

## **Freedom of Information Act 2000 (the Act)**

### **Decision notice**

**Date:** 17 June 2020

**Public Authority:** The Department for Work and Pensions

**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of a data sharing agreement between the Department for Work and Pensions (DWP) and Greater Manchester Police (GMP).
  2. The Commissioner's decision is that DWP does not hold information falling within the scope of the request.
  3. The Commissioner does not require DWP to take any steps.
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## Request and response

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4. On 27 July 2019, the complainant wrote to DWP and requested information in the following terms:

*"BACKGROUND:*

*<https://www.disabilitynewsservice.com/police-force-admits-agreement-to-share-information-about-protesters-with-dwp/>*

*Greater Manchester Police (GMP) has admitted that it has a written agreement to share information about disabled people and other activists who take part in protests with the Department for Work and Pensions (DWP).*

*REQUEST:*

- 1. Provide the written agreement with GMP to share information about disabled people and other activists who take part in protests.*
  - 2. How many people has GMP provided information about under this agreement?*
  - 3. State the protests or other events where information was gathered in [sic] sent to you in the last 12 months. By this, I mean the place the event] happened, and the date(s)."*
5. On 20 August 2019, DWP responded and confirmed that it did not hold the requested information. DWP provided the following explanation and confirmed that it was providing this outside of its obligations under the Act:

*"There is no sharing agreement between the Department for Work and Pensions and Greater Manchester Police, or with any specific police force. The sharing of any information between DWP and the police is agreed at a national level, with DWP's National Disclosure Unit handling all requests to disclose information to police forces and other law enforcement agencies.*

*There is no mandatory requirement for any police force within the United Kingdom to make referrals of suspected benefit fraud to DWP. Where information is received, DWP will check to see if there are grounds for further investigation, as with any potential benefit fraud allegation.*

*The greatest care is taken to corroborate information and where an alleged fraud is unsubstantiated an investigation will be closed at the earliest opportunity with no further action."*

6. The complainant requested an internal review on 20 August 2019 simply stating: "You don't hold ANY of the info? Check again pls."
7. On 11 September 2019, DWP provided the outcome of an internal review into the handling of another person's request. DWP did not provide a further response in relation to the complainant's specific internal review request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 11 September 2019 to "apply for a DN under S50 FOIA". He did not provide any reasons for his complaint.
9. The Commissioner confirmed to the complainant that she intended to investigate whether DWP is correct when it states that it does not hold the requested information. She also confirmed that she would raise concerns regarding the provision of another requester's internal review.
10. The complainant did not dispute the proposed approach and therefore the Commissioner considers the scope of the case to be whether, on the balance of probabilities, DWP holds information within the scope of the request.
11. The Commissioner will refer to the issue of the internal review in the 'Other Matters' section of this notice.

### **Reasons for decision**

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#### **Section 1(1) – General right of access to information**

12. Section 1(1) of the Act 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 information relevant to the request, and if so, to have that information communicated to them. This is subject to any procedural section or exemptions that may apply. A public authority is not obliged under the Act to create new information in order to answer a request.
13. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the

Commissioner, following the lead of a number of First-Tier Tribunal (Information Rights) decisions applies the civil standard of proof – ie on the balance of probabilities.

14. In circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, DWP holds recorded information that falls within the scope of the request.

### **DWP's position**

15. The Commissioner wrote to DWP to request its submissions in relation to this complaint. In this correspondence, she set out that she considers that DWP has interpreted the request too narrowly. The Commissioner explained that it is likely that a national level agreement would fall within the scope of the request as both DWP and GMP would be subject to this agreement, even if they are not individual signatories to the agreement.
16. DWP confirmed to the Commissioner that it had reconsidered DWP's position in light of the Commissioner's comments, however, it maintained that there is no specific agreement with GMP or any other police force.
17. DWP explained that police forces and DWP may rely on their common law or statutory powers to disclose personal information to one another, where it is in the public interest to do so; primarily for the purpose of preventing and detecting crime.
18. DWP directed the Commissioner to the Data Protection Act 2018 which sets out how personal data is processed, including how data is processed for law enforcement purposes<sup>1</sup>.
19. In relation to the comments from GMP referenced in the request, DWP considers that this refers to the process by which DWP may disclose personal data to police forces in England and Wales in situations where the individual is suspected of having committed a criminal offence, rather than for police forces to disclose personal data to DWP.
20. DWP confirmed that this process is aided by the use of a Memorandum of Understanding (MoU) which has been agreed by DWP and the National Police Chiefs Council. DWP confirmed that the MoU simply sets out the way in which personal data will be disclosed and the MoU is not

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2018/12/part/3/enacted>

required for the data sharing to be lawful. DWP provided the MoU to the Commissioner for her information but confirmed that it considers that the MoU does not fall within the scope of the request.

