

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 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 draft and final versions of evaluations of remote Work Capability Assessments undertaken by DWP and any submissions provided by the contractor.
2. The Commissioner's decision is that section 22A is not engaged in relation to the majority of the draft and final versions of the evaluations. However, the Commissioner considers that section 22A is engaged for a small amount of the information and the balance of the public interest favours maintaining the exemption.
3. With regards to the request for submissions from the contractor, the Commissioner is satisfied that on the balance of probabilities, DWP does not hold any information falling within the scope of this request.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the information falling within the scope of RFI1 and RFI1a with the exception of the draft versions of the already published report.
5. 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.

Background

6. Work Capability Assessments (WCAs) are an assessment of how much a health condition or disability affects a claimant's ability to work. This is used as part of the decision making process following a claim for benefits.
7. During the Covid-19 pandemic lockdown, DWP temporarily suspended all face-to-face WCAs and used telephone and video assessments in some decisions.
8. On 25 March 2021, The Social Security (Claims and Payments, Employment and Support Allowance, Personal Independence Payment and Universal Credit) (Telephone and Video Assessment) (Amendment) Regulations 2021 came into force. These Regulations made clear that telephone and video channels can be used as additional methods of conducting WCAs.

Request and response

9. On 8 April 2021, the complainant wrote to DWP and requested information in the following terms:

"On 25 March 2021 new regulations relating to work capability assessments ("WCA") being carried out by telephone or video came into force.

I assume that the DWP will have carried out an evaluation of WCAs being completed by telephone or video prior to laying the new regulations (I know the DWP has not produced an impact assessment).

It is reasonable to assume that the evaluation resulted in a report being produced by the DWP and that submissions were made by Maximus UK Services Limited ("Maximus")(trading as Centre for Health and Disability Assessments).

RFI1: Please disclose the evaluation report produced by the DWP into the carrying out of WCA via telephone or video.

RFI1a: If earlier drafts of the evaluation report are readily available and do not breach S.12 please disclose these as well.

RFI2: Please disclose the submission provided by Maximus to the DWP. It is assumed that these submissions took the form of a small number of written reports. If these reports can be provided within S.12 cost limits,

please do so. For the avoidance of doubt, I am not interested in individual emails or other documents that refer to the evaluation.

Any information that is exempt under section 40 FOIA is considered to be outside the scope of this request for information”.

10. On 6 May 2021, DWP provided its response. It confirmed that it held information falling within the scope of RFI1 and RFI1a but it was withholding this information under sections 22 and 22A. DWP explained that this was because the information is part of an ongoing programme of research and is intended for publication at a later date. DWP confirmed that it considered the balance of the public interest favoured maintaining the exemption.
11. In relation to RFI2, DWP confirmed that Maximus UK Service Limited/Centre for Health and Disability Assessments (CHDA) did not provide any written submissions.
12. On 7 May 2021, the complainant requested an internal review of the handling of their request. They disputed that sections 22 and 22A were engaged and that DWP did not hold any written submissions from the service provider. The complainant asked a series of questions regarding submissions received from the service provider.
13. DWP provided the outcome of its internal review on 18 May 2021. It only addressed the complainant's arguments regarding sections 22 and 22A and upheld its position.
14. On 26 May 2021, DWP confirmed that it had handled the complainant's queries regarding the submissions received as a fresh request. DWP confirmed that it was refusing to comply with the request as it was a repeated request as defined by section 14(2).

Scope of the case

15. The complainant contacted the Commissioner on 15 June 2021 to complain about the way their request for information had been handled.
16. During the course of the investigation, DWP confirmed that it had published a report regarding research into conducting WCAs by telephone, "Claimant experience of telephone-based health assessments

for PIP, ESA and UC¹”, and that this was the only information that was withheld under section 22. DWP also confirmed that it was relying on section 36 in relation to the draft versions of this report.

