

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2015

Public Authority: Department for Work and Pensions (DWP)
Address: Caxton House
6-12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Work and Pensions (DWP) about policy guidance documentation relating to processes of sanctions and appeals in relation to jobseeker claimants and information about the names of those handling the request for information. DWP provided the complainant with relevant documentation and advised that it held nothing further within the scope of the request. It relied on section 40(2) to refuse to provide the names of those handling the request.
2. The Commissioner's decision is that DWP has disclosed all of the information falling within the scope of the request and was correct to rely on section 40(2) to refuse the request for names of the individuals who had handled the request. The Commissioner does not require DWP to take any further steps.

Request and response

3. On 22 September 2014, the complainant wrote to DWP and requested information in the terms set out at Annex A to this notice. The chronology of DWP's responses to the requests is also set out in that Annex.

Scope of the case

4. The complainant contacted the Commissioner on 8 January 2015 to complain about the way his request for information had been handled. He specifically stated that the outcome he wished for was for DWP to be required to actually provide the specific information requested.
5. The Commissioner considers the scope of the investigation is to determine whether DWP has disclosed all of the information falling within the scope of the request and whether it was correct to rely on section 40(2) to withhold the names of staff handling the request for information.

Reasons for decision

6. Section 1(1) FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information and if it does, to have that information communicated to him.
7. In considering cases such as this, the Commissioner will consider whether on the balance of probabilities the requested information is held. In order to make a decision on this, the Commissioner will ask the public authority detailed questions as to the nature of the requested information and the searches it carried out. He will then consider the context of the case, and nature of the requested information, the authority's responses, any arguments put forward by the complainant and any evidence to suggest that the information in question is held.
8. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any further information which falls within the scope of the request (or was held at the time of the request).
9. In considering the case the Commissioner has first considered what information was being requested. He has considered the request and has also taken into account the DWP understanding of the request.
10. The Commissioner considers that the request asks for all policy guidance relating to the application of any sanctions against jobseeker claimants, the full process of appeals consideration by decision makers in relation to jobseeker claimants, and internal policy guidance of 'acceptable reasons' which would mitigate against a sanction or appeal in relation to jobseeker claimants. This covers the first three parts of the request and it is the Commissioner's position that part four seeks the same

information or, in the absence of the existence of relevant policy documents, seeks confirmation that the handling of sanctions and appeals must be entirely discretionary. In as much as part 4 seeks confirmation of a position the requester believes to be true, the Commissioner does not consider it to be a valid request for information.

11. Beyond the initial request and internal review response, DWP has entered into correspondence with the complainant in a bid to address his further points. DWP has labelled each item of correspondence as an internal review but the Commissioner will treat them as further correspondence. In that correspondence DWP has provided further links to documents and has clarified certain aspects of the documents provided and processes involved. The FOIA does not require a public authority to create information or explanations of processes and practices, only to disclose information which is not exempt under the Act.
12. The Commissioner notes that the complainant has specifically asked for a "full and complete set of policy guidance documentation" about the subject matter which is sanctions and appeals in relation to jobseeker claimants.
13. DWP has confirmed that all of the links provided to the complainant are excerpts from policy documents which relate to jobseekers' allowance. It did not disclose the full document but determined disclosure by the subject matter requested. The full policy documents containing the excerpts already disclosed are on the Gov.uk website with the exception of the Code of Appeals Procedures post October 2013.
14. Because the request is so specific in detailing the subject matter, the Commissioner considers that DWP was correct in not disclosing the entire policy document relating to jobseekers' allowance but rather providing the requested information via links to relevant extracts.
15. However, the Commissioner considers that his assessment of what parts of the document should or should not have been disclosed is largely irrelevant as the most of the documentation disclosed is available in its entirety on the Gov.uk website.
16. Having provided the complainant with links to the available information, it is clear that DWP are seeking to rely on section 21 but should have cited section 21 in its correspondence with the complainant.
17. In its submission to the Commissioner, DWP details the attempts it has made to help the complainant, not only by disclosing relevant policy documentation but by providing clarification and explanation. DWP

asserts that if it held anything further it would have been disclosed to the complainant.

18. In considering this request and response, the Commissioner is satisfied that on the balance of probabilities DWP has disclosed all of the information falling strictly within the scope of the request and therefore has fulfilled its duty under section 1(1)

Section 40 – Personal information

19. Section 40(2) provides that:

"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 the second condition below is satisfied."*

Section 40(3) provides that:

"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 Data Protection Act 1998, 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..."

Is the withheld information personal data?

