

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2013

Public Authority: Department for Work and Pensions
Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant made a freedom of information request to the Department for Work and Pensions for the amount of tax payers' money it spent on surveillance and/or investigation in Thailand. The Department for Work and Pensions has refused to confirm or deny if it holds the requested information by relying on section 31(3) and 31(1)(a) of FOIA on the grounds that confirming or denying if the information is held would prejudice the prevention or detection of crime. The Commissioner has investigated the complaint and found that section 31(3) is engaged and that the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing if the information is held. The Commissioner requires no steps to be taken.

Request and response

2. On 9 March 2013 the complainant made a freedom of information request to the Department for Work and Pensions (DWP) which read as follows:

Please disclose the amount of tax payers money spent on surveillance and or investigation in Thailand for years: 2009, 2010, 2012, 2013

3. The DWP responded to the request on 26 March 2013 when it refused to confirm or deny if it held the requested information by virtue of the exemption in section 30(1) of FOIA.

4. The complainant subsequently asked the DWP to carry out an internal review of its handling of his request and it presented its findings on 16 April 2013. It now said that whilst it was satisfied that section 30 applied, it now considered that section 31(1) was the correct exemption to apply.

Scope of the case

5. On 20 April 2013 the complainant contacted the Commissioner to complain about the DWP's decision to refuse to confirm or deny if the requested information was held.

Reasons for decision

6. The Commissioner found the DWP's responses to the complainant to be somewhat confused in that its initial response refused to confirm or deny if the information was held under section 30(1) of FOIA but failed to specify which particular sub-section it was relying on. The internal review then said that whilst it was of the opinion that section 30 did apply it now concluded that the information was 'exempt information' by virtue of section 31(1). Again, the DWP failed to specify which particular sub-section it was relying on and in both responses the DWP failed to consider the public interest test.
7. In light of this the Commissioner asked the DWP to clarify its position and confirm which exemption it was relying on.
8. In response the DWP confirmed that it was refusing to confirm or deny if the requested information was held and that it was relying on section 31(1)(a) of FOIA.
9. Section 31(3) provides that a public authority is not obliged to confirm or deny if it holds the requested information if to do so would, or would be likely to, prejudice any of the matters mentioned in section 31(1).
10. Section 31(1)(a) provides for an exemption where disclosure of information would or would be likely to prejudice the prevention or detection of crime. Therefore, the issue for the Commissioner to consider in this case is whether confirming or denying if the requested information is held would or would be likely to prejudice the prevention or detection of crime.

11. In its response to the Commissioner the DWP explained that claiming DWP benefits abroad, when the conditions of entitlement are not met, is a criminal offence and would be investigated and dealt with accordingly. It said that investigating benefit fraud in other countries is a key part of its Fraud Strategy as is the prevention of fraud. The Commissioner considers therefore that section 31(1)(a), given that it concerns the prevention or detection of crime, is the appropriate exemption to apply in this case.

12. In the case of a prejudice based exemption it is also necessary to establish a 'causal link' between confirming or denying if the information is held and the prejudice claimed for the exemption to be engaged. In explaining why the exemption applied the DWP said:

If we provided confirmation that anti-fraud activities did or did not take place in one country, in this case Thailand, we would be accepting that we would disclose details of every country where anti-fraud activities are or are not undertaken. The deterrent factor of not knowing in which countries we do and do not conduct work, is something that falls within section 31(1)(a) prevention or detection of crime.

13. The Commissioner accepts that were the DWP to confirm or deny if it held the requested information then this would allow those persons who may have committed or intend to commit benefit fraud to discover in which countries there is a limited possibility of investigation and prosecution. For example, if it denied holding the information then this would undermine its efforts to tackle benefit fraud by people living in Thailand. Yet on the other hand, were it to confirm that information is held in this case then it would quickly become apparent in other cases where it relies on a neither confirm nor deny response that it does not hold the requested information. Therefore it is important for the DWP to be able to respond to such requests consistently by refusing to confirm or deny if information is held in each case.

14. The DWP provided the Commissioner with details of the number of benefit fraud offences committed abroad and from this it is clear that the likelihood of prejudice occurring is real and significant.

15. The Commissioner is satisfied that confirming or denying if information is held would undermine the deterrent effect of not knowing in which countries the DWP operates and this in turn would be likely to prejudice the prevention and detection of crime. The Commissioner finds that the exclusion from the duty to confirm or deny under section 31(3) is engaged.

Public interest test

16. Section 31 is a qualified exemption, therefore the duty to confirm or deny does not arise only if the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information.

Public interest in disclosing if information is held

17. The complainant has not offered any reasons why he considers that the public interest favours disclosing whether or not the DWP holds the requested information. However, for its part the DWP acknowledged in its responses to the Commissioner that there is a public interest in knowing that it takes benefit fraud seriously.

Public interest in maintaining the exclusion from the duty to confirm or deny

18. As regards the public interest in refusing to confirm or deny if the information is held the DWP said that it considered that the key factor against confirming whether or not DWP spends tax payers money on surveillance and or investigation in Thailand in particular is that it would be likely to undermine the deterrent effect of not knowing which countries are targeted by DWP and when.
19. It said that in its view it was clearly not in the public interest to undermine its ability to deter benefit fraud abroad. It argued that there would be a real potential for some claimants to move to countries where receiving certain social security benefits is unlawful because they expect detection rates to be lower.
20. It argued that the public would expect losses of public money to be kept to a minimum and fraud to be deterred or prevented wherever possible which would be hindered if it answered the request in the way that the complainant would like.

Balance of the public interest arguments

21. The Commissioner has considered the arguments for disclosing if the information is held and the arguments put forward by the DWP. Whilst he accepts that there is a public interest in knowing what steps the DWP takes to tackle benefit fraud committed abroad and to account for the spending of public money, he finds that this is satisfied to a certain extent by the information the DWP already publishes. For instance the DWP has explained how it publishes detailed information about its success against benefit fraud which are then picked up by the media.

21. On the other hand there is clearly a strong public interest in protecting the ability of the DWP to deter and successfully tackle benefit fraud committed abroad. This is essentially to the benefit of the taxpayer as this kind of fraud costs the government millions of pounds each year.
22. In the Commissioner's view there is a very strong public interest in the ability of public authorities to enforce the law and in protecting society from the effects of crime. Given that the threat posed by benefit fraud is real and significant the Commissioner considers that the arguments for refusing to confirm or deny have added weight. Therefore, in the absence of any compelling arguments for disclosing if the information is held, the Commissioner has decided that in all the circumstances of the case the public interest in maintaining the exclusion from the duty to confirm or deny outweighs the public interest in disclosing if the requested information is held.

Right of appeal

23. 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

24. 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.
25. 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
Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF**