

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 21 February 2020

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information on pensions changes from the Department for Work and Pensions (DWP).
2. DWP refused to comply with the request under section 14(1) as it considered the request was vexatious.
3. The Commissioner's decision is that DWP is entitled to rely on section 14(1) to refuse to comply with the request.
4. The Commissioner does however find that DWP has breached section 10 with respect to a further request made on 7 May 2019.
5. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the requests dated 7 May 2019.
6. 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.

Request and response

7. Between 2 April 2019 and 13 April 2019, the complainant wrote to DWP and made four requests for information. These requests are set out in Annex A of this notice. All four requests relate to the New State Pension.
8. On 2 May 2019, DWP responded to all four requests in an aggregated response. It confirmed that it was relying on section 14(1) to refuse to comply with the requests. DWP also confirmed that it did not hold the requested information. DWP explained that whilst it understood the importance of the New State Pension and GMP Indexation to the complainant, it considered that the frequent and overlapping nature of his requests mean that the burden placed on DWP by these requests outweighs the useful purpose they would have. DWP confirmed that the topic of the requests has been subject to Parliamentary scrutiny.
9. DWP also confirmed that the Permanent Secretary had written to the complainant and this letter had outlined that it was unlikely that DWP would be able to provide any further information that could resolve the complainant's concerns.
10. On 7 May 2019, the complainant requested an internal review of the handling of his requests for information. He stated that he believed correspondence between DWP and the Treasury was held and made the following further requests:

"I would like you to have a look again for correspondence between DWP and the Treasury 2012

...

Please can you have a look for any correspondence you have between yourselves and Treasury from January 2012 regarding the ending of contracting out and its effect on public service schemes and any internal correspondence about it before you contacted the Treasury."
11. The complainant did not specifically dispute DWP's reliance on section 14(1) to refuse to comply with his requests.
12. DWP provided the outcome of its internal review on 23 May 2019. It upheld its response dated 2 May 2019 and maintained its reliance on section 14(1) to comply with the requests. DWP did not address the fresh requests made in the internal review request submitted by the complainant.

Background

13. DWP provided the following background regarding the subject of the requests.
14. The additional State Pension (derived from the State Earnings Related Pension Scheme or SERPS) was introduced in 1978 to provide an alternative for those workers who were not covered by an occupational pension. At the time, millions of private and public sector workers were already in private schemes and rules were required to manage the relationship between these schemes and the new SERPS scheme. The rules allowed schemes to "contract out" of SERPS.
15. Contracting out introduced the Guaranteed Minimum Pension (GMP) to occupational pension schemes. In return for funding a GMP that would pay benefits at least broadly equivalent to the additional State Pension that the person would have received had they not been contracted out, employers and employees paid a lower rate of National Insurance contributions.
16. At the time, these schemes were not required to price protect occupational pensions. This was later revised and GMP accruals were required to protect by 3% or inflation, whichever is less. GMPs were abolished from the 1997/98 tax year onwards.
17. To ensure people did not lose out on price protection, a calculation was built into the rules of the additional State Pension so that it could have the effect of price protecting the GMP of some individuals.
18. The additional State Pension was replaced by the new State Pension from 6 April 2016 and it is no longer possible to operate this calculation for people reaching State Pension age from this date. As a consequence, the indexation of GMPs ended for those reaching State Pension age in the new State Pension.

Scope of the case

19. The complainant contacted the Commissioner on 25 May 2019 to complain about the way his request for information had been handled.
20. The Commissioner considers that the scope of the investigation is to determine whether DWP is entitled to rely on section 14(1) to refuse to comply with the requests set out in Annex A. She will also consider whether DWP are required to respond to the further requests made in the complainant's request for internal review.

Reasons for decision

21. Section 14(1) of the Act states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
22. The term "vexatious" is not defined in the Act. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
23. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
 - i. The burden imposed by the request (on the public authority and its staff);
 - ii. The motive of the requester;
 - iii. The value or serious purpose of the request; and
 - iv. Any harassment or distress of and to staff
24. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the "*importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealing, the lack of proportionality that typically characterise vexatious requests.*" (paragraph 45)
25. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her

¹ <http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All of the circumstances of a case will need to be considered in reaching a decision as to whether a request is vexatious.

