

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2019

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

Decision (including any steps ordered)

1. The complainant has requested information about datasets and data held by the DWP. The DWP relies on sections 24(2) and 31(3) of the FOIA to neither confirm nor deny that it holds the requested information.
2. The Commissioner's decision is that DWP has incorrectly applied sections 24(2) and 31(3) of the FOIA. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The DWP is required to confirm or deny whether the requested information is held and either disclose it or issue a fresh response compliant with section 17 of the FOIA.
3. The public authority 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 the Act and may be dealt with as a contempt of court.

Request and response

4. On 26 February 2018, the complainant wrote to DWP and requested information in the following terms:

"I know that the DWP publishes data on the <https://stat-xplore.dwp.gov.uk> website but this request is not for actual data or just the type of data that maybe show on this website.

RFI1 - What datasets does the DWP hold on its standard IT systems (i.e. excluding bespoke datasets held by local offices) about claimants in respect of:

- ESA
- IB
- PIP
- DLA
- JSA
- Universal Credit

RFI2 – For the datasets from RFI1 what type of data is held? Please note I only want to know the type of data held not the actual data.

For the avoidance of doubt a dataset is a collection of data. Most commonly a data set corresponds to the contents of a single database table, or a single statistical data matrix, where every column of the table represents a particular variable, and each row corresponds to a given member of the data set in question".

5. The DWP responded on 17 April 2018, saying as follows:
 - "The Department may hold the information that you have requested. However the Department would withhold any information on the basis of the provisions contained in Sections 31 and 24 of the Freedom of Information Act ("the Act"), which covers the prevention of crime, and national security respectively".
6. The complainant requested an internal review on 22 April 2018 .The DWP sent him the outcome of its internal review on 11 May 2018. It upheld its original position.
7. After discussing the same with the Commissioner ,the DWP latterly¹ modified its reply to the complainant's request by saying that in

¹ 8 November 2018

accordance with the provisions of s24(2) and s31(3) of the FOI Act, "we neither confirm nor deny that we hold the requested information".

8. In its letter of the 8 November 2018, the DWP went on to say "Sections 31 and 24 of the Freedom of Information Act ("the Act"), which covers the prevention of crime, and national security respectively. Section 31 and 24 are qualified exemptions, and as such, a public interest test needs to be applied. While there is a legitimate public interest in ensuring that the public can have confidence that the Department has datasets in place to enable claims to benefit to be processed, it is not in the public interest for the Department to provide details of these, or the information contained within as this may enable individuals to attempt to circumvent the Department's security controls.
9. Confirming what information is held, particularly concerning claims to benefit would assist an individual in testing the effectiveness of the Department's security controls. This is not in the public interest, and therefore we are withholding the information in accordance with Section 17 of the Act".

Scope of the case

10. The complainant contacted the Commissioner on 15 July 2018 to complain about the way his request for information had been handled.
11. The Commissioner considers that she has to determine whether the DWP response of neither confirming nor denying that it holds the requested information is correct.

Reasons for decision

12. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. This is known as 'the duty to confirm or deny'.
13. However, there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the Act allows a public authority to respond by refusing to confirm or deny whether it holds the requested information. This is called a 'neither confirm nor deny' (NCND) response.

14. The DWP relies on the provisions of section 24(2) and/or 31(3) to neither confirm nor deny that it holds the requested information.

Section 24 – national security.

15. By virtue of section 24(2) the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security. The section 24 exemption is qualified and, if engaged, is therefore subject to the public interest test.
16. The totality of the DWP's submissions² to the Commissioner, to justify its reliance on section 24(2), is replicated at paragraphs 17 to 19 below.
17. "Providing details of the 'building blocks' of our IT systems may enable someone with criminal intent to attempt to decipher how our IT systems are built and subsequently how they work in terms of the data models. This in turn could aid the design of attack scenarios, or methods of attempting to access systems and data sets remotely, for example using key words linked to the "type of data" held on the particular systems concerned. If a perpetrator was then successful in hacking our IT systems, they may be able to influence the assessment and payment of benefits or the collection of revenue by wider government.
18. This could in turn ultimately affect the smooth implementation of DWP policies and operations, potentially creating financial instability and/or social disruption. This is why we very carefully protect the nature and specific contents of the relevant datasets, especially where such details might otherwise have wide visibility, while providing reassurance regarding privacy tests and the protection of personal data.
19. A certificate from The Minister was not sought for this exemption".

Section 31 – law enforcement.

20. Section 31(3) of the FOIA excludes a public authority from complying with the duty to confirm or deny in relation to information if to do so would, or would be likely to, prejudice any of the functions in sections 31(1). The section 31 exemption is qualified and, if engaged, is therefore subject to the public interest test.

² DWP letter to the Commissioner dated 12 February 2019

21. The totality of the DWP's submissions to the Commissioner³, to justify its reliance on 31(3), is replicated at paragraphs 22 to 23 below.
22. "Providing the information required may enable a perpetrator to decipher how our IT systems are built and how they work. This in turn may enable someone to falsify claims and divert payments. Our IT systems are designed specifically to enable the assessment and payment of benefits and work alongside the IT systems of wider government.
23. The same protective principles apply as are explained in relation to use of Section 24, because we know that the Departments and its technology systems and databases are targeted by particular threat sources on a repeated basis".
24. The Commissioner has not been persuaded by the DWP that it correctly relied on sections 24(2) or 31(3) to neither confirm nor deny that it holds requested information. The DWP has not demonstrated how the mere fact, as to whether it holds requested information would jeopardise national security (section 24(2)) and/or prevention of crime (section 31(3)). Further, the Commissioner could not herself, envisage how the DWP confirming or denying it held the requested information could lead to the prejudices which sections 24(2) or 31(3) seek to prevent.

³ ibid

Right of appeal

25. 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: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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
Principal Adviser
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Wycliffe House
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