

DWP Central Freedom of Information Team

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Our Ref: VTR IR661

Our Ref: VTR IR690

Date: 5 January 2016

Disabled people against Cuts request-297529-0f8ba061@whatdotheyknow.com

Dear Disabled People Against Cuts,

Thank you for your requests of 19 November and 9 December 2015, asking for a review of the handling of your earlier Freedom of Information request. As these two requests refer to the same FOI, they are being handled together. For completeness the details of your requests for a review are attached at annex 1. In summary, your requests asked for a review of the handling of your previous FOI request, which sighted the use of exemption S.27.

DWP response

The review was conducted by an official of the Department, unconnected with the original handling of your original request. The case has been examined afresh, and guidance has been sought from specialist areas to ensure all factors were taken fully into account.

Your original request asked for

Any communications between the DWP and ministers that mention DPAC between Jan and Oct 2015

This is a wide ranging request in its scope since it captures *any* recorded communications between DWP officials and Ministers which mention DPAC. DPAC may be mentioned in the thousands of letters/emails from the public directed at Ministers, that DWP officials then support the Ministers in answering. Additionally, Ministers and DWP officials are involved in substantial engagement with stakeholders outside of the department, including those in the voluntary sector such as DPAC, at both national and local levels; this activity generates substantial communications from across the department, (both policy and operational sections), that would have to be searched for mention of DPAC. DWP is a large customer facing department with over 80,000 staff across the UK, so it would not be straightforward to deal with this request as it stands.

In the light of this my decision is that the Department does hold information falling within the description specified in your request. However, I estimate that the cost of complying with your request would **exceed the appropriate limit for central Government, set by regulations at £600**. This represents the estimated cost of one person spending 3½ working days in

determining whether the Department holds the information, and locating, retrieving and extracting it.

Under section 12 of the Freedom of Information Act the Department is not **therefore** obliged to comply with your request and we will not be processing it further.

Under section 16 of the Act we should assist you in helping you narrow your request so that it may fall beneath the cost limit. Please consider the recommendations below:

- you may wish to reduce the time period you have chosen as it is too broad, and
- you may wish to refine the communications search down from between 'the DWP and Ministers'.

We will consider afresh any revised request however we cannot guarantee that any revised request will fall within the cost limit.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely

DWP Strategy Fol team

Your right to complain under the Freedom of Information Act

If you are not content with the outcome of an internal review you may apply directly to the Information Commissioner's Office (ICO) for a decision. Generally the ICO cannot make a decision unless you have exhausted our own complaints procedure. The ICO can be contacted at: Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745

Annex 1

I am writing to request an internal review of Department for Work and Pensions's handling of my FOI request 'communication between DWP and minsters'.

The DWP is saying that this information is not available under the Freedom of Information Act as the exemption contained in Section 27 on International Relations applies. From the ICO guidance on S27, I don't see how disclosing the requested information could harm the activities covered by these parts of S.27 (1) of the UK abroad, without DWP identifying the specific applicable interests that would be prejudiced within S.27 and also the nature of the prejudice that is being claimed. Therefore the engagement of the prejudice test needs to be justified by DWP.

. Step 1 The prejudice envisaged must be real, actual or of substance.

The disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it. If the consequences of disclosure would be trivial or insignificant there is no prejudice. However, this does not mean that the prejudice has to be particularly severe or unavoidable. There may be a situation where disclosure could cause harm, for example to commercial interests, but the authority can mitigate the effect of the disclosure, perhaps by issuing other communications to put the disclosure in context. In such a case, where the severity of the prejudice can be mitigated, the exemption may not be engaged or we may still accept that the exemption is engaged but then consider the effect of these mitigating actions as a factor in the public interest test.

Step 2

There must be what the Hogan Tribunal called a "causal link" between the disclosure and the prejudice claimed. The authority must be able to show how the disclosure of the specific information requested would or would be likely to lead to the prejudice. Although there must be a causal link, the prejudice test relates to something that may happen in the future, if the information were disclosed. Therefore it is not usually possible to provide concrete proof that the prejudice would or would be likely to result. Nevertheless there must be more than a mere assertion or belief that disclosure would lead to prejudice. There must be a logical connection between the disclosure and the prejudice in order to engage the exemption. Establishing the causal link means that the prejudice claimed is at least possible, ie there are circumstances in which it could arise.

Step 3 - the likelihood of prejudice

The prejudice-based exemptions (with the exception of section 24(1)) use the phrase "would or would be likely to" prejudice (or inhibit or endanger). If the authority cannot show that the prejudice would or would be likely to occur, then the exemption is not engaged.

The causal link shows the circumstances, or the chain of events, that could lead to prejudice. It may be possible to show that prejudice would occur even if those circumstances would only occur once or affect one person or situation. However, the more frequently those circumstances arise, the more likely the prejudice is to occur. So, while the chances of prejudice occurring in any one case may be low, if the number of cases in which it might arise is high then it may be possible to say that prejudice would or would be likely to arise.

The DWP is also saying that 'the scope, nature and process of the UN inquiry is confidential. That confidentiality should be respected by all parties'. S.27 (2) and (3) defines what confidential information is: Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court. For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.

DPAC is not asking for any information of this nature but general information held by DWP. Therefore disclosure can still take place with the confidential information, names etc. redacted if necessary. It is worth pointing out that because of leaks, the nature of the inquiry has been extensively covered in press, as well as the presence of investigators in the country to gather evidence. The ICO guidance states: "If information requested of a public authority is already in the public domain, partially or fully, it is unlikely to be confidential although exceptions are possible and a question about the inquiry was raised in PMQs which is televised as well as recorded in Hansard

I therefore request that the DWP justifies the engagement of the prejudice test and determines based on the ICO guidance whether the information held is covered by the confidentiality clause

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.whatdotheyknow.com/request/communication_between_dwp_and_mi