### **The Commissioner's position**

21. In making her determination, the Commissioner has considered DWP's submissions and the specific wording of the request.
22. The Commissioner considers that before she can determine whether information falling within the scope of the request is held by DWP, she must first determine the objective interpretation of the request and therefore what information has actually been requested.
23. As set out above, the Commissioner considers that DWP originally interpreted the request too narrowly by considering whether an agreement is held between DWP and GMP only. Whilst the request may specify DWP and GMP, GMP does not necessarily need to be an individual signatory in order to be a party to an agreement regarding the sharing of information.
24. For example, a multilateral national data sharing agreement, which sets out how information obtained by the police can be shared with DWP, would fall within the scope of the request.
25. The Commissioner has reviewed the article provided by the complainant in his request and the specific wording of the request and she is satisfied that the scope of request 1 is for an agreement regarding the sharing of information by GMP to DWP.
26. As the MoU provided to the Commissioner by DWP is regarding how requests for information by police forces to DWP should be handled, the Commissioner does not consider the MoU to fall within the scope of the request.
27. With regards to whether information is held by DWP in relation to request 1, the Commissioner considers that it is highly unlikely that DWP would not be immediately aware of whether it holds an agreement for police forces to provide it with information about claimants. The Commissioner considers that this information is sufficiently important that it should not require in depth searches to locate, should it be held. She would expect DWP's Information Rights Team to have knowledge of any such agreement.
28. The Commissioner has no reason to doubt the veracity of DWP's statement that it does not hold an agreement regarding the sharing of data obtained by the police. The complainant has not provided the

Commissioner with any arguments regarding why he believes that DWP does hold such an agreement.

29. The Commissioner has reviewed the article provided as background by the complainant when making his request and she notes that it states that DWP has "*repeatedly*" denied that it holds such an agreement and whilst it states that GMP has confirmed that a data sharing agreement is in place, the only details provided are that GMP confirmed that it had located a "*multi-agency agreement to which DWP are one of many partners*" and that this agreement "*relates to controls/rules partners must adhere to when handling information*".
30. As set out above, DWP has explained that it believes that GMP is referring to the MoU provided to the Commissioner and having reviewed this, the Commissioner has no reason to doubt this explanation.
31. The Commissioner is also cognisant that a formal agreement is not required to share information lawfully. As set out by DWP, should the police consider that the public interest lies in sharing personal data with DWP, this can be done in accordance with the Data Protection Act 2018 as long as the police is able to identify a lawful basis on which to do so.
32. The Commissioner is therefore satisfied that on the balance of probabilities, DWP does not hold an agreement as specified by request 1.
33. With regards to requests 2 and 3, the Commissioner notes that the information sought is defined by the agreement specified in request 1. As the specified agreement is not held by DWP, the Commissioner can come to no other conclusion than DWP does not, on the balance of probabilities, hold information relating to the sharing of information under that supposed agreement.
34. The Commissioner therefore considers that on the balance of probabilities, DWP does not hold information falling within the scope of requests 1-3.

## **Other matters**

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35. As set out in the "*Request and response*" section of this notice, DWP provided the complainant with an internal review relating to another person's request. The Commissioner asked DWP to explain how this occurred and confirm what steps DWP will take to ensure that this does not occur again.
36. DWP provided the following response:

*"Unfortunately, this was a result of an administrative error where the response from another requester was issued to [the complainant's] WDTK account in error. Staff have been reminded of the correct procedures to follow and checks that should be made to prevent this situation from occurring."*

37. The Commissioner notes that, despite DWP issuing the correct internal review to the complainant on 8 April 2020, the incorrect internal review can still be found on the WhatDoTheyKnow.com correspondence chain for this request.
38. The Commissioner is concerned that in addition to DWP providing the incorrect internal review, it provided contradictory statements regarding the provision of an internal review. When notified by the Commissioner that this complaint had been accepted, DWP stated that it had not received a request for internal review. However, on 8 April 2020, DWP provided the complainant with an internal review dated 5 September 2019.
39. The Commissioner expects DWP to consider whether this constitutes a personal data breach, as it includes the other requester's name and discloses that this individual has made a request for specific information. The Commissioner has a self-assessment toolkit which may assist with this determination<sup>2</sup>.
40. If DWP concludes that it does constitute a personal data breach, DWP should take the appropriate steps in accordance with the General Data Protection Regulation<sup>3</sup>.
41. These concerns will be logged and used by the Commissioner when considering whether formal regulatory action is required.
42. We will use intelligence from individual cases to inform our Insight and Compliance function. This will align with the goal in our "Openness by Design" strategy to improve standards of accountability, openness and transparency in a digital age. We aim to increase the impact of enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy.

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<sup>2</sup> <https://ico.org.uk/for-organisations/report-a-breach/pdb-assessment/y>

<sup>3</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/personal-data-breaches/>

43. The right to complain to the Commissioner is provided via section 50(1) of the Act and states:

*"Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, **in any specified respect**, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I."*  
[emphasis added]

44. The Commissioner asks the complainant to specify why he is applying for a decision notice in future. This will aid her officers in focussing their investigation.



## Right of appeal

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45. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. 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.
47. 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

**Victoria Parkinson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**