

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 February 2013

Public Authority: Department for Work and Pensions

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

Decision (including any steps ordered)

1. The complainant requested the qualifications and credentials of those involved in the administrative and medical reviews of incapacity benefit assessments.
2. The Department for Work and Pensions (the 'DWP') argued that it did not hold the information. In the alternative it argued that the information was exempt under sections 40(2) and 43(2) of the FOIA.
3. The Commissioner has found that the DWP holds the qualifications of the doctors but it does not hold the qualifications of the administrative assessors.
4. The Commissioner considers the doctors' qualifications to be their personal data. Moreover he is satisfied that disclosure would be unfair and would therefore breach the first data protection principle. Therefore the DWP was correct to refuse to provide the doctors' qualifications on the basis that they are exempt under section 40(2) of the FOIA.
5. The Commissioner has suggested that as a matter of good practice the DWP should consider making further general information publicly available about the minimum qualification requirements for those involved in incapacity benefit assessment reviews but no remedial steps are required.

Background

6. The DWP has a contract with Atos Healthcare ("Atos") for the provision of services in connection with incapacity benefit assessments. Atos make an assessment which the incapacity benefit claimant can then appeal. If they decide to do so their complaint is escalated to what is known as the Independent Tier ("IT"). This is the third stage of a three tier complaints process.
7. The IT is administratively supported by a Convenor who works for Atos. The Convenor receives the complaint and (if it is accepted) copies of the claimant's file are prepared and sent to the IT company. This is a private company that offers the complainant a review of the way in which their complaint has been handled by Atos. The DWP has confirmed that the IT company is only responsible for reviewing Atos' adherence to the process for handling the complaint.
8. The IT company appoints an independent assessor to perform the review.
9. If appropriate, Atos also send the claimant's file to an Independent Healthcare Professional ("doctor") to carry out a medical quality review of the initial assessment.
10. The DWP has confirmed that the IT assessor is trained and accredited in undertaking audits of quality management systems. The appointed doctor must be registered with the General Medical Council (the "GMC") and be highly experienced in the field of disability assessment medicine.
11. The assessor will conduct a review and write a report. The report is sent back to the Convenor. If the assessor finds a problem then the report goes to the National Customer Relations Manager at Atos who will determine the nature of any remedial action which should be taken.
12. The doctor will also write a report which again is sent back to the Convenor. If concerns are identified the report is sent to the DWP for a decision maker review about what to do next.
13. The Convenor communicates the outcome of both reports to the claimant. The DWP has explained that the identity and qualifications of the assessor are not given to the complainant or Atos. This information is held by the IT and is not known to Atos or the DWP.
14. The identity and qualifications of the doctors are held by Atos and are approved by the DWP Corporate Medical Group.

15. The DWP has explained that the IT company is a private company which has been appointed to act as an IT, following approval by the DWP Contracted Customer Services Directorate.
16. The contract between the DWP and Atos states that "*A private company has been appointed to act as an IT. The name of this firm will not be divulged to any third party*". The DWP has explained that this is to ensure its impartiality.
17. The DWP has also explained that it is not in the agreed remit of the IT that it will be open to receive direct communication from the claimant (or any party). The Convenor is the point of contact between the IT and the claimant.

Request and response

18. On 30 October 2011 the complainant requested information from the DWP in the following terms:

"Can you please confirm that as it possible for claimant representative groups to attend IT hearings, a claimant can too STRICTLY as an observer?" [Complainant's emphasis].

19. On 28 November 2011 the DWP issued a response to the request. It clarified the IT review process and confirmed that a 'recognised welfare group representative' could be allocated to observe the IT's administrative review undertaken by an independent assessor, or the review of the medical evidence undertaken by the doctor.

20. On 30 November 2011 the complainant again requested information from the DWP:

"As you explain it there are only 2 individuals involved and they never meet. What Credentials / qualifications do each of them have to fulfil this role?"

