

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2023

Public Authority: Department for Work & Pensions
Address: Caxton House
7th Floor
6–12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested information from the Department for Work and Pensions (DWP) about the DWP's personal information charter.
2. The Commissioner's decision is that, on the balance of probabilities, the DWP has released all the information that it holds.
3. The Commissioner does not require the DWP to take any steps.

Request and response

4. On 10 August 2022, the complainant wrote to the DWP and referring to the contents of its personal information charter, requested information in the following terms:

"[name redacted], please ensure you appoint someone with the authority and qualifications to identify and supply the information required under the charter points in bold copied below.

`If we process your personal information, we will:

- make sure you know why we need it - **Why do you need a copy of an audio recording that plays no part in the assessment process?**
- only process the personal information we need - **In what way is the audio recording "Processed"**
- make sure nobody has access to it who should not - Since my medical information is personal only to me and the audio recording of my consultation is mine alone with only my permission to share being allowed, your contract staff and DWP employees have no right to access any such recording and so **why are you allowing and writing policy which requires the disclosure of this information to staff who should not have access to it by law?**
- keep it secure - **Where is it kept and for what purpose and for how long.**
- tell you through this charter or in other ways if we share it with other organisations
- ask you to agree to us sharing your information where you have a choice - The choice to share this information resides with me as the Data Subject alone, as specified in UK law and the ECHR legislation, and yet the DWP has not asked for my agreement but demanded my agreement in breach of UK Law and ECHR legislation committing criminal harassment against me under UK law whilst denying I have any choice in the matter, so please do explain just how your charter allows this?
- only keep it for as long as we need to - Since the audio plays no part in the assessment process there is no "NEED" for the DWP to have any copy let alone keep a copy for any period of time so again please clarify.
- not make it available for commercial use (such as marketing) without your permission

`If we ask you for personal information, you need to:

- give us accurate information
- tell us as soon as possible if there are any changes, such as a new address, when you start work or earn more

`This helps us to:

- keep your information accurate and up to date

- pay you the right amount of benefit
- provide the best possible service

'If you do not tell us about changes that affect any benefit that DWP is paying you, you may be prosecuted or other sanctions applied.

'Data protection principles

We will always comply with data protection law. This says that the personal information we hold about you must be:

1. used lawfully, fairly and in a transparent way - The demand for an audio recording in breach of the DPA ECHR legislation and your own charter clearly breaches this principle entirely.

2. collected only for valid purposes that we have clearly explained to you and not used in any way that is incompatible with those purposes - There is no valid purpose for obtaining or keeping an audio recording of a claimants WCA interview as it is not used within the lawful process specified and is demanded in breach of multiple laws which specify that your demand is criminal constituting unlawful harassment under the protection from Harassment act.

3. relevant to the purposes we have told you about and limited only to those purposes - Not relevant and apparently unlimited as there is no specified use for the unlawful recording and no limitation.

4. accurate and kept up to date

5. kept only as long as necessary for the purposes we have told you about - You refuse to specify a purpose and fail to provide any reason for the requirement let alone a retention period.

6. Kept securely. - Please do tell where these audio recordings are kept, who is responsible for them and how long they are retained for and where in your published data management information this information is located?

'What DWP uses personal information for

'DWP collects information to deal with:

- social security (this includes benefits, grants, loans, pensions and Housing Benefit)
- child maintenance

- the investigation or prosecution of offences relating to tax credits and benefits
- prevention and detection of fraud, and protecting public funds
- employment and training
- promoting financial planning for retirement
- policy relating to occupational and personal pension schemes

research and analysis into matters listed above "Please do specify which of the above bullet points applies to the unlawful unnecessary and illegal audio recordings of DWP WCA interviews held by the DWP."

5. The DWP responded on 2 November 2022. It explained that when it receives a question, rather than a request for recorded information, it will provide the recorded information that best answers the question.
6. It attached guidance used by the Centre for Health and Disability Assessment which addressed some of the complainant's questions and provided information about the audio recording process.
7. Following an internal review the the DWP wrote to the complainant on 28 November 2022. It conceded that it should have given a more detailed explanation for the delay in responding to the information request and that attaching the the Centre for Health and Disability Assessment Audio Recording guide was not helpful.
8. The DWP explained that assessments can only be recorded where formal requests from the claimant are made, to make a copy of the recording for the claimant and the DWP. Also that DWP will retain its copy in accordance with Data Protection legislation.

Reasons for decision

9. Section 1(1) of the FOIA states that:

"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 information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him."
10. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal

(Information Rights) decisions in applying the civil standard of the balance of probabilities.

11. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any – or additional- information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

12. The complainant contacted the Commissioner on 28 November 2022 to complain about the way their request for information had been handled. The grounds of complaint are as follows:

"Their response has ignored my FOIA request questions and refused to provide a single response addressing any of the actual questions asked whilst again clearly stating "DWP will retain their copy in accordance with the General Data Protection Regulation Legislation"

"The DPA and GDPR makes it unlawful for any audio recording to be retained and the information already provided clearly specifies that the audio recording is not required or used in any way within the process and furthermore it is not kept by the DWP but retained by the contractor for no reason as yet disclosed.

"Even in this FOIA response they have clearly falsified information which is demonstrably false whilst ignoring the legal requirement to respond."

The DWP's position

13. In its submission to the Commissioner, the DWP took the view that the questions contained in the complainant's information request were based on a hypothetical scenario, which they explained could not/does not occur and so there is no information contained within the scope of the request.
14. The DWP went on to explain that audio recordings of assessments only occur when the claimant has specifically requested that their assessment is audio recorded. So again, the DWP does not hold any information within the scope of the request.
15. The DWP provided the complainant with links to the Centre for Health and Disability Assessments website, which contains information about what happens during an assessment, and a link to the GOV.UK website which contains information about how claimants can request that their working capability assessments are recorded.

16. The DWP said that no additional searches were required in the course of the Commissioner's investigation as adequate searches confirmed that the scenario described in the complainant's information request does not occur and so information has never been held.

The Commissioner's view

17. The Commissioner has considered the DWP's position, in conjunction with the request.
18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. he will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.
19. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
20. The Commissioner notes that the majority of the "request" does not meet the requirements of section 8 of FOIA and is therefore not valid. The FOIA does not give a right to have questions answered – it provides a right of access to information that a public authority holds in recorded form.
21. The Commissioner has therefore only looked at those parts of the request that seek recorded information – these are highlighted in bold.
22. The DWP maintains that any audio or video recordings are processed in accordance with data protection legislation. It is not the Commissioner's role, in the context of a complaint arising under FOIA, to determine whether the DWP has or has not complied with data protection legislation – only whether it has provided the information that it holds in recorded form.
23. The information the DWP would hold in recorded form about its processing of such information is that which would be contained in its personal information charter – which the complainant already has.
24. Whether the complainant believes that the recorded information the DWP holds is, or is not, sufficient to justify the processing of their personal data is a matter for them. The complainant would be entitled to bring a data protection complaint (or take the matter to a court) if they

believe that their personal data has been processed unlawfully. FOIA is not a means to resolve such a dispute.

25. On this basis, the Commissioner has concluded that, on the balance of probabilities, no further information is held.

Right of appeal

26. 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

27. 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.

28. 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

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