17. DWP confirmed that it was maintaining its reliance on section 22A for all of the information falling within the scope of the request that had not been published. DWP also maintained that it held no information falling within RFI2.
18. The complainant confirmed that in light of its publication, they did not dispute the application of section 22 to the subsequently published report.
19. The Commissioner therefore considers that the scope of this investigation is to first determine whether DWP is entitled to rely on section 22A to withhold the information falling within RFI1 and RFI1a with the exception of the new published report. If the Commissioner determines that section 22A is not engaged in relation to the drafts of the now published report, he will go on to consider whether DWP is entitled to rely on section 36 to withhold this information.
20. The Commissioner will also determine whether, on the balance of probabilities, DWP holds any information falling within the scope of RFI2.

Reasons for decision

Section 22A: Research

21. Section 22A states:

“(1) Information obtained in the course of, or derived from, a programme of research is exempt information if –

- (a) the programme is continuing with a view to publication, by a public authority or any other person, of a report of the research (whether or not including a statement of that information) and

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003874/technical-report-claimant-experiences-of-telephone-based-interviews.pdf#:~:text=NatCen%20Social%20Research%20carried%20out%20two%20surveys%20to,or%20UC%20claimants%20between%20April%20and%20October%202020.

- (b) disclosure of the information under this Act before the date of publication would, or would be likely to, prejudice –
- i. the programme,
 - ii. the interests of any individual participating in the programme,
 - iii. the interests of the authority which holds the information, or
 - iv. the interests of the authority mentioned in paragraph (a) (if it is a different authority from that which holds the information).

22. The exemption is qualified and subject to a public interest test.

Information from a programme of research

23. The Commissioner's guidance² explains that:

"The exemption will include a wide range of information relating to the research project, and will cover information that is not necessarily going to be published. In other words there does not need to be any intention to publish the information that has been requested.

FOIA does not define 'research'. The Commissioner will use the ordinary definition of the term research: a systemic investigation intended to establish facts, acquire new knowledge and reach new conclusions."

24. DWP explained that at the time of the request, it was conducting a programme of research on assessment channels. DWP confirmed that the elements of this programme of research were broken down as follows:

- Published evaluation on the 'Claimant experience of telephone-based health assessment for PIP, ESA and UC'. DWP commissioned NatCen Social Research to conduct two surveys to examine the claimant experience of telephone assessments and to gauge preferences for using telephone, face-to-face or video assessments on an ongoing basis. Telephone interviews were conducted with 837 claimants of PIP and 1146 ESA or UC

² <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>

claimants between April and October 2020. The final evaluation report was published on 20 July 2021³.

- Unpublished in-house research with staff and claimants involved in telephone assessments. The final evaluation report was produced in November 2020.
 - Unpublished in-house research with staff and claimants involved in video assessments. The final evaluation report was produced in April/June 2021.
 - Two unpublished Management Information analyses of telephone assessments: 'PIP Post-Covid Assessment System Evaluation: Response to Feedback' (produced February/March 2021) and 'PIP Telephony Analysis – Disputes Focus' (produced April 2021).
25. DWP confirmed that, at the time of its submissions to the Commissioner, it had only published one report of the individual elements as set out above and it did not plan to publish any of the other reports summarised above.
26. DWP explained that the elements above constituted a programme of research which aimed to establish facts, acquire new knowledge and reach new conclusions about the claimant and staff experiences of telephone and video assessments.
27. The Commissioner is satisfied that the requested information is derived from DWP's research into telephone and video assessments and the above elements combined can be considered as a wider programme of research.

Ongoing programme of research

28. In order for the exemption to be engaged, the programme of research must be ongoing.
29. DWP explained that, at the time of the request, the research was ongoing. DWP explained that one of the unpublished reports and one of the Management Information analyses were finalised after the date of the request and the publication of the report on claimant experience took place in July 2021. DWP considers that the research programme

³ <https://www.gov.uk/government/publications/claimant-experience-of-telephone-based-health-assessments-for-pip-esa-and-uc>

therefore remained ongoing despite the making of the relevant Regulations and the conclusion of certain aspects of the research programme prior to the initial request.