The Complainant's position

26. The complaint explained that over several years, he has been in contact with DWP regarding the loss of GMP indexation without any warning for people reaching state pensions age under the New State Pension that started on 6 April 2016.
27. The complaint stated that the reason he asks questions is because DWP does not answer his questions or provide replies that have nothing to do with what he had asked.
28. The complainant states that he disputes DWP's position that they do not hold the requested information as he knows DWP were in correspondence with the Treasury from January 2012 as he has correspondence from the Treasury confirming that they had emails from DWP. The complainant provided a response from the Treasury³ which shows that DWP contacted the Treasury on 18 January 2012. He considers this proves that there is correspondence in existence from DWP to the Treasury regarding the loss of GMP indexation via the way a persons additional pension is calculated.
29. The complainant explained that he is seeking information because DWP are *"not paying indexation on part of a persons occupational pension known as GMP for people reaching state pension age on and after 6 April 2016 without telling anyone when they were making special arrangements for public service schemes to pay the indexation previously paid with the state pension."*
30. The complainant considers that this affects over 10 million people and there is therefore a significant public interest in disclosing the requested

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

³

https://www.whatdotheyknow.com/request/562185/response/1347141/attach/4/Scan.pdf?cookie_passthrough=1

information to ascertain why the public were not told about the loss of GMP indexation after they reached state pension age.

DWP's position

31. DWP explained that since March 2013, the complainant has submitted 72 requests for information under the Act, and requested 24 internal reviews, on issues related the Guaranteed Minimum Pension (GMP) indexation. DWP provided a correspondence log of these requests. DWP explained that these requests started in 2013 when the New State Pension White Paper was published.
32. DWP explained that the 72 requests have been extracted from the What Do They Know website as its FOI team only holds records for the previous two years. It therefore considered that the correspondence provided is a minimum and there may be further requests regarding GMP indexation.
33. DWP consider that the 72 requests have created a huge burden on DWP's time and resources regarding the small team responsible for this policy. DWP explained that because of the deep knowledge required to deal with this issue and other complex legacy state pension policies, at any one time there are perhaps one to two individuals with the required background to deal with these cases.
34. DWP explained that the requests are all on the same subject, the abolition of additional State Pension by the Pensions Act 2014 and its subsequent effect on GMPs.
35. DWP explained that the requested information is about a policy which was put before Parliament in a Bill in May 2013, two months after the complainant began making requests. DWP considers that the complainant has shown unreasonable persistence in pursuing this for almost 7 years despite DWP having comprehensively addressed the issue.
36. DWP explained that the complainant was able to put forward his concerns during the creation of the policy and its consideration by Parliament. It considers that there is no significant public interest in pursuing these concerns so long after the consideration by Parliament.
37. DWP set out that the policy was fully considered by Parliament and was then enacted through the Pensions Act 2014, which came into force in 2016. The policy has been subject to further scrutiny by Parliament through Parliamentary Questions, the National Audit Office and the Work and Pensions Select Committee. DWP considers that the policy has therefore been fully considered and approved by Parliament.

38. DWP acknowledged that it has been criticised by the Parliamentary and Health Service Ombudsman (PHSO) regarding how the policy change was communicated and it is currently considering how best to implement the recommendations made by the PHSO.
39. DWP considers that the requests under consideration are for information that the complainant has already received as part of previous FOI responses and Ministerial Correspondence. DWP explained that much of the information is held on the GOV.UK website and the Parliamentary website. DWP confirmed that the complainant has been provided with links to this information.
40. DWP confirmed that it had advised the complainant that information could be found at the Work and Pensions Select Committee inquiry into *Understanding the new State Pension* (March 2016) under the section headed "Latest Evidence" which specifically covers the issue⁴. DWP also provided the complainant with a link to the documents held on the Select Committee's webpage which includes the documents sent to the Committee by DWP.
41. DWP considers that there is no obvious reason for the complainant to request this information again. It considers the requests to be futile and frivolous.
42. DWP explained that the stream of requests on this one subject has had a negative impact on DWP's resourcing, including taking up a lot of time of senior staff, such as the Permanent Secretary and those carrying out internal reviews, and junior staff, such as those responding to the requests for information and searching DWP's archives.
43. DWP confirmed that in addition, the Permanent Secretary wrote to the complainant on 12 April 2018 and 2 May 2018. The letter of 2 May 2018 noted that *"There is nothing to suggest that any further information from the Permanent Secretary's office will help resolve the reservations you have over this matter and for this reason the Permanent Secretary will not be responding to any further correspondence on this issue"*. DWP provided a copy of the 2 May 2018 letter.
44. DWP believes that the aggregate impact of these requests have been completely disproportionate. The purpose of the requests is to challenge a policy which Parliament has already considered and decided upon, so

⁴ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/state-pension-15-16>

the requests have minimal value. DWP states that, in contrast, the requests have caused significant disruption to the Policy Group supporting Ministers in the design and maintenance of the state pension policy.

45. DWP also confirmed to the Commissioner that following its application of section 14(1), the complainant made a further request for information on 4 July 2019 which was also refused under section 14(1).
46. DWP acknowledged that the complainant clearly has concerns regarding the policy change at issue. DWP explained that the complainant was aware of the policy change when it was first put before Parliament in May 2013. DWP considers that the complainant has had the opportunity to contribute to Parliament's consideration of the policy through his MP and the other Parliamentary channels. DWP explained that much of the requested information is already publicly available, particularly on the Parliament website. DWP confirmed that it provided links to this website.
47. DWP confirmed that it had provided the complainant with links which explains the "*critical importance of simplifying the state pension system and provides the broad objectives of pensions reform, The single-tier state pension: a simple foundation for saving (January 2013)*"⁵.
48. DWP also confirmed that it had advised the complainant of, and provided links to, two reports which specifically cover this policy change:
 - A National Audit Office report into the policy change *The impact of state pensions reforms for people with Guaranteed Minimum Pensions* (March 2016)⁶.
 - A Work and Pensions Select Committee inquiry into *Understanding the new State Pension* (March 2016) which specifically covers the issue⁷.
49. DWP explained that at a more detailed level, it has provided the complainant with all the information he has requested, where this is

5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/181229/single-tier-pension.pdf

⁶ <https://www.nao.org.uk/report/the-impact-of-state-pension-reforms-on-people-with-guaranteed-minimum-pensions/>

⁷ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/state-pension-15-16/>

available, and advised him when it was not available. DWP explained that over time it has provided explanations of the rationale for the policy change and details of the legislation. It confirmed that it has also provided him with details of the financial impact the overall new State Pensions policy has on individuals including specific reference to this policy change⁸.

50. DWP confirmed that the issue of the new State Pension had been subject to Parliamentary scrutiny and the complainant was made aware of this in November 2018 and December 2018. DWP explained that the complainant is seeking information about a policy which Parliament scrutinised fully during the progress of the Pensions Act 2014, which came into force in 2016 and which has also been subject to further scrutiny by Parliament, the National Audit Office and the Work and Pensions Select Committee.
51. DWP also provided the Commissioner with a transcript of Parliamentary questions from 6 January 2014⁹ in which the subject was raised.

The Commissioner's position

52. As set out in paragraph 23 of this notice, the Commissioner has issued guidance on identifying a vexatious request. This guidance sets out that the Commissioner considers that vexatious requests are likely to exhibit various characteristics. In considering this complaint, the Commissioner considers the following characteristics are key to determining this case.

Is the request obsessive?

53. The Commissioner would characterise an obsessive request as one where the requester is attempting to re-open an issue which has already been comprehensively addressed by the public authority or otherwise subjected to some form of independent scrutiny.
54. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although

⁸ *Impact of New State Pension (nSP) on an Individual's Pension Entitlement – Longer Term Effects of nSP* January 2016– <https://www.gov.uk/government/publications/new-state-pension-impact-on-an-individuals-pension-entitlement-longer-term-effects>

⁹

https://publications.parliament.uk/pa/cm201314/cmhansrd/cm140106/text/140106w0002.htm#140106w0002.htm_wqn58

a request is isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence, then it may form part of a wider pattern of behaviour that makes it vexatious.

