

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2012

Public Authority: Department for Work and Pensions
Address: 4th Floor
Caxton House
6 -12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested information from the Child Maintenance Enforcement Commission (CMEC) relating to the top 10 highest amounts owed by individuals in child maintenance arrears.
2. During the course of the Information Commissioner's investigation the CMEC ceased to exist and its functions and responsibilities were transferred to the Child Maintenance Group within the Department for Work and Pensions (DWP). Throughout the decision notice reference is therefore also made to the DWP. Any reference to the DWP should therefore also be taken as reference to the CMEC.
3. The DWP refused to provide the information on the basis of section 40(2) and subsequently section 44 was also applied. The Commissioner's decision is that DWP has incorrectly relied on the exemptions to withhold the requested information.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The DWP should now provide the complainant with the information requested.

5. The DWP 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 FOIA and may be dealt with as a contempt of court.

Request and response

6. On 10 March 2012, the complainant wrote to the CMEC and requested information in the following terms:

‘Details of the 10 highest amounts owed by individuals in child maintenance and arrears.

List them and for each figure indicate how many dependents relate to the case and disclose the sex of the parent.’
7. The CMEC responded on 4 April 2012. It stated that it could not provide the information as it was exempt under section 40 of the FOIA.
8. The complainant wrote to the CMEC on 5 April 2012 and expressed dissatisfaction with its response to the request.
9. Following an internal review the CMEC wrote to the complainant on 8 May 2012. It again stated that it was unable to provide the information requested as it was exempt under section 40(2) of the FOIA. Disclosure would breach the fair processing principle of the Data Protection Act (DPA) 1998.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant did not agree with the CMEC argument that providing the information would be unfair to the individuals concerned, nor would it risk identifying them.
11. The Commissioner considers the scope of this request has been to consider whether section 40(2) of the FOIA applies to the

information requested. During the Commissioner's investigation the DWP also claimed a late reliance on section 44 of the FOIA for the withheld information. The Commissioner has also considered whether this exemption is engaged.

Reasons for decision

12. In this case the DWP has sought to rely upon these exemptions to withhold all the information requested. It has withheld this information on the grounds that disclosure of this information under FOIA would be unfair and therefore in breach of the first principle of the DPA. It has also withheld the information on the grounds that the DWP is prohibited from disclosing it by other enactments, namely the Social Security Administration Act 1992 (the SSAA) and the Child Support Act 1991.

13. **Section 40**

Section 40(2) of FOIA states that

(2) Any information to which a request for information relates is also exempt information if-

(a) it constitutes personal data which do not fall within subsection (1) and,

(b) either the first or second condition below is satisfied

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the DPA, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress, and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the DPA (which relate to manual data held by

public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the DPA the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

14. Section 1 of the DPA defines personal data as data which relates to a living individual, who can be identified:
 - a) from that data, or
 - b) from that data and any other information which is in possession of, or is likely to come into the possession of, the data controller.
15. It is the Commissioner's view that the information requested does not constitute personal data. The DWP has argued:
 - that individuals would not expect their arrears details to be put in the public domain and to do so would therefore breach principle 1 of the DPA.
 - that individuals would be able to recognise themselves, as would their partners, and that information could then be 'used against them'.
16. Having considered the information provided by the DWP, it is noted that it does not contain any identifying information. For example, there is no geographical area supplied or date of birth.
17. The DWP also indicated that the information may not be entirely accurate therefore it is possible that several other individuals may have similar data, should the information be accurately reassessed.
18. It is the Commissioner's view that the arguments regarding fairness and the first principle do not apply as the information requested is not personal data in the first case.
19. **Section 44**

The second exemption claimed by the DWP in its correspondence with the Commissioner is section 44(a) which states:

1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it -

- (a) is prohibited by or under any enactment*
(b) is incompatible with any EU obligation, or
(c) would constitute or be punishable as a contempt of court
20. The DWP stated that it is bound by section 2 of the Child Support Act 1992, which requires it, in taking any decision in relation to day-to-day activities in any case handling that it *"shall have regard to the welfare of the child likely to be affected"* by any decision which it takes in exercising any discretionary power conferred by the Act.
21. The DWP has argued that it would not be in the interest of the child's welfare, if it was to become public knowledge, via the media, that his mother or father was one of the top 10 people in the country with child maintenance arrears.
22. It is the Commissioner's view that in order for the children to be identified, it would first be necessary to identify the parents from the information disclosed. As indicated in paragraph 16, it is the Commissioner's view that this information is not personal data.
23. The DWP further argued that, in addition to section 2 of the Child Support Act 1992, section 44(1)(a) would also be engaged by section 123(1) of the Social Security Administration Act 1992 (SSAA) which states:
- 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 which relates to a particular person.*
24. The DWP further state that schedule 4 part 1 of the SSAA sets out that a person employed in social security administration or adjudication includes "A civil servant in DWP". The DWP maintain that since 1 August 2012 all employees previously working for CMEC are now DWP civil servants.
25. However it should be noted that the request was made on 10 March 2012, at which time CMEC employees were not DWP civil servants. Furthermore, section 123(3) of the SSAA states:

Reference: FS50447854



It is not an offence under this section -

- a) to disclose information in the form of a summary of collection of information so framed as not to enable information relating to any particular person to be ascertained from it.*
26. It is the Commissioner's opinion that the information requested, in the format requested would be *"so framed as not to enable information relating to a particular person to be ascertained from it"*.
27. The Commissioner is satisfied, that after considering the information provided, the DWP has incorrectly applied sections 40(2) and 44(1)(a) of the FOIA.

Right of appeal

28. 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

29. 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.
30. 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

Pamela Clements
Group Manager, Complaints Resolution
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Wycliffe House
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