21. On 18 December 2011, before a response had been issued, the complainant wrote to the DWP offering clarification:

"Perhaps to help you with this:

1. *The original question was "can I attend as an observer?"* [sic]

2. *What specific credentials/qualifications do these two individuals have that could be regarded as "industry recognised", particularly in the area of disability assessment? It would of*

course not be acceptable if the training in this area had been provided by Atos."

22. On 23 December 2011 the DWP issued a response to the complainant's request dated 30 November 2011. The DWP argued that it does not hold the qualifications or current positions of those who conduct the independent medical quality reviews. It went on to state that all healthcare professionals currently involved in IT reviews have been approved by the DWP's Corporate Medical Group as being *"highly and appropriately qualified, skilled and competent for the role [and] they are trained in disability assessment"*.
23. The DWP went on to say that, furthermore, neither does it hold the requested information for those who undertake the administrative review but stated that those who conduct such reviews are *"trained and accredited in undertaking audits of quality management systems"*.
24. On the same day, the complainant wrote to the DWP arguing that his requests had not received a full response.
25. On 18 January 2012, the DWP wrote to the complainant in response to the clarification offered on 18 December 2011. The DWP stated that there is no provision for individuals to attend an IT review other than for recognised welfare group representatives. The DWP refused to respond to the request where it concerned the credentials and qualifications of those individuals who conduct IT reviews. It claimed that this request was a repeat, having already been answered and concluded in its internal review response dated 23 December 2011 (section 14(2)).
26. The complainant wrote to the DWP on the same day to ask for another internal review and outlined the following points in summary:
 - "1) You have said that a claimant cannot attend an Independent Tier Hearing even as an observer. Where is this exclusion documented?"*
 - 2) You have said "the administrative review is undertaken by an independent assessor who is trained and accredited in undertaking audits of quality management systems", but you will not tell me what this accreditation is, so the statement is meaningless. Please confirm.*
 - 3) For the medical review, you have said that although the HCPs involved are approved by your Corporate Medical Group, you cannot tell me against what standard this approval takes place or what minimum qualifications these HCPs must have. This does not make sense so please confirm.*

4) You have said that nobody in Atos knows who the IT HCP is, but as the convenor has to communicate with them, this does not make sense either. Please confirm.

5) I have asked who trains the IT HCP in disability assessment, but you have not answered. Clearly, it should not be Atos."

27. On 15 February 2012 the DWP replied to each of the complainant's points in turn:

"In reply to Q1 the exclusion is covered in part 15.3 of the Complaints Procedures Guide, which you have already been provided. This documents those people who may attend the IT Hearing and by inference excludes those who may not attend i.e. Atos Healthcare, claimant etc.

In response to Q2 the accreditation is in respect of the audit of quality management systems. The exact qualifications of an auditor will vary. The company engaged has worldwide experience in audit and is involved in the certification of many private and public organisations.

In answer to Q3 the suitability for the role of Independent Medical Practitioner (IMP) is based on the individual's knowledge and experience of disability assessment which may include, although not limited to, conducting assessments, training, medical quality auditing and providing medical advice to decision making authorities.

In reply to Q4 the response dated 23 December 2011 (VTR IR298) stated that the identity of the HCP who conducts the medical review for the IT is not held by MSCCT. It did not state that it is unknown to Atos Healthcare.

In response to Q5 the IMP maintains experience through a variety of means dependent upon their current roles which are unconnected to Atos. All training material which is developed by Atos Healthcare is key to this, and it is all approved by DWP."

28. The DWP added that the publication, 'Atos Healthcare Complaints Procedure' - which had previously been supplied to the complainant - provides "information relating to the Independent Tier and nothing further to that can be provided".