55. The Commissioner accepts that, at times, there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with their request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
56. The Commissioner acknowledges the complainant's reasons for making his request however she does not consider that they provide sufficient reasoning to justify 72 requests over six years on the same subject matter. The Commissioner notes that the legislation has been passed and subject to scrutiny via Parliament and a Select Committee.
57. The complainant raises concerns that the changes were made "*without telling anyone*", however this issue has been investigated by the PHSO who have criticised DWP for its handling of the communications of the legislation change and made recommendations. It is not, therefore, apparent how continuing correspondence with the complainant would shed any further light on this issue or indeed help to resolve it or the complainant's understanding.
58. In light of the length of time the complainant has been corresponding with DWP and the number of requests made, she is satisfied that the request fits a pattern of obsessive behaviour.

Does the request lack any serious purpose or value?

59. The guidance is clear that the Act is not generally concerned with the motives of an applicant. However, if a request clearly lacks a serious purpose or value, it may support an argument that it is vexatious.
60. The Commissioner does not doubt the complainant's intention when making this request. It is clear to the Commissioner that the complainant is not satisfied with how the change in the pension allocation has been implemented and communicated. The findings of the PHSO confirm these concerns to be, in part, valid.
61. However, whilst the Commissioner is satisfied that the request has a serious purpose, she is not persuaded of its value. As set out above, the complainant has received responses to 72 requests for information and further correspondence outside of the Act regarding this subject. DWP has confirmed that it does not hold the information requested

previously. The Commissioner notes that the complainant has evidence that emails were sent in 2012 as some have been disclosed by a different public authority. However, this is not evidence that DWP still held the information at the time of the request, some 7 years later. The Commissioner considers that if information of any import is held, it is likely to have been captured by one of the previous requests made since 2013.

62. For these reasons, the Commissioner is not persuaded that the request has a significant inherent value.

Will the request create an unreasonable burden on the public authority?

63. Public authorities must keep in mind that meeting their underlying commitment to transparency and openness will require accepting a level of burden in responding to requests for information. However, the Commissioner does not consider that public authorities should be expected to accept disproportionate levels of burden such that the Act itself becomes a burden.
64. In considering the issue of burden in this case, the Commissioner looked to the Dransfield Upper Tribunal Decision for guidance. Paragraph 70 addresses the issue of future burden.
65. The Commissioner considers future burden to be one of the key issues in this case. DWP has provided evidence of the pattern of correspondence and the Commissioner has considered the arguments provided by the complainant. Having reviewed the correspondence provided, the Commissioner considers that the history of the complainant's correspondence demonstrates that the complainant is unlikely to ever be satisfied with DWP's response.
66. She considers that if DWP had complied with the request, there is a high likelihood that correspondence would continue with no end in sight for DWP. The Commissioner is satisfied that providing a response to this request would prolong correspondence and places an unfair burden on DWP in a manner which would be disproportionate to the value of the request.

Conclusion

67. In light of the provided information and on the basis of her own analysis of the context in which the request was made, the Commissioner's decision is that DWP is entitled to refuse this request under section 14(1) of the Act.
68. The complainant has been corresponding with DWP for several years on the same issue and the Commissioner considers that this case meets the

high threshold for an obsessive request which, if complied with, would place a disproportionate future burden on DWP with likely protracted correspondence which is unlikely to ever satisfy the complainant.

Section 10: Time for compliance

69. In the complainant's request for an internal review dated 7 May 2019, he makes a further request for information, namely "*correspondence between DWP and the Treasury from January 2012*" and "*Correspondence you have between yourselves and Treasury from January 2012 regarding the ending of contracting out and its effect on public service schemes and any internal correspondence about it before you contacted the Treasury.*"
70. DWP confirmed that it did not respond to this request as the subject matter related to the policy of GMP indexation which had been the issue at hand in its response dated 24 May 2019 in which it relied on section 14(1) to refuse to comply with the request.
71. DWP also confirmed that the requests were for information which had previously been requested in March 2018.
72. Section 17(6) of the Act states:

"Subsection (5) does not apply where—

 - (a) the public authority is relying on a claim that section 14 applies,*
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*
 - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."*
73. In essence, section 17(6) allows a public authority to not respond to a request if it has already provided a refusal notice citing section 14 and it would be unreasonable to expect the public authority to have to provide another.
74. The Commissioner's guidance on vexatious requests includes guidance on when it would be unreasonable to expect a public authority to provide a further section 14 refusal notice.

"The ICO will usually only accept that it would be unreasonable to issue a further refusal notice if the authority has already warned the

complainant that further requests on the same or similar topics will not receive any response."

