

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 March 2018

**Public Authority:** Department for Work and Pensions ('DWP')

**Address:** Caxton House  
4<sup>th</sup> Floor  
6-12 Tothill Street  
London  
SW1H 9NA

#### Decision (including any steps ordered)

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1. The complainant has requested information on security incidents at a DWP building in a three month period along with details of any civil actions taken by DWP.
2. DWP refused to confirm or deny whether it held any information falling within the scope of the request on the basis of section 31(3), by virtue of section 31(1)(a) (prevention and detection of crime) and section 38(1)(a) (Health and safety). The Commissioner has concluded that section 31(3) is engaged and that the public interest favours maintaining this exclusion.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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4. On 30 May 2017, the complainant wrote to DWP and requested information in the following terms:  
  
"Please send me details of the amount of security incidents that the building has had in the last three months, of this letter. Please include a brief nature of each and brief details of Civil Actions taken out by DWP or affiliates/contractors within the period I request these details under the Freedom of Information Act 2000."
5. DWP responded on 23 June 2017 with a refusal notice in reliance of section 31(1)(a).

6. Following an internal review DWP wrote to the complainant on 29 August 2017. It upheld the initial response and in addition relied on section 38 to withhold the requested information.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 18 September 2017 to complain about the way his request for information had been handled. He provided the Commissioner with some background information regarding his personal interaction with DWP which is outside the scope of this case.
8. The DWP sought to rely on section 31(3) in relation to 31(1)(a) in its submission to the Commissioner. The Commissioner therefore considers the scope of her investigation to be to determine whether DWP may appropriately rely on section 31(3) (Law enforcement) and section 38(1)(a) (Health and safety) to refuse the request.

## **Reasons for decision**

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### **Section 31**

9. Section 31(1) of FOIA states:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) The prevention or detection of crime,

Section 31(3) of FOIA states:

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)."

10. DWP explained to the Commissioner that it has a comprehensive Security Incident process to identify, respond and mitigate security incidents and threats and it holds a record of unacceptable claimant and customer behaviour incidents ('the UCB Log'). In providing its submission to the Commissioner DWP agreed to the disclosure of some information from the UCB Log which the Commissioner subsequently provided to the complainant in her letter of 26 January 2018.

11. DWP explained to the Commissioner that the UCB Log records incidents which may be considered by the general public to be 'security incidents' but which are not considered to be security incidents by DWP.
12. DWP went on to explain that its definition of a security incident is specifically a deliberate attempt, whether successful or not, to compromise DWP assets (information, people, IT or premises) or any accident resulting in a loss of DWP assets.
13. To assist with the complainant's understanding, the Commissioner explained DWP's definition of a 'security incident' in comparison with a UCB. She also explained the access to personal information by submitting a subject access request. However, this was to no avail as the complainant does not accept her explanations. He advised the Commissioner:

"...how is the DWP's definition relevant? If they are allowed to define their own understanding, then that same understanding could be completely made so as to be detrimental to the rule of law. ....As the term 'Security' is laid down in the dictionary as 'The state of being free from danger or threat,' and I was actually placed in a threatening position. I should not have to complete a Subject Access Request for the information, and there can be no reason for not giving me the information (regards myself) and using Section 31(1)(a) Prevention or detection of crime clause to do so."

14. DWP argued that it is not obliged to confirm or deny whether it holds the requested information under section 31(3) FOIA as to do so would be likely to prejudice the prevention or detection of crime.
15. In order for a prejudice based exemption, such as section 31(3), to be engaged the Commissioner considers that three criteria must be met:
  - The actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed – or in this case confirmation as to whether or not the requested information is held - has to relate to the applicable interests within the relevant exemption;
  - The public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld – or the confirmation as to whether or not the requested information is held - and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - It is necessary to establish whether the level of likelihood of prejudice being relied on by the public authority is met – ie,

confirming or denying whether information is held 'would be likely' to result in prejudice or confirming or denying whether information is held 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

16. DWP explained that to confirm or deny that information on security incidents is held would itself provide information to the world at large. Similarly by confirming or denying holding information on security incidents, as defined by DWP, would provide an opportunity for a perpetrator to establish whether or not their attack/threat to DWP assets had been identified and the steps taken to protect the assets. If a perpetrator learned that their attack had not been identified or detected this could encourage a further attack. Similarly the information could assist in determining the type of defences used to protect against security incidents.
17. The actual harm alleged clearly relates to the prevention and detection of crime thereby satisfying the first criterion. In regard to the second criterion the Commissioner notes that, if held, a security incident log would record details of actual and attempted attacks on DWP staff, premises, assets, IT and detection/remedial action. Providing access to such a log to the world at large could provide an individual with malevolent intent with information on how attacks were discovered, reported or managed. The Commissioner accepts the causal link between the confirmation or denial that the requested information is held and prejudice to DWP's prevention and detection of crime capabilities and vulnerability to attack.
18. In this case DWP has stated that it believes the likelihood of prejudice arising through confirming or denying whether the requested information is held is one that is likely to occur, rather than one that would occur. The Commissioner is satisfied that confirming or denying holding information relating to security incidents creates a real and significant risk of prejudice to the prevention or detection of crime.
19. Further information is set out in the Confidential Annex to this decision notice.
20. The Commissioner is satisfied that DWP's arguments meet the prejudice test for the engagement of sections 31(a) and 31(3). She therefore accepts that confirming or denying whether the requested information is held would be likely to result in the prejudicial effects explained by DWP. As section 31(3) is a qualified exemption, the next step is for the

Commissioner to consider whether in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in confirming or denying that information is held.

### **The public interest**

21. DWP accepts that there is a legitimate public interest in ensuring that the public can have confidence that DWP has controls in place to deter, detect and defend security attacks against it.
22. The Commissioner considers that there is public interest in confirming or denying that information on security incidents is held in order to reassure the public that the necessary steps required to protect DWP's information are in place.
23. However, the Commissioner acknowledges that there is a clear public interest in protecting society from the impact of crime. The greater the potential for a disclosure to result in crime, the greater the public interest in maintaining the exemption. The Commissioner considers that it is clearly not in the public interest to potentially undermine DWP's ability to detect and defend security incidents as defined above, by confirming or denying holding information. She accepts that the prejudice which would be likely to occur, and result in creating potential attacks on DWP, is not quantifiable. Nevertheless she considers that the public interest is best served by endeavouring to avoid the risk of security incidents in order to support and enable the continued delivery of DWP's service to the public. Consequently she has determined that the public interest in neither confirming or denying that the information is held overwhelmingly outweighs the public interest in confirming or denying that information is held.
24. In the light of her finding on section 31 the Commissioner has not considered the application of section 38.

### **Other matters**

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25. In his recent correspondence with the Commissioner the complainant referred to assaults by DWP staff on members of the public. The Commissioner notes his comments:

"...and a large part of my request was with regard to assaults by their staff, on members of the public,"

26. Although this element appears to be of significant interest to the complainant it was not specified as part of his request. Notwithstanding this, the Commissioner understands that if such an assault took place it would not be recorded as a security incident but would be a human resources matter concerning the conduct of an employee.

## **Right of appeal**

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27. 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 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**