30. The Commissioner accepts that the drafting and publication of the reports will form part of the research programme itself. As DWP was still drafting two of the final reports at the time of the request, the wider research programme was ongoing.

Intention to publish a report of the research

31. The Commissioner's guidance states:

"47. The exemption requires that the research programme must be 'continuing with a view to the publication... of a report of the research (whether or not including a statement of that information).

48. This means that, so long as the research programme continues, the exemption may apply to the information if there is an intention for a report of the outcome to be published at some point in the future. This is the case even if a report has already been published about a particular aspect of the same research programme".

32. DWP explained that on 25 March 2021 a publication submission recommended that the Minister for Disabled People and the then Secretary of State agree to publish the research report "Claimant experience of telephone-based health assessments for PIP, ESA and UC" in May 2021. DWP confirmed that subsequent email correspondence on 6 May 2021 confirmed that the Secretary of State was content to publish this research.
33. DWP confirmed that the evaluation report was published on 20 July 2021.
34. With regards to the "Claimant experience of telephone-based health assessments for PIP, ESA and UC" element of the wider research programme, the Commissioner notes that the Secretary of State's approval was received after the request was made. However, as the recommendation was made prior to DWP receiving the request in question and the subsequent publishing of the report, the Commissioner accepts that there was an intention to publish a report of this research and therefore this criteria is fulfilled for this particular element of the wider research programme.
35. With regards to the remaining elements of the wider research programme, the Commissioner is not persuaded that this criteria is fulfilled.

36. DWP has confirmed to the Commissioner that it has no intention to publish any of the remaining reports.
37. Section 22A states that there must be an intention to publish "a report of the research (whether or not including a statement of that information)".
38. The Commissioner considers that this statement recognises that not everything obtained or created as part of a research programme will ultimately make it into the final report.
39. The Commissioner does not accept that this part of the exemption supports DWP's position that publishing one out of five reports means that all the information falling within the wider research programme engages section 22A.
40. The Commissioner notes that the exemption specifies that there must be an intention to publish a report of the **research** not a report relating to the research programme. He therefore considers that there must be an intention to publish a report of the specific research that has been undertaken. While the Commissioner accepts that the four elements of research relate to a wider research programme, he does not accept that the published report constitutes a report on the remaining three elements of the research undertaken.
41. This position is supported by DWP's confirmation that the remaining elements of the research have their own separate reports that DWP confirmed it had no intention to publish.
42. The Commissioner therefore considers that there was not an intention to publish a report on the remaining three elements of the research, namely:
 - In-house research with staff and claimants involved in telephone assessments
 - In-house research with staff and claimants involved in video assessments.
 - Two management information analyses of telephone assessments: "PIP Post-Covid Assessment System Evaluation: Response to Feedback" (produced February/ March 2021) and 'PIP Telephony Analysis – Disputes Focus' (produced April 2021).
43. The Commissioner requires DWP to disclose the requested information which relates to the above named elements of the research programme.

Prejudice to the research or related interests

44. The Commissioner's guidance confirms that:

"The public authority must demonstrate that there is a risk that disclosure of the requested information before the envisaged date of publication would or would be likely to prejudice:

- the research programme;
- the interests of an individual participating in the programme;
- the interests of the authority holding the information; or
- the interests of a different authority that is going to publish a research report".

45. DWP explained that the published evaluation was contracted externally. It considered that releasing earlier draft reports would prejudice the contractor's interests, since how a research company constructs its reports is sensitive commercial information.

46. DWP also explained that a contractor would be concerned about the release of information prepared by it that had not been quality assured for reputational reasons.

47. DWP considered that releasing draft reports would prejudice its own interests for future research commissioning as contractors may refuse to bid if they knew that draft reports can be released in response to FOI requests.