Scope of the case

29. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
30. The Commissioner wrote to the complainant to clarify whether he wanted to obtain the qualifications/credentials of all assessors and doctors or whether he wanted to obtain the qualifications of a specific doctor and assessor involved in a particular case. The complainant confirmed it was the former, all assessors and doctors.
31. The scope of this case is therefore to determine whether the DWP holds the credentials and qualifications of those individuals involved in the administrative and medical reviews as part of the IT process for the purposes of the FOIA. In the event that any of the requested information is held then the Commissioner will go on to consider whether it is exempt under section 40(2) or 43(2) of the FOIA.

Reasons for decision

Is the requested information about qualifications and credentials held by the DWP?

32. The Commissioner has considered whether this information is held by DWP for the purposes of the FOIA. Section 3(2)(b) states that for the purposes of the FOIA information is held by a public authority if, "*it is held by another person on behalf of the authority*". The Commissioner has therefore considered the relationship between the DWP, Atos and the IT company, including the terms of any contracts between the parties, in order to determine whether the qualifications are held by Atos or the IT company on behalf of the DWP for the purposes of the FOIA.

Information held by Atos

33. The DWP has confirmed that Atos holds the qualifications of the doctors who perform the reviews.
34. The DWP has explained that Atos is contractually obliged to provide it with information the DWP needs it to respond to FOIA requests. The DWP has provided the Commissioner with an extract of the contract which outlines how Atos is expected to deal with requests made under the FOIA.
35. The Commissioner is satisfied that the qualifications are held by Atos in connection with the functions it is carrying out on behalf of the DWP. He

is also satisfied that it is information caught by the clause in the contract that obliges Atos to provide the DWP with information that it requires to respond to an FOIA request. Having concluded that, in accordance with section 3(2)(b), the doctors' qualifications are held by Atos on behalf of the DWP for the purposes of the FOIA, he will go on to consider whether that information is exempt. However, before doing so, it is necessary to consider whether the assessors' qualifications are held.

Information held by the IT

36. The DWP has confirmed that the IT holds the qualifications of the independent assessors.
37. However, it has argued that neither Atos nor the DWP know or hold the qualifications of the independent assessors who work for the IT. It has explained that there is no relationship between the DWP and how the IT is managed. The DWP has explained that the services of the IT company are procured on a fee per case basis. It is apparently not deemed to be a subcontractor of the DWP or Atos subject to the same or similar contractual obligations as Atos to provide information to the DWP to assist with responses to FOIA requests.
38. As there is no relationship between DWP and the IT company there is no contractual obligation placed upon the IT company to provide the DWP with the qualifications of its independent assessors. The company will not provide this information so as to maintain its independent function.
39. The Commissioner queried how, in the event of concerns about performance, the DWP could verify that the IT assessors were appropriately qualified. The DWP re-iterated that there is no relationship between it and the IT company and explained that the need to verify qualifications has never arisen. The Commissioner understands that all IT independent assessors are trained and accredited in undertaking audits of quality management systems. On the basis of the information provided to the Commissioner it appears that there is no means of the DWP obtaining the assessors' qualifications in the event of concerns about performance on the basis of the existing contractual arrangements.
40. The Commissioner has considered the information the DWP has provided regarding the appeal process, the services provided by the IT company and the contractual arrangements in place. It appears that the DWP does not require the qualifications to be held in connection with the functions carried out by the IT company nor is there any contractual obligation on the company to provide Atos or the DWP with the qualification information for FOIA or any other purpose. In view of this the Commissioner has concluded that the assessors' qualifications are

not held by the IT company on behalf of the DWP for the purposes of the FOIA under section 3(2)(b).

Is the information about the doctors' qualifications/credentials exempt?

41. The DWP argued that if the doctors' qualifications were held, the information was exempt from disclosure under section 40(2) and section 43(2) FOIA.

42. Section 40(2) of the FOIA states that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the DPA states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

43. Personal data is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.

44. The Commissioner is satisfied that the doctors' qualifications are biographically significant information about them. Given the details within qualifications and credentials the Commissioner is further satisfied that the individuals would be identifiable from that information when combined with other information in the public domain.

