

Freedom of Information Act 2000 (Section 50)

Decision Notice

14 August 2007

Public Authority: Department for Work and Pensions
Address: The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Summary

The complainant requested a copy of the risk assessment on telephony carried out by DWP. After having initially refused to disclose the information, DWP later provided the documents it considered relevant to the request. These were taken from a wider report that the authority did not disclose in full as it was considered to be outside the scope of the request. This was challenged by the complainant. The Commissioner viewed all the information held and agreed that the information withheld from the complainant is outside of his request and therefore DWP is not required to disclose it. The Commissioner found that DWP failed to respond to the complainant's request within 20 working days and was in breach of section 10 of the Act. The Commissioner also found that as the refusal notice issued was outside of the 20 working days that DWP were in breach of section 17 of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made a request to the Department for Work and Pensions (DWP) on 5 June 2006 for the following information:

"I would be interested to see the risk assessment carried out of your telephone system to which you refer, and I should be obliged if you would make it available to me."

The request followed correspondence from DWP in relation to the complainant's benefit application which stated that 'the telephony used in DWP contact centres was risk assessed to ensure that it was secure'.

3. The complainant did not receive a response and wrote again on 10 July 2006 explaining that his request for a copy of the risk assessment was being made under the Freedom of Information Act and that if he did not receive a response he would complain to the Information Commissioner.
4. DWP response on 4 August 2006 responding to the other queries raised in the complainant's letter of the 5 June but did not make any reference to the request for a copy of the risk assessment.
5. The complainant wrote to DWP again on 16 August 2006 reminding them that in his letters of the 5 June 2006 and 10 July 2006 he had asked to see a copy of the risk assessment and that to date no response had been received.
6. DWP responded on 30 August 2006 refusing to disclose the information under section 38 of the Act 'Health and Safety'. DWP stated that disclosure of the information could compromise the security of the telephone system by identifying potential weaknesses and any controls put in place to address them, if any existed. DWP also confirmed that in applying the public interest test it had concluded that the public interest lay in maintaining the exemption.
7. The complainant responded on 5 September 2006 querying DWP's application of section 38, highlighting to DWP that section 38 allows public authorities to withhold information if disclosure would, or would be likely to endanger, the physical or mental health of any individual or endanger the safety of an individual.
8. DWP responded on the 19 October 2006 upholding its decision to withhold the information under section 38 of the Act.

The Investigation

Scope of the case

9. The complainant wrote to the Commissioner on 29 October 2006 to complain about the handling of this request for information. In particular the complainant

asked the Commissioner to investigate DWP's application of section 38 and the length of time taken to issue a refusal notice.

10. During the course of the investigation DWP disclosed to the complainant all the elements of the 'risk assessment' document it holds which it found fell within the scope of the complainant's request. In doing so DWP withdrew its application of any exemptions to the remaining withheld information.
11. The Commissioner's investigation focused on establishing if the withheld information falls within the scope of the complainant's request and an investigation into the time taken to comply with the complainant's request.

Chronology

12. The Commissioner wrote to DWP on 2 November 2006 informing it that a complaint had been received from the complainant.
13. On 24 January 2007 DWP wrote to the complainant informing him that a further review of the refusal had been done following his complaint to the Commissioner and enclosed extracts of the risk assessment. DWP reiterated that disclosure of the remaining information could compromise the security of the system by identifying weaknesses and controls put in place to address them. This could enable unauthorised persons to breach security and obtain personal information about its customers.
14. The Commissioner wrote to the complainant on 9 February 2007 explaining that in light of the disclosure of 24 January 2007 he was contacting DWP to reconsider the application of section 38.
15. On 26 February 2007 the Commissioner wrote to DWP asking for a copy of the withheld information and for more explanation as to the application of section 38.
16. On 29 March 2007 DWP responded. It stated that it was now also considering if section 36 applied to the information as well as section 31. DWP also explained that there was some dispute as to whether the information held by it was covered by the scope of the complainant's request. DWP explained that the document held is a high level document regarding all aspects of system security. By way of background information, DWP also stated that the complainant's request related to correspondence he had received regarding his benefit application, which stated that 'the telephony used in DWP contact centres was risk assessed to ensure that it was secure'.
17. DWP explained that its application of section 38 related to the personal information held in its computer systems. Disclosure of the information could enable unauthorised access of the system and therefore allow personal customer information to be accessed.
18. DWP wrote on 10 April 2007 enclosing a full copy of the document withheld from the complainant and explaining in more detail why it felt that the remaining

withheld information falls outside of the complainant's request. DWP also explained that some additional information had been found that it could disclose.

19. The Commissioner wrote on 11 June 2007 seeking clarification regarding the information disclosed to the complainant. The Commissioner also requested more information regarding the proposed application of section 36 and 31.
20. DWP responded on 3 July 2007. DWP confirmed that the complainant had been sent a copy of the document 'ACCORD NOSP DWP' excluding the elements that DWP felt was not covered by the scope of his request. DWP explained that it had now disclosed further material from the document and also some material which it felt answered his original concerns and enclosed a copy of this to the Commissioner. This was a proactive gesture by DWP in order to attempt to allay the complainant concerns and the information disclosed was beyond the scope of the request. DWP withdrew its application of section 38 to any information held and stated that whilst it believed all the remaining information is outside of the complainants request, if the Commissioner found otherwise then it would wish to rely on sections 31, 36 and 24.

Findings of fact

21. The document held by DWP and referred to as a 'telephony risk assessment' is entitled 'ACCORD NOSP DWP, Project Level Document, DWP Job Centre Plus System Security Policy (SSP)'. This contains information regarding the risk assessment of telephony as well as:
 - Security architecture
 - Specific technical solutions
 - Wider DWP computer network and its architecture
 - Specific security and IT requirements, and
 - Technical, procedural, physical and personal security countermeasures and controls.
22. DWP has disclosed all the elements of this document which it has found relate to telephony risk assessment as requested by the complainant. In addition to this DWP enclosed a number of documents to the complainant relating to policies and procedures.

Analysis

Procedural matters: Section 1 'General Right of Access'

23. A full text of all the sections referred to below can be found attached in the Legal Annex.
24. Section 1 requires that any person making a request for information is entitled to be informed by the public authority if the information is held and if so to have that information communicated to them.

25. The complainant's initial request was for a copy of the 'risk assessment carried out of your telephone system to which you refer'. This arose as a result of a letter to the complainant from DWP which included the sentence; 'A comprehensive risk assessment has been completed to identify and counter any potential security threats to our telephony system.'
26. DWP has explained that the reference to this telephony risk assessment was not accurate as the document to which it referred was the ACCORD NOSP SSP document. DWP explained that this is high level document which included but was not limited to a risk assessment on telephony but did not explain the department's long-standing policies and practices in the area of telephony and the protection of personal information.
27. During the course of the investigation DWP disclosed to the complainant elements of this document, along with other policy documents and guidelines outlining the risk assessment and policies regarding the protection of personal information and telephony. DWP also provided to the Commissioner a copy of the information from the ACCORD NOSP SSP document which had not been disclosed to the complainant on the grounds that it did not cover any risk assessment involving telephony but involved peripheral issues and was therefore outside of the complainant's request.
28. The Commissioner has viewed this information with the aim of establishing if the information falls within the scope of the request. The remaining information being withheld consists of information under the following headings:
 - Technical Architecture of Job Centre Plus: this consists of technical information about the IT set up, equipment and networks of Job Centre Plus;
 - Operators: this consists of identification of the job role and titles required to support the telephony and computer infrastructure within Job Centre Plus.
 - Privilege Management: this consists of how and why user privileges are granted for access to the telephony and other IT components of the system
 - Audit Information.
 - Appendix C: This consists of a number of risk assessments which relate to the risk of attack on DWP and Job Centre Plus IT systems focusing on the risk of internal users breaching security.
29. In the Commissioner's view the information withheld does fall outside of the complainant's request. The documents withheld which reference telephony are strategic policy information related to the set up of the telephony, security or job structure within Job Centre Plus and are not therefore 'risk assessments'. The information in Appendix C, whilst referring to risk assessments in relation to security breaches of the computer systems does not relate to a telephony risk assessment.
30. DWP has now complied with the complainant's request for the information held on the 'telephony risk assessment' and in addition has provided to the

complainant information regarding its policy and guidelines for handling personal information over the phone.

31. DWP have now complied with the request and supplied to the complainant all the information within the scope of the request. The Commissioner has therefore not considered the application of sections 24, 31 and 36 of the Act.
32. In providing the information which was originally requested by the complainant DWP has complied with the requirements of section 1.

Section 17 'Refusal of a Request'

33. Section 17(1) states that a public authority which is relying on withholding the requested information under one of the exemptions listed in the Act, must provide to the complainant, within the time for complying with section 1, a notice which (a) states the fact; (b) specifies the exemption; and (c) states why the exemption applies.
34. Section 10 of the Act states that a public authority must comply with section 1 no later than the twentieth working day from receipt of the request.
35. The complainant made his initial request for information on 5 June 2006. DWP did not issue a refusal notice in relation to this request until 30 August 2006. The Commissioner finds that the public authority in failing to respond to any of the complaint's request within 20 working days, breached section 17 of the Act.

Section 10: Time for Compliance

36. Section 10 requires that a public authority must comply with section 1 (1) promptly and in any even no later than the twentieth working day following the date of receipt. Section 1(1) states that any person making a request for information to a public authority is entitled to be informed in writing as to whether the public authority holds the information and if so have the information communicated to him.
37. The complainant made his request for a copy of the risk assessment on the 5 June 2006. DWP originally withheld this under section 38 of the Act but later withdrew its application of this to the information held which fell within the scope of the request. DWP confirmed it held information relevant to the complainant's request and disclosed this information to him on 3 July 2007.
38. In failing to supply the information requested in line with the requirements of part 1 (1) of the Act, within twenty working days from receipt of the request, the Commissioner finds DWP breached section 10 of the Act.

The Decision

39. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- i. Compliance with section 1 of the Act as the requested information was provided to the complainant.
40. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- i. The issuing of a refusal notice under section 17 of the Act.
 - ii. Compliance with section 10 of the Act.

Steps Required

41. The Commissioner requires no steps to be taken.

Right of Appeal

42 Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 14th day of August 2007

Signed

Steve Wood
Assistant Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case , the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”