20. Personal data is defined by section 1 of the Data Protection Act 1998 (DPA) as:

"...data which relate to a living individual who can be identified–

- (a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."*

21. In order for the exemption to apply, the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner notes that the complainant has requested the names of the individuals who have handled his requests for information. The Commissioner is satisfied that the withheld information constitutes personal data.

Would disclosure breach the data protection principles?

22. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
23. The Commissioner's considerations have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.
24. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject.
25. The requested information relates to the work life of two individuals. DWP has asserted that what is relevant is providing a complete and compliant response and that it is irrelevant who drafted that response.
26. DWP has confirmed that the author of the response and the response reviewer, in this case the author's line manager, are aware of the request for disclosure of their names and neither has given consent for disclosure nor will they do so. Both are junior civil servants who do not have public facing roles.
27. The Commissioner makes a general distinction between information relating to an individual's professional life and information which relates to their private life. He generally considers the latter attracts more privacy and warrants more protection. In this case, the information clearly relates to the individuals' professional lives.
28. In the Commissioner's view, a key issue to consider in assessing fairness is whether the data subject has a reasonable expectation that their information will not be disclosed. The Commissioner accepts that as junior civil servants, there is no expectation that personal details would be put into the public domain by virtue of their role. Although the

responses drafted and reviewed are for members of the public, the Commissioner accepts that this does not constitute a public facing role.

29. As to the consequences of disclosure upon the data subject, having found that the data subjects would hold a strong expectation of privacy in relation to disclosure of their names, it follows that disclosure of the requested information would result in distress to the individuals concerned.
30. In considering whether there is any legitimate public interest in this information, the Commissioner agrees with DWP that what is important is providing a complete and compliant response. The disclosure of the names of the person drafting the response and the person reviewing the response would not enhance this procedure. The disclosure of names of junior civil servants does not offer anything by way of accountability and transparency.
31. The Commissioner considers that DWP was correct to rely on section 40(2) to refuse this part of the request as disclosure of the names of the individuals would be an intrusion of privacy.

Other matters

32. In its submission to the Commissioner, DWP has provided the name of the head of its central FOI team and has stated that this can be provided to the complainant as a point of contact even though the individual has no responsibility for drafting replies. Whilst this information does not fall within the scope of the request, the Commissioner notes that as DWP sought to be helpful to the complainant it should have made this offer to him during the course of his complaint. DWP should now consider offering the complainant these details.
33. The Commissioner would note too that whilst DWP has provided a submission to him, it should, in future, address the specific questions set out by his office in its initial correspondence. This will provide supporting evidence for any narrative, ensure consistency of approach in investigations and perhaps negate the need for follow up correspondence.
34. In this particular case, the volume of correspondence has meant that the request has become a little lost as the complainant sought clarification and made further requests to DWP. It was this further correspondence that eventually allowed the complainant to ask for the information which was withheld under section 40(2). Whilst he accepts that DWP was attempting to be helpful, the Commissioner notes that

under the FOIA a public authority is obliged to provide a response to a request and to respond to a request for internal review. DWP has conducted four internal reviews during the course of this complaint and the Commissioner would ask that in future correspondence, DWP makes it clear to a complainant that it has fulfilled its obligation after the initial internal review and that any further correspondence seeking clarification or explanation will be treated as such and handled outside of the Act. Any requests for information made during the further correspondence can then be handled as new requests.

Right of appeal

35. 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: 0870 7395836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

**Gerrard Tracey
Principle Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex A

"Please provide a full and complete set of policy guidance documentation relating to:

1 - The application of sanctions in and/or all potential forms, (i.e. all low, intermediate and higher level sanctions), and that might be applicable in any and/or all circumstances (which could include anything from not turning up when required to do so for a jobsearch review meeting, right through to failing to comply with a Mandatory Work Placement Directive) and anything in between for any / all Jobseeker Claimants.

2 - The full process of the consideration of appeals by Decision Makers from Jobseeker benefit claimants to the same, full range of potential sanction circumstances that fall into the abovementioned Part 1 of this request for any / all Jobseeker Claimants.

3 - The internal policy guidance of "acceptable reasons" and / or circumstances that would mitigate against a sanction and / or an appeal against a sanction being applied to a Jobseeker Claimant in the full range of circumstances covered in Parts 1 & 2 hitherto mentioned.

4 - In the absence of such policy documents existing and/or being applicable and/or made available in response to this specific request, a copy of the policy guidance that would be used by any / all Decision Makers to deal with such sanction application and / or appeal circumstances and confirmation that if such policy documents do not exist, that all sanctions and / or appeals and the consideration of "good reasons" must therefore be entirely discretionary amongst Decision Makers to consider."

