

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2023

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information related to the Department for Work and Pensions' (DWP) risk model for advances fraud.
2. DWP originally relied on section 31(1)(a) to withhold the requested information. However, during the course of the investigation, DWP changed its position and introduced section 12(1) as to comply with the request would exceed the appropriate limit.
3. The Commissioner's decision is that DWP is entitled to rely on section 12(1) to refuse to comply with the request.
4. The Commissioner does not require further steps.

Request and response

5. On 2 February 2023, the complainant wrote to DWP and requested information in the following terms:

"... I am submitting a FOIA request in relation to the DWP's strategic risk model for advances fraud. This strategic risk model was referenced in a powerpoint presentation from DWP Director for Counter Fraud, Compliance, and Debt Bozena Hillyer at the Combatting Public Sector Fraud Conference.

This request is further stipulated below.

1.a Documents containing a full set of (input) features used in the model.

1.b Documents containing descriptions of how the features in 1.a are defined and/or derived.

2. Documents containing the attributes of the raw data used by the model as well as any transformations of the raw data for use in the model.

3.a Technical documentation related to any algorithm or code used to build the predictive model.

3.b Documents containing the following information (1) the name of the algorithm or model and (2) the programming language it was programmed in.

4.a Documents containing outputs and/or pertaining to outputs from the model / algorithm.

4.b Handbooks or other manuals for how end-users should interpret and act upon algorithmic outputs.

5. Documents pertaining to tests and/or evaluations of the model, algorithm, and/or its behaviour.

6.a Data and/or privacy impact assessments pertaining to the model

6.b Handbooks or other manuals for the model and/or algorithm.

6.c Human rights impact assessments, including any assessments related to bias and discrimination, pertaining to the model.

7.a Does the algorithm, model, or software rely on matching data or combining from different sources?

- 7.b Does the algorithm, model, or software rely on any form of profiling?
8. Data and statistics on the number of people and/or benefits payments the model has been applied to.”
6. DWP provided its response on 1 March 2022. It confirmed that it held the requested information but was withholding this under section 31(1)(a), prevention or detection of crime.
7. DWP upheld this position at internal review.

Scope of the case

8. The complainant contacted the Commissioner on 9 May 2022 to complain about the way their request for information had been handled. In particular, they disputed that DWP could withhold the requested information on the basis of section 31(1)(a).
9. During the course of the investigation, it became apparent that DWP had incorrectly interpreted the request and further information fell within the scope of the request.
10. On 18 April 2023, DWP wrote to the complainant to confirm that it was now relying on section 12 to refuse to comply with the request as collating all of the information falling within the scope of the request would exceed the appropriate limit.
11. The Commissioner acknowledges that public authorities may at any stage seek to rely on an exemption or exclusion not previously claimed. This was confirmed by the Upper Tribunal in the case of *McInerney v IC and Department for Education* [2015] UKUT 0047 (AAC).
12. The Commissioner therefore considers that the scope of his investigation is to determine whether DWP is entitled to rely on section 12 to refuse to comply with the request.

Reasons for decision

Section 12: Cost of compliance

13. Section 1(1) of FOIA states:

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds the information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him"

14. Section 12 states:

"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit"

- 15. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments.
- 16. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively imposes a time limit of 24 hours, or 1440 minutes, for the public authority.
- 17. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
- 18. DWP confirmed to the Commissioner that in order to locate all of the information falling within request 3b, it would need to search the emails and documents held by multiple individuals across multiple teams.
- 19. DWP confirmed that a search of one email account led to a return of over a thousand emails that would need to be reviewed to determine whether they fall within the scope of the request and collated where this was the case.

20. The Commissioner accepts that the estimate provided by DWP is a reasonable one and that complying with the request would exceed the appropriate limit.
21. Section 12(4) provides that a public authority may aggregate requests made by the same individual, within 60 working days, which is to any extent for the same or similar information. The Commissioner is therefore satisfied that DWP is entitled to aggregate all eight requests.
22. For the above reasons, the Commissioner is satisfied that DWP was entitled to rely on section 12(1) to refuse to comply with the request.
23. Where a public authority is relying on section 12(1) to refuse to comply with a request, it has a duty under section 16 to provide advice and assistance to the requester to aid them in refining their request.
24. Having reviewed DWP's revised response, the Commissioner is satisfied that DWP has complied with this obligation.

Other matters

25. The Commissioner acknowledges the unfortunate circumstances that have led to a late reliance on section 12(1). However, his decision must be based on the specific wording of a request and he cannot require a public authority to refine a request during the course of an investigation.
26. The Commissioner is disappointed that DWP failed to consider this request on the basis of its clear objective interpretation. The Commissioner has recently issued a practice recommendation¹ regarding DWP's handling of requests and he expects to see an improvement in DWP's request handling.

¹ <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4024647/department-for-work-and-pensions-practice-recommendation.pdf>

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

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