48. DWP explained that releasing information concerning a research programme still in progress would also prejudice the research programme and the interests of individuals participating in the programme. DWP gave an example of publication of emerging or incomplete findings could be misleading and influence participants' responses to future elements of the research; this would prejudice the quality and robustness of the remainder of the research.

49. DWP provided arguments in its section 36 submissions that the Commissioner considers are also relevant to the determination of section 22A. He has therefore included these arguments in his consideration of section 22A.

50. DWP explained that as part of the usual quality assurance practice for externally commissioned social research, comments were provided on draft reports to ensure that the report presented findings in the clearest way possible in order to meet audience expectations and that the final agreed version reflected the original commission set out in the Invitation to Tender. DWP explained that it is made clear in all research tenders

that the supplier may need to produce multiple drafts to agree a final report and that will be included as part of their costs.

51. DWP confirmed that it was relying on the higher threshold of 'would' prejudice.
52. The Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. The Tribunal has been clear that this phrase means that there are two possible limbs upon which a prejudice based exemption can be engaged; i.e. either prejudice 'would' occur or prejudice 'would be likely to' occur.
53. With regard to 'would be likely to prejudice', the Information Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15).
54. With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).
55. Having considered DWP's arguments, the Commissioner is not persuaded that the prejudice envisaged by DWP reaches the threshold of 'would', however, he does accept the lower threshold of 'would be likely to' prejudice has been met.
56. The Commissioner does not accept that DWP's interests would be prejudiced by disclosure causing contractors to not bid for research contracts. DWP has been reminded on several occasions in previous decisions that disclosure of information is considered on a case by case basis and therefore disclosure in one case does not automatically lead to disclosure in all future cases. The Commissioner is also not persuaded that contractors would be deterred from bidding for contracts on the basis that information may be disclosed under FOIA. FOIA has been in force since 2005 and contractors working with the public sector will be well aware that information held by public authorities may be disclosable.
57. With regards to DWP's argument that participants responses may be altered by disclosure, the Commissioner acknowledges that DWP's arguments related to the wider research programme as a whole. However, in relation to the specific information being considered, DWP confirmed that the research in question was undertaken between April

and October 2020. As the request was made in April 2021, the Commissioner does not accept that the research participants could be affected by disclosure.

58. With regards to the arguments relating to contractor's concerns regarding draft versions, the Commissioner considers that DWP has not provided sufficient evidence to support its assertion that the contractor would consider disclosure to be prejudicial to their interests. The Commissioner considers that the arguments put forward by DWP are those which may also be considered under section 43, prejudice to commercial interests. When considering section 43, the Commissioner would not accept speculative arguments regarding a contractor's interests and would expect to receive evidence of the contractor's view regarding the prejudice disclosure would cause. While the Commissioner acknowledges that the exemption under consideration is not section 43, he considers that the requirement to evidence the prejudice that DWP considers would occur is relevant to his consideration of section 22A.
59. The Commissioner does however accept DWP's arguments that the draft reports form part of the routine quality assurance process and this is designed to ensure that the information presented is accurate and clear to the reader. The Commissioner accepts that the interests of DWP would be likely to be prejudiced if the early versions of the report, and the accompanying comments and track changes, were disclosed before the published report had been made available.
60. The Commissioner therefore considers that section 22A is engaged in relation to the draft versions of the published research report.
61. Section 22A is a qualified exemption and the Commissioner will therefore go on to consider the balance of the public interest.

Public interest arguments

62. The complainant quoted a summary by Panopticon blog⁴ of the Upper Tribunal decision in Department of Health v ICO & Lewis [2015] UKUT 159 (AAC)("Lewis")⁵.