Is disclosure fair?

45. In considering whether disclosure would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:

- the consequences of disclosure;
- the data subjects' reasonable expectations of what would happen to their personal data; and
- the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

46. The Commissioner considers that doctors' reasonable expectations about the disclosure of their qualifications are inextricably linked with their expectations regarding their identity being revealed, given the guarantees of anonymity given by Atos. Therefore he has taken this into account when considering the first data protection principle notwithstanding that the complainant has not, in this case, requested the doctors' names.

Consequences of disclosure

47. The Commissioner accepts that disclosure of the qualifications would result in some intrusion into the doctors' privacy. The DWP has also argued that there are targeted campaigns against those involved in the delivery of the Medical Services Contract and in some instances there have been concerns for the health and safety of staff members. It is therefore likely that if the qualifications were disclosed from which the doctors could be identified they would also then be subjected to pressure from those campaign groups and in some instances to threats to their health and safety. This is also likely to result in considerable distress to the doctors concerned.
48. The Commissioner acknowledges that the DWP has in no way suggested that the complainant in this case is likely to use the withheld information for this purpose. However disclosure under the FOIA is to the world at large. As there are groups and individuals seeking to pressure those involved in incapacity assessments the Commissioner is satisfied that if the withheld information were released under the FOIA in this case then the consequences specified by the DWP are a realistic possibility.

Reasonable expectations

49. The DWP has argued that it is fundamental that the IT remain independent of Atos. The expectation set by the DWP and Atos is that the IT doctors will remain anonymous and will therefore not be subject to contact or pressure from claimants or groups who oppose the government's policies on reassessing incapacity benefit recipients as mentioned above. Given the likelihood of the qualifications identifying the doctors the Commissioner accepts that they have a reasonable expectation that this information will not be disclosed under the FOIA. The Commissioner also notes that the doctors have not consented to the disclosure.

The balance between the rights and freedoms of the data subject and the legitimate interests of the public

50. The Commissioner recognises that the public has a legitimate interest in knowing that doctors who perform reviews of assessments are

appropriately qualified. There is a clear argument that those individuals who perform such a public role should be transparent about their qualifications and accountable to the public.

Conclusion on analysis of fairness

51. A balance therefore has to be struck between transparency and accountability and the duty to respect the doctors' right to privacy. The Commissioner recognises that there is a legitimate interest in the public being able to confirm that doctors conducting reviews of incapacity benefit assessments are appropriately qualified and that this argument has significant weight. However he does not believe that it is sufficient to warrant the prejudice to the rights and freedoms of the data subjects (the doctors) in this case given the aforementioned reasonable expectations and the consequences of disclosure. The Commissioner has therefore concluded that it would be unfair to disclose the doctors' qualifications and credentials and as such this would breach the first data protection principle. In view of this he is satisfied that the DWP appropriately refused to provide the qualifications on the basis that the information was exempt under section 40(2) of the FOIA.
52. Notwithstanding his conclusion in relation to section 40(2) the Commissioner has made some additional observations about information that could be made public as a matter of good practice in the 'Other matters' section below.
53. Having determined that section 40(2) was correctly relied on by DWP to refuse to provide the qualifications and credentials it has not been necessary for the Commissioner to go on to consider section 43(2).

Other matters

54. DWP has suggested that it would be prepared to provide the minimum education or professional requirements expected of IT members in this case. The Commissioner considers that as a matter of good practice the DWP should consider making more information publicly available about the minimum qualifications required those conducting the incapacity benefit assessment reviews. Such general information would not identify any individual and therefore would not constitute personal data. However it would provide further transparency and accountability and go some way to meeting the legitimate interests of the public in demonstrating that professionals fulfilling that role are appropriately qualified.

Right of appeal

55. 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

56. 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.
57. 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

Jo Pedder
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