

C/o XXXXXXXXXXXXXXXXXXXXXXX@XXXXXXXXXXXXXXX.XXX

1 March 2013

In review question 2 you ask us to reconsider our application of the section 35 exemption. As reviewing officer, I have considered its use and the Department does accept that whilst being open wherever possible, that we should also defend the policy making process. Therefore I am satisfied that it has been applied correctly and for the appropriate reasons and I uphold the original decision made.

For review question 6 you ask us to "clarify whether the detailed cost-effectiveness assessment is available" I again maintain that all documentation relating to the provision of audio recording will remain withheld under section 35 of the FOI act and I uphold the original decision made.

In response to your final question, any action taken in respect of a recording would depend entirely in the facts of the individual case and thus this information is not held  
In summary, having fully reviewed the previous response, I uphold the decisions made within it.

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

Yours sincerely,

DWP Business Management Team  
Health & Disability (Operations)

---

### **Your right to complain under the Freedom of Information Act**

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF [www.ico.gov.uk](http://www.ico.gov.uk)

### **Annex A**

Dear Department for Work and Pensions,

Please pass this on to the person who conducts Freedom of Information reviews. I am writing to request an internal review of Department for Work and Pensions's handling of my FOI request 'WCA Audio Recording (6)'.

I have already raised two IRRs based on the long, unexplained delay with this request and although the response contains the standard apology, it gives no indication that it has substantially failed the 20 day rule. This in itself with the total absence of due process since September justifies referral to the ICO. This 3rd IRR is about the eventual content of response 3691.

1) Your response to Q1 makes various claims about the conclusions on the subject, but it does NOT address the very clear request. I do not accept that there is no recorded information to substantiate what you have said – there must be some form of rejoinder to the Atos report and probably a subsequent (written) dialogue. Particularly with an outsourced contract, neither party would wish for any ambiguity over who said what when. For the same reason there would of course be a written record of finally what DWP wanted Atos to do. FOI is not limited to published reports.

Furthermore, none of the Harrington reports support the final DWP position as you suggest, so please provide the source of what you claim.

The “consultation” you say took place with the Harrington Project Board would again be supported by some record if only a series of file notes. Professor Harrington is a professional who would have insisted on nothing less. Please clarify what you mean by a “final decision”. Call them interim decisions if you like, but you have announced a series of changes/conditions to the original promise Minister Grayling announced in the HoC. These decisions would not have been taken without discussion and sign off and I would like to see the records and authorisation. This is historical information that has already been implemented so cannot be subject to a section 35/6 exemption.

2) Although I can confidently predict the outcome, I would ask you to reconsider the FOI exemption you have cited here. You have been attempting to use section 35/36 exemptions since the trial was completed 18 months ago and it is now wearing just a bit thin – how much longer would a decent management team need?.

Although you claim still to be working on “policy”, it has not stopped you changing it as you see fit to make the process for claimants as hard as possible – from available for anyone who asks to only if Atos is so inclined, plus the smoke screen around self-recording and the attempt to deny basic rights. It is impossible to believe that you do not yet have a policy and do not know where you are heading – the only issue is that it is embarrassing and/or unpalatable, neither of which are legitimate excuses for non-disclosure.

3) No response needed, but it is notable that you draw a clear distinction between right-first-time decision making and the quality of assessments when one would hope that the only real measure of quality was through precisely this parameter. The WCA is a means to an end, not an end in itself. You are in fact suggesting that WCA quality is fine, in which case all of the errors corrected at Tribunal must be exclusively due to poor decision making as the key piece of information on which decision are based is perfectly sound. We all know this is not true.

4) As regards Q2, amazing that the main influence on trial results was not considered important enough to be examined. This has not however stopped you quoting trial results as if they are impartial, statistically valid and beyond debate, when clearly they are none of these things. No response required.

5) For Q3, it is staggering that after all this time you have made no attempt to validate the internal Atos QA process, so using it in this context is totally meaningless. If the QA process was a reliable measure of WCA standards, there would be nowhere near as many appeals and decisions overturned.

6) For Q4, my request stems directly from the statement you made and is looking for substantiation. Please therefore clarify whether the detailed cost-effectiveness assessment is available or not (as required by FOI legislation) and if it is, that you are simply refusing to

disclose it under section 35/6. If you are adamant that it is not good value, you will of course have some figures that prove the assertion – without them, it is pure speculation.

7) For Q5 & Q6, I am not asking for a preview of the decisions you might make, I am asking about what information you will gather to make them. FOI requires you to at least confirm if this information exists or not. Clearly if the data gathered is inadequate, the chances of the best decision being made are slim. Again after 18 months it is absurd to suggest there has been no progress – or is it and this is the real reason for regularly citing section 35/6 exemptions.

8) For Q7, as regards the legal action you say could be taken, who within DWP/Atos would initiate it? You are overstating the position here in an attempt to frighten claimants away from self-recording.

Published legal advice to HCPs paints a very different picture. For example:

- “Dentists are warned that the law offers little or no protection from patients covertly recording consultations. Patients are within their rights to record consultations and could use the information obtained to challenge their dentist’s actions.”
- “A patient who makes a secret audio recording of a consultation with a clinician is unlikely to be breaking any privacy or data protection laws. The prevailing perception is that such an act is bound to be unlawful and that clinical professionals can rightfully object, but the legal position is quite different.”

- “The fact that the patient did not seek the clinician’s consent to the audio recording will not amount to a breach of data protection law. So could clinicians rely on privacy laws instead? Only if the recorded information relates to the clinician’s personal and family life and affairs and such information is disclosed without justification. This is highly unlikely in the scenario of a patient audio recording a consultation, as the conversation will relate solely to the patient. The recording might be intrusive and could even be perceived as an act of surveillance, but it is not unlawful under privacy laws.” and there are very many more in a similar vein

As I am sure you are aware from existing TS decisions that for DWP to take actions against claimants based on policy it has not advised specifically in advance is not acceptable and general publication on a huge website is in itself inadequate.

A full history of my FOI request and all correspondence is available on the Internet at this address: [http://www.whatdotheyknow.com/request/wca\\_audio\\_recording\\_6](http://www.whatdotheyknow.com/request/wca_audio_recording_6)