hold. This is at the discretion of the individual public authority to meet its own business needs or other obligations.
34. The Act provides for a right of access to information held at the time the request is made. Whilst the Commissioner understands the complainant's position, they have not provided any real evidence that the requested information is held. DWP has provided reasonable explanations for why the information is not held and has also conducted searches that the Commissioner accepts would locate any relevant information held.

## Right of appeal

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35. 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 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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**