⁴ <https://panopticonblog.com/2015/04/08/the-secret-ish-diary-of-andrew-lansley-aged-58-14/>

⁵ <https://www.bailii.org/uk/cases/UKUT/AAC/2015/159.html>

63. The complainant stated that there are long-standing problems with the Work Capability Assessments linked to Employment Support Allowance ("ESA") and Universal Credit ("UC"). The complainant explained that people claiming Personal Independence Payments ("PIP") also regularly report the same issues with assessments as those claiming ESA. They consider that it is reasonable to claim that issues reported about PIP assessments are likely to be repeated in ESA assessments and vice versa.

64. The complainant provided the Commissioner with three recent news stories regarding these problems:

- "Disabled Woman who fled abuse says Universal Credit caused fresh trauma"⁶
- "Whistleblower's horror after suicide mirrored her Universal Credit warning"⁷
- "Woman took her own life after trauma caused by daily demands of Universal Credit"⁸

65. The complainant provided the following arguments:

"The DWP imposed ESA and PIP health assessments (medical examinations) by telephone or video during the pandemic. Criticism of these assessments have persisted since their introduction. People frequently report that the report does not reflect what they said or accurately reflect the impact their conditions have on their daily lives. They also report that tricks and underhand behaviour are employed by the assessors to find reasons to find them fit for work or not eligible for PIP.

The use of these "dirty tricks" was raised before a meeting of the Work and Pensions Committee on 20 July 2022⁹ and reported on the Benefits

⁶ <https://www.disabilitynewsservice.com/disabled-woman-who-fled-abuse-says-universal-credit-caused-fresh-trauma/>

⁷ <https://www.disabilitynewsservice.com/whistleblowers-horror-after-suicide-mirrored-her-universal-credit-warning/>

⁸ <https://www.disabilitynewsservice.com/woman-took-her-own-life-after-trauma-caused-by-daily-demands-of-universal-credit/>

⁹ <https://committees.parliament.uk/oralevidence/10631/pdf/>

and Work website¹⁰ I attach 2 statements to the Work and Pensions Committee by people who experience these tricks first-hand (written evidence from Anonymous HAB0161 21.09.22 and written evidence from Anonymous HAB0162 21.09.22)¹¹

As reasonable person [sic] would rightly wonder how medical examinations can effectively be carried out via telephone or video call. Given the ongoing problems with the WCA and report of "dirty tricks" being used, it is reasonable to ask what investigations or research the DWP carried out to make sure the examinations were fair before imposing them on vulnerable members of society.

When considering the public interest in disclosing information that may explain the thinking within the DWP (or lack of thought) about WCA, the Commissioner should consider the persistently high success rate of appeals. The DWP has always claimed that the high success rate was due to people presenting new evidence to the Tribunal. It has made the same claims in relation to PIP appeals.

However, an answer to a Parliamentary Question¹² proves that the DWP haven't been telling the truth about PIP and therefore it is reasonable to conclude that it also hasn't been telling the truth about ESA.

The answer was reported by the Benefits and Work organisation "DWP lie exposed – new evidence is not why they lose 7 in 10 PIP appeals"¹³. It reveals that new evidence is actually a tiny proportion of the reasons that appeals are successful.

The key reasons are actually:

- Reached a Different Conclusion on Substantially the Same facts – i.e. the assessors and the DWP got it wrong
- Cogent Oral Evidence – i.e. the assessors didn't listen to the claimant.

¹⁰ <https://www.benefitsandwork.co.uk/news/assessment-dirty-tricks-to-be-urgently-investigated>

¹¹ <https://committees.parliament.uk/work/1468/health-assessments-for-benefits/publications/>

¹² <https://questions-statements.parliament.uk/written-questions/detail/2022-07-21/42121>

¹³ <https://www.benefitsandwork.co.uk/news/dwp-lie-exposed-new-evidence-is-not-why-they-lose-7-in10-appeals-2>

I say that compelling evidence shows that the DWP cannot be trusted to tell the truth about health assessments and the performance of contractors who carry them out.

