

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2012

Public Authority: The Department of Work and Pensions

Address: 2nd Floor
The Adelphi
11 John Adam Street
London
WC2N 6HT

Decision (including any steps ordered)

1. The complainant has requested how many of 53 named councillors receive benefits, what those benefits are and the amount that is paid (without the link between the individuals and what they have been paid).
2. The Department of Work and Pensions (the "DWP") refused to provide the information originally relying on the exemption for third party personal information (section 40(2)). In its internal review, it also relied on the exemption for information that is prohibited from disclosure under any other enactment (section 44(1)(a)).
3. The DWP explained that it was having trouble identifying the information and in consequence the complainant provided more detail about the relevant individuals. The case was to focus on 45 of the individuals that could be identified with the further information the complainant provided.
4. The Commissioner finds that the requested information is exempt section 44(1)(a), as disclosure of this information is prohibited by the Social Security Administration Act 1992. Therefore he requires no remedial steps to be taken in this case.

Request and response

5. On 28 August 2011, the complainant wrote to the DWP and made the following request for information:

"I would like to know how many of the below members of [named local authority] are in receipt of any benefit from the DWP, and exactly what benefits these are, and in each case the amount of money received. I do NOT want to know who is receiving what."

He then listed the names of 53 Councillors.

6. The DWP responded on 19 September 2011. It refused to provide the requested information as it considered that it was third party personal information, the disclosure of which would be in breach of the Data Protection Act 1998. Therefore it considered that this information was exempt under section 40(2).
7. On 27 September 2011 the complainant requested an internal review. He explained that he considered that in the form that he requested the information was not personal data, as no individuals could be identified from it. He also argued that the refusal notice did not comply with section 17(1)(c) of the FOIA as it failed to explain why the exemption applied to the information he had requested.
8. On 3 October 2011 the DWP communicated the results of its internal review. It explained that it considered that the disclosure of the benefits could be linked to the specific councillors depending on what has been claimed. It therefore upheld its application of section 40(2). It explained that it also considered that the requested information was exempt under section 44 of FOIA, as disclosure was prohibited by section 123 of the Social Security Administration Act 1992. It apologised that the complainant considered that the refusal notice did not comply with section 17(1)(c). However it considered that it was apparent that the requested information was personal information, and that therefore it was apparent as to why section 40(2) applied to the requested information.
9. On the same day, the complainant asked the DWP to reconsider its position again. He explained that he considered that the format of the requested information would render it anonymous and therefore not personal data.
10. On 10 October 2011 the DWP responded, and explained that it did not consider that the requested information was anonymous.

Scope of the case

11. On 2 November 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

12. During the investigation of the case the DWP contacted the Commissioner and explained that it required further information in order to identify the individuals in question on its systems (i.e. more than just their names). It therefore explained that at that time it was unable to provide the Commissioner with a copy of the withheld information.
13. The Commissioner informed the complainant of this. Subsequently the complainant provided the Commissioner with further information that he could find, in order to enable the DWP to identify the individuals in question. With this additional information the DWP confirmed that it was able to identify 45 of the named councillors. Therefore, the Commissioner has considered the application of the cited exemptions to the requested information that can be located when in possession of this additional information. Subsequent references in this notice to the 'withheld information' relates to that information the DWP identified at this stage.
14. The Commissioner has therefore considered the DWP's use of sections 44 and 40(2) to withhold this information.

Reasons for decision

Section 44(1)

15. The Commissioner has first considered whether the withheld information is exempt under section 44(1)(a).
16. Section 44(1)(a) states that information is exempt information if its disclosure (other than under the FOIA) by the public authority holding it is prohibited by or under any enactment
17. In this instance the statutory bar in question is section 123 of the Social Security Administration Act 1992 (the "SSAA"), the relevant parts of which are worded as follows:

"Unauthorised disclosure of information relating to particular persons

(1) A person who is or has been employed in social security administration or adjudication is guilty of an offence if he discloses without lawful authority any information which he acquired in the course of his employment and which relates to a particular person.