On 7 October 2014 DWP responded. With regard to question 1, it provided 4 links to guidance given to decision makers. For question 2, it provided an explanation but did not disclose any recorded information. In respect of question 3, a link was provided to guidance to decision makers and an explanation also provided. With regard to question 4, DWP asserted that the information had been provided.

The complainant wrote to DWP on 8 October 2014 and drew attention to his concerns about the response to item 2 stating that the link did not cover all

areas. He stated further that item 4 had not been adequately addressed and limited information had been provided. He further asked:

"please provide written confirmation that no local Jobcentre office has local discretion to ignore these policy documents and make local "discretionary" decisions that differ from policy guidance issued by central Government."

DWP issued an internal review response on 28 October 2014. It provided further links and explained that item 4 had been addressed by links provided in previous requests.

The complainant wrote again to DWP on 8 November 2014 and stated that the response was neither correct nor complete. The links provided did not open and in terms of the request for additional information, this had not been answered.

In a further review response from DWP on 20 November new links were provided and the complainant was asked to confirm that these worked. DWP confirmed that it would respond further by 5 December 2014.

On 20 November the complainant confirmed that the links opened but they were the wrong links. He reiterated his request of 22 September. He went on to state:

"You have now provided:

- 1 - Chapter S4: JSA Sanctions – General principles*
- 2 - Chapter S5: JSA Higher-level sanctions*
- 3 - Chapter S6: JSA Medium-level sanctions*
- 4 - Chapter S7: JSA Low-level sanctions*

Nowhere on any of these four links, does it demonstrate to anyone reading it:

1 - The full process of consideration of appeals by Decision Makers for any sort of sanction (Part 2 of my original enquiry)

2 - The internal "policy guidance" of "good reasons" presented in mitigation of "good reasons" by a claimant and/or under appeal circumstances.(Part 3 of my original enquiry)

3 - Any response whatsoever to Part 4 of my original enquiry

*4 - Nor is there any response to my enquiry dated 8TH OCTOBER 2014:
"please provide written confirmation, that no local Jobcentre office has local discretion to ignore these policy documents and*

make local "discretionary" decisions that differ from policy guidance issued by central Government."

DWP responded further on 26 November 2014 addressing the concerns set out in the letter dated 8 November 2014 and the further letter dated 20 November 2014. DWP explained that the links provide the basic information requested but accepted that they did not set out the actual decision making process. DWP set that position out in an explanatory paragraph.

The complainant wrote further to DWP on the same date, 26 November 2014, describing the response as poor and incompetent. He stated that DWP was avoiding behaving in a transparent fashion and said that it was ignoring his specific requests. He requested that his case be escalated to the most senior line manager and asked for details of the names and grades of those who had handled his request and of the person to whom the request would be escalated.

He set out the areas he believed remained outstanding as follows:

"Nowhere on any of these four links, does it demonstrate to anyone reading it:

1 - The full process of consideration of appeals by Decision Makers for any sort of sanction (Part 2 of my original enquiry) - (this means all internal written guidance and policy issued to Decision Makers)

2 - The internal "policy guidance" of "good reasons" presented in mitigation of "good reasons" by a claimant and/or under appeal circumstances.(Part 3 of my original enquiry) - (this also means all internal written guidance policy issued to Decision Makers)

3 - Any response whatsoever to Part 4 of my original enquiry - (4 - In the absence of such policy documents existing and/or being applicable and/or made available in response to this specific request, a copy of the policy guidance that would be used by any /all Decision Makers to deal with such sanction application and / or appeal circumstances and confirmation that if such policy documents do not exist, that all sanctions and / or appeals and the consideration of "good reasons" must therefore be entirely discretionary amongst Decision Makers to consider.)

4 - Nor is there any response to my enquiry dated 8TH OCTOBER 2014: "please provide written confirmation, that no local Jobcentre office has local discretion to ignore these policy documents and make local "discretionary" decisions

that differ from policy guidance issued by central Government." - this is repeated for the THIRD time, as it has been entirely ignored as a question hitherto)."

A response was issued by DWP on 31 December 2014. The review stated that it had provided the information requested but acknowledged that it could have provided further information which would have assisted the complainant's understanding as to the workings of the appeal process.

With regard to the request for names and grades of those handling the request, DWP sought to rely on section 40(2) personal information.

The complainant sent a further letter to DWP on 8 January seeking another review and advising that he would refer his case to the Information Commissioner's Office.

On 30 January 2015 DWP advised that there was:

"No further available information we can provide in relation to your request"