I argue that in light of the long-standing and persistent problems with the WCA and lack of trust in the DWP, the public interest in disclosing the research and/or investigations carried out by the DWP on the introduction of telephone and video WCA is overwhelming. Therefore, the requested information should be disclosed in its entirety (except that covered by Section 40)".

66. The complainant set out that WCAs remain a highly controversial test used to determine eligibility for Employment Support Allowance and Universal Credit ("UC"). They stated that DWP's own data raises doubt about the quality and efficacy of the WCA¹⁴ and the data shows that:
- 53% of cases submitted for mandatory reconsideration were revised. This means that over half of the original decisions were wrong.
 - "of the 100,000 appeals completed, 34% had the DWP decision upheld at hearing while the remaining 66% were ruled in favour of the claimant".
67. The complainant set out that this means that despite more than half of the original decisions being revised, 66% of Tribunal appeals were found in favour of the claimant. The complainant considers that these data are a shocking indictment of DWP and its contractors who carry out the WCA.
68. The complainant explained that there have also been a number of high-profile ESA Tribunal and Court cases where DWP was found to have broken the law.
69. The complainant explained that people who claim ESA or UC on the basis of ill-health or disability are vulnerable and will often struggle to cope with what is a very complex difficult process. Therefore, any changes that have the potential to make it harder to people to navigate through the WCA will generate significant public interest.

¹⁴ <https://www.gov.uk/governments/statistics/esa-outcomes-of-work-capability-assessments-including-mandatory-reconsiderations-and-appeals-june-2022/esa-work-capability-assessments-mandatory-reconsiderations-and-appeals-june-2022>

70. The complainant disputed that it is possible to carry out a thorough medical examination on the telephone or video call. The complainant explained that section 37(5)(b) of the Welfare Reform Act 2012 prescribes the WCA as a medical examination¹⁵.
71. The complainant considers that basic communication between the assessor and the claimant over the telephone or video is extremely challenging. They stated that when this is combined with the existing problems of WCA being routinely flawed, it is clearly in the public interest to know how DWP concluded that WCAs completed via the telephone or video are robust.
72. DWP explained that there was a public interest in allowing researchers to finalise their findings before the evaluation was subjected to external scrutiny. The need to explain or take action to limit the possibility of harm arising from disclosure whilst the report was in draft would not have been proportionate in light of the intended timescales for publication of the report.
73. DWP set out that it recognised that release of the draft reports could provide a greater understanding of the published evaluation report. It considered, however, that the benefit of this should not be overstated when there is a final version of the report that is likely to be of most use to the public in understanding the issues and research findings. DWP considered that this greater understanding would be focused more on the process of how the report was produced than the contents of the report. DWP considers that release of earlier drafts would risk disclosure of inaccurate or misleading information which could ultimately undermine the final quality assured findings in the published report.
74. DWP acknowledged that disclosure could add to the public understanding of the evaluation being carried out on telephone assessments. However, DWP set out that the programme was still ongoing at the time of the request and there was a risk that release of emerging or incomplete findings would prejudice the quality and robustness of the remainder of the programme.
75. The Commissioner has included the arguments put forward in favour of maintaining section 22A and, where relevant to section 22A, the arguments put forward in response to the Commissioner's question's about section 36.

¹⁵ <https://www.legislation.gov.uk/ukpga/2012/5/section/37>

76. DWP explained that the public interest in disclosure had to be balanced against the fact that the draft versions of the report are a work in progress. DWP explained that the information contained details that would not be designed in any shape or form to be released with the final version. Those working on the draft versions would also not expect or have in mind that these versions would be disclosed.
77. DWP explained that draft reports are quality assured by DWP through a process of peer review prior to publication. This is important to ensure that findings are thoroughly tested and examined, so that any errors or inaccuracies can be corrected and scientific rigour is maintained in the final published report. The peer review process adds to the quality of the final research report and should ultimately ensure that maximum value is achieved from the public investment in research. The publication of the drafts would risk disclosure of inaccurate and/or misleading information which could ultimately undermine the final (quality assured) findings in the published report.
78. DWP considered that the public interest lay in allowing researchers to finalise their findings before the evaluation was subjected to external scrutiny. The need to explain or take action to limit the possibility of harm arising from disclosure whilst the report was in draft would not have been proportionate in light of the intended timescales for publication of the report.
79. DWP considered that it was not in the public interest to disclose wider information from the programme of research while the wider programme was still ongoing. DWP considered that releasing information concerning a research programme still in progress may impact negatively on the programme and participants. DWP gave the example that publication of emerging or incomplete findings may be misleading and also influence responses to future elements of the research; this would be likely to prejudice the quality and robustness of the remainder of the research programme.