(2) A person who is or has been employed in the audit of expenditure or the investigation of complaints is guilty of an

offence if he discloses without lawful authority any information—

- (a) which he acquired in the course of his employment;*
- (b) which is, or is derived from, information acquired or held by or for the purposes of any of the government departments or other bodies or persons referred to in Part I of Schedule 4 to this Act or Part I of Schedule 3 to the Northern Ireland Administration Act; and*
- (c) which relates to a particular person.*

(3) It is not an offence under this section—

- (a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it; or*
- (b) to disclose information which has previously been disclosed to the public with lawful authority."*

18. As section 44(1) expressly provides that the FOIA should be discounted when considering whether disclosure is prohibited, the Commissioner cannot consider that the FOIA provides a lawful authority for disclosure. Instead he has to consider disclosure under the FOIA as disclosure into the public domain. Therefore, in considering whether this statutory prohibition applies he has to consider the potential disclosure of the withheld information as disclosure to the world at large.
19. The Commissioner is satisfied that the disclosure of the withheld information, as it is held by the DWP, would be a disclosure of information that relates to particular people. He is also content that the members of staff at DWP are 'employed in social security administration or adjudication'. As section 44(1) expressly provides that the FOIA should be discounted when considering whether disclosure is prohibited, the Commissioner cannot consider that the FOIA provides a lawful authority for disclosure. Instead he has to consider disclosure under the FOIA as disclosure into the public domain. Therefore, he is also content that the DWP does not have any lawful authority to disclose the withheld information to the public.
20. Section 123(3) of the SSAA provides two conditions in which the disclosure of this kind of information by the DWP will not constitute an offence. These are that:

- The information in question has previously been disclosed to the public with lawful authority.
 - If the information in question is disclosed in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
21. In relation to the first of these, the Commissioner has not been provided with any evidence that the withheld information has been previously disclosed to the public with lawful authority – therefore he does not consider that this condition applies.
 22. In relation to the second of these, the Commissioner considers that if the withheld information is truly anonymous (which the complainant argues it is) this condition will apply and, consequently, section 123 of the SSAA will not prohibit the disclosure of this information. Therefore he has gone on to consider whether it was reasonable for the DWP to not apply this condition in relation to this request.
 23. In reaching a view on this the Commissioner has taken into account that the names of the individuals in question, together with their ages and the rate at which the DWP pays certain benefits, are in the public domain. Given that the individuals named in the request are all Councillors, the Commissioner also considers that it is reasonable to conclude that other information about some of their personal lives is also on the public domain.
 24. Given that the withheld information relates to a relatively small number of individuals, about whom additional information is already in the public domain, the Commissioner considers that if the withheld information was disclosed this could be combined with other available information to relate it to particular individuals.
 25. He also considers that releasing either the count and/or the total without further details would also result in the same outcome. The count would reveal enough to an individual with an understanding about what benefits can be claimed to be able to link the numbers to certain individuals. The total amount would reveal exactly the nature of benefits that have been claimed given that it is known what the DWP pays for what.
 26. Taking these factors into account, the Commissioner considers that the withheld information is not sufficiently anonymous for the condition listed at the second bullet point above to apply.
 27. Therefore, the Commissioner considers that the disclosure of the withheld information in this case is prohibited by section 123 of the

SSAA. As such, he considers that this information is exempt under section 44(1)(a) of the FOIA.

28. This exemption is absolute, and is therefore not subject to a public interest test.

Section 40(2)

29. As the Commissioner has found that the withheld information is exempt under section 44(1)(a), he has not gone on to consider the application of section 40(2) in this case.

Other matters

30. It should be noted that this case has raised the following matter of concern. In its correspondence with the complainant the DWP relied on sections 40 and 44, without (in fact) knowing what relevant recorded information it held. Indeed, it explained (to the Commissioner) that it was unable to identify the relevant recorded information from the details contained in the request.
31. The Commissioner considers that it is not possible to apply exemptions in a case like this one without knowing what relevant recorded information is held, as without reference to the withheld information it cannot be known whether what was requested was personal data (for the purposes of section 40(2)), and/or could relate to a particular person (for the purpose of the application of section 123 of the SSAA).
32. Therefore the Commissioner expects that when dealing with requests of this type in the future, the DWP ensures that it reviews what information it holds before issuing a refusal notice. This may require it to go back to the complainant under section 1(3) of the FOIA to obtain enough information in order to identify whether it holds the requested information.

Right of appeal

33. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. 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

Steve Wood
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