75. The Commissioner has reviewed the refusal notice in this case and DWP does not inform the complainant that it will not respond to further requests for information on this subject.
76. The Commissioner asked DWP to confirm why it had not responded to these further requests and it confirmed that as it had already applied section 14, it did not consider it was required to respond. However, DWP did not provide evidence that it had confirmed to the complainant at any point that it would not respond to further requests as it would consider them vexatious.
77. The Commissioner also notes that DWP has confirmed that it refused to comply with a further request dated 4 July 2019 and provided a refusal notice citing section 14 despite this falling after its decision to not respond.
78. The Commissioner is mindful that the fresh requests were made at the point of the complainant requesting an internal review. Therefore the reliance on section 14 was under challenge and could potentially be overturned.
79. Whilst she understands why DWP would consider continued requests to be vexatious, in the specific circumstances of this case, she does not consider that it is reasonable to simply not respond when it has not previously informed the complainant that it does not intend to do so and the application of section 14 is being challenged.
80. The Commissioner therefore requires DWP to provide the complainant with a response to his request dated 7 May 2019.

Other matters

81. The complainant raised concerns that DWP did not include the names of the staff members who had responded to the request and had performed the internal review. He therefore considers that it is not possible to ascertain whether a truly independent internal review was undertaken.
82. DWP provided the Commissioner with the job titles and grade of the staff who provided the response to this request and the internal review. The internal review was performed by a member of staff senior to the original responder.

83. The Commissioner is therefore satisfied that in this case the internal review was conducted by someone in a senior role with a genuine ability to overturn the original response should they believe that this was in error.
84. Whilst the Section 45 Code of Practice¹⁰ provides the following advice regarding internal review, it does not require or advise public authorities that they must provide the names of the staff responding to a request or internal review. Public authorities should consider their own policies and the reasonable expectations of employees undertaking the responses.

"5.9 It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision. The public authority should in all cases re-evaluate their handling of the request, and pay particular attention to concerns raised by the applicant."

¹⁰ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

85. 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

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

86. 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.
87. 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

Annex A: Requests under consideration

2 April 2019

"Further to FOI2019/11313

As you don't hold the information as stated in the paragraph below can you please give me the name of the department that does hold the information.

"We do not hold information on correspondence or discussions between the DWP Bill Team and Policy officials and the Work and Pensions Select Committee regarding the New State pension."

8 April 2019

"Can you please let me have copies of any information the DWP gave to the Work and Pensions Committee and correspondence the DWP have or had between the DWP and Work and Pensions committee when Anne Begg was the Chair of the Committee regarding introduction of the new state [pension] before it started on 6 April 2016. If you don't have it please tell me who does.

Please note I am not restricting it to correspondence or talks between the DWP Bill Team and Policy officials only but the whole of DWP."

13 April 2019

"1) Regarding paragraph above can you please send me a copy of the information or give me the paragraph number that mentions in plain English that people with GMP indexation will no longer receive GMP indexation via the state pension calculation if they reach state pension on and after 6 April 2016.

...

2) Please send me a copy of any impact assessment that mentions GMP indexation via the state pensions.

...

3) In paragraph above please give me a copy of the proactive communications to the three key audiences explaining that people with GMPs

will no longer receive GMP indexation via the state pension calculation if they reach state pension age on and after 6 April 2016.

...

4) Please send me a copy of the relevant change in law under the NSP that mentions the rebate derived amount was not to include an adjustment for consolidation of COD/GMP after a person reaches state pension age as laid out in the 2011 Pension Act.

...

5) Please give me copies of information that mentions consolidation of COD/GMP indexation after a person reach state pension age would not happen under the NSP and was not to be included in the calculation of the rebate derived amount as described in paragraph 85 calculation.

...

Please send me a copy of the legislation cancelling consolidation of CODs/GMP indexation calculation after a person reaches state pension age as mentioned in Pension Act 2011."

13 April 2019

"Copies of any correspondence you had with the Treasury, any other Government Department and Parliament between Oct 2010 and April 2011 when you issued the Green Paper "A state pension for the 21st century" regarding no one reaching pension age 6 April 2016 or later will have an additional state pension (AP) so no comparison can be made."