Balance of the public interest

80. On 5 May 2022, the Upper Tribunal handed down its ruling in the case of *Montague v Information Commissioner and Department for International Trade* [2022] UKUT 104 (AAC). This ruling, which is binding on the Commissioner, states that the correct point at which to assess the balance of the public interest is the point at which the public authority issued its refusal notice.
81. In this case, the Commissioner is therefore required to consider the balance of the public interest on the basis of the circumstances at 6 May 2021.

82. The Commissioner acknowledges that the complainant's arguments relate to the public interest in disclosure of all of the requested information rather than only the draft versions of the published report. The Commissioner also acknowledges that the complainant may wish to compare the draft versions with the final published version. However, at the time of DWP's response, the final report had not yet been published. This would later occur in July 2021.
83. With regards to the arguments in favour of disclosure, the Commissioner accepts that the nature of the published report will impart a public interest in transparency. The report relates to the lived experiences of those subject to WCAs and therefore relates to the experiences of millions of people, including the most vulnerable members of society.
84. The Commissioner recognises that at the time of the request, very little if any information regarding the findings of this report was available to the public and this does increase the public interest in disclosure of the withheld information. However, in the Commissioner's view, that public interest lay in DWP publishing the final report, not the drafts.
85. In light of the timing of the request, and the lack of a published final report, the Commissioner considers that the degree to which disclosure of the draft versions would genuinely add to the public's understanding of the review process is limited. Essentially, at the time at which the public interest must be considered, the draft versions of the report could not be compared to the final report as the final report was not publicly available.
86. The draft versions contain comments and tracked changes. Having reviewed this information, the Commissioner notes that these are mostly stylistic changes rather than substantive changes to the contents of the reports. The Commissioner does not consider that there is any controversial information or information of concern in these comments and changes.
87. The Commissioner recognises that there is a compelling public interest in preserving the space in which reports are finalised through the drafting process. The Commissioner accepts that if the draft versions of a report were to be disclosed, particularly before the research programme had finished and the final version of the report published, this would be likely to impact on the research programme as a whole.
88. The Commissioner accepts that if the draft versions of the final report had been disclosed during the review and approval process, this would be likely to lead to less candid feedback and more cautious reviews.

89. The purpose of draft versions of any report is to ensure that the brief has been met, inaccuracies or errors can be corrected and the information is presented in an understandable and accessible manner. The Commissioner accepts that the process of drafting and review during the research programme would have been impacted if the initial drafts were disclosed.
90. In conclusion, the Commissioner has found that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In reaching this finding, the Commissioner has placed particular weight on the timing of the request, ie that disclosure would have resulted in the draft version being placed into the public domain before the final agreed version.
91. The Commissioner would stress, however, that this does not mean that any similar request made after the date of publication of the final report would automatically result in disclosure. Whilst section 22A cannot be engaged once the research programme has finished, the Commissioner will consider afresh any further exemption cited on the basis of the specific circumstances at the time of the request.

Section 1: General Right of Access to Information

92. 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.
93. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-Tier Tribunal (Information Rights) decisions, and applies the civil standard of proof – ie on the balance of probabilities.
94. In the specific circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, DWP holds information falling within the scope of RFI2, namely any submissions from Maximus for the purpose of evaluating telephone and video WCAs.
95. DWP explained that it had used the ordinary definition of the term 'submission' in its interpretation of the request, ie "a document or proposal to study or consider". DWP set out that the complainant did not define submissions in their request, but stated that they were "not

interested in individual emails or other documents that refer to the evaluation”.

96. DWP confirmed that it had reviewed project records and identified information from Maximus/CHDA regarding an evaluation of carrying out WCAs by telephone or video call. However, DWP does not consider this information to fall within the scope of the request and provided a summary of this information with its reasons why.
- Information is held which comprises correspondence documents that were used to negotiate the resource requirements and practical arrangements to obtain data for the evaluation. DWP explained that these documents are not representations that in themselves needed to be studied or considered for the evaluation. DWP therefore does not consider that the correspondence falls within the scope of the complainant's request for submissions, particularly as they stated that they were not interested in individual emails or documents that refer to the evaluation. DWP confirmed that the contents of this correspondence was not used in the evaluation reports' findings.
 - DWP confirmed that it holds records of research interviews conducted with Maximus staff. The interviews were conducted as part of the evaluation of telephone and video assessments, and the interview transcripts were used to inform the evaluation reports findings. DWP does not consider that these interview transcripts fall within the scope of the claimant's request. Since these were not submitted as submissions on behalf of Maximus. DWP explained that the interview transcripts contain the personal views and experiences of staff working for Maximus that it wanted to explore as part of the evaluation, but these do not necessarily represent corporate views or present an official view on behalf of Maximus.
97. DWP confirmed that no submissions were sought or received from Maximus at an organisational level regarding an evaluation of carrying out WCA by telephone or video call.
98. DWP confirmed that it had conducted further searches of project records in response to the Commissioner's investigation. DWP searched electronic files in the Disability Analysis Division shared area and contacted colleagues in Contract Management and Partner Delivery and Commercial Directorates.

The Commissioner's position

99. The Commissioner notes that the request is focussed on submissions provided by Maximus for the purposes of DWP's evaluation of WCAs being completed by telephone or video call. In light of the specific nature of the request, the Commissioner considers that it is unlikely that DWP would not be able to easily locate any information falling within the scope of the request. The Commissioner considers that as this information would be used by any staff assessing Universal Credit claims, it would not require in depth searches to locate it if it were held. He would expect DWP to have knowledge of any submissions from Maximus on telephone or video call WCAs.
100. He therefore considers that the searches performed by DWP were adequate and proportionate in the specific circumstances of this case. The Commissioner is unable to identify any further actions that DWP could reasonably be expected to take in order to comply with the request.
101. In conclusion, the Commissioner has determined that, on the balance of probabilities, DWP does not hold any information falling within the scope of request "RFI2".

Other matters

102. As part of their complaint, the complainant asked the Commissioner to consider whether the Qualified Person's opinion is reasonable where there is no explicit opinion provided by the Qualified Person. The complainant considers that "a submission to the QP that does not ask them to form an opinion, followed by an email from a subordinate stating that the QP approves said submission is not sufficient evidence that an opinion was formed".
103. The Commissioner considers that the process set out by the complainant reflects the reality of how ministers are advised and decisions communicated. In the normal course of business, ministers will receive advice from civil servants and, where appropriate, special advisers. The Minister's decision will then be communicated by a member of their private office. When considering whether section 36 is engaged, the Commissioner does not consider that an opinion is rendered unreasonable because it follows this same process.
104. DWP handled the complainant's dispute that no information was held within the scope of 'RFI2' as a fresh request for information before applying section 14(2) as it considered it to be a repeated request. The Commissioner raised concerns about this issue during his investigation and reminded DWP of the importance of recognising where a fresh

request has been made and where the requester is asking questions because they dispute a position.

105. DWP apologised for the error and confirmed that it had taken steps to improve the process of receiving and recognising requests for internal reviews.

Right of appeal

106. 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

107. 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.

108. 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