

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2024

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 regarding a data sharing Memorandum of Understanding between the Department for Work and Pensions (DWP) and local authorities.
2. DWP refused to disclose the requested information, relying on sections 24(1), National Security, and section 31(1)(a), the prevention or detection of crime.
3. The Commissioner's decision is that DWP is entitled to rely on section 31(1)(a) to withhold the disputed information.
4. The Commissioner does not require any steps.

Request and response

5. On 31 July 2023, the complainant wrote to DWP and requested information in the following terms:

"The Government has threatened to suspend council access to DWP data if local authorities do not sign an annually-reviewed memorandum of understanding governing how they will use data from the DWP. Officials have told local authorities to sign the revised document by 24 July 2023 or face consequences. The memorandum of understanding between DWP and local authorities defines the security and policy parameters that must be adhered to when sharing data between these organisations.

I would like to know the following:

1. How many local authorities signed the memorandum of understanding in full without any caveats by the 24 July 2023 deadline? Please provide a list of these local authorities.
2. How many local authorities signed the memorandum of understanding but with caveats/exceptions by the 24 July 2023 deadline? Please provide a list of these local authorities.
3. How many local authorities refused to sign the memorandum of understanding by the 24 July 2023 deadline? Please provide a list of these local authorities.
4. How many local authorities did not reply by the 24 July 2023 deadline? Please provide a list of these local authorities.

I would be interested in any information held by your organisation regarding my request."

6. DWP provided its response on 8 August 2023 and confirmed that it was relying on sections 24 and 31 to withhold the information held. DWP did not specify what subsections it was relying on.
7. DWP upheld its position at internal review, the outcome of which was provided on 22 August 2023.

Scope of the case

8. The complainant contacted the Commissioner on 23 August 2023 to complain about the way their request for information had been handled, specifically DWP's refusal to disclose the requested figures.

9. The Commissioner confirmed to the complainant that, as they had not raised any concerns regarding the list of local authorities or the further information regarding the request, his investigation would focus only on the requested figures. The complainant did not dispute this approach.
10. During the course of the investigation, DWP confirmed that it was relying on subsections 31(1)(a) and 24(1) to withhold the figures.
11. The Commissioner therefore considers that the scope of this investigation is to determine whether DWP is entitled to rely on section 31(1)(a) or section 24(1) to withhold the requested figures.

Reasons for decision

Section 31(1)(a): Prevention or detection of crime

12. Section 31(1)(a) 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”.

13. In order for a prejudice based exemption such as section 31(1)(a) to be engaged, the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld 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
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure ‘would be likely’ to result in prejudice or disclosure ‘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. The anticipated prejudice must be more likely than not.

DWP's position

14. In its refusal notice to the complainant, DWP explained that the Memorandum of Understanding between DWP and local authorities defines the security and policy parameters which must be adhered to when sharing data between these organisations. DWP explained that the Memorandum of Understanding is reviewed annually and as part of this review, DWP asked Local Authorities to fully measure their compliance against the standards outlined within it and report back to DWP with their findings.
15. DWP considered that disclosure of the information provides the opportunity to attempt to identify and/or exploit perceived vulnerabilities within those security parameters to gain unlawful access to data derived from DWP.
16. DWP explained in its submissions to the Commissioner that due to the rich amount of sensitive personal data held by both central and local government, there is evidence to suggest that cyber security attackers target both central and local government for vulnerabilities within their IT systems. DWP explained that cyber criminals target organisations with these perceived vulnerabilities to carry out illegal activity such as ransomware attacks and this has been demonstrated by the increasing number of cyberattacks across government in recent years.
17. DWP confirmed that the Memorandum of Understanding between DWP and local authorities defines all the security parameters which authorities must adhere to, to ensure the ongoing sharing of data between DWP and those authorities. DWP considered that to publish data which states how many of the local authorities are compliant with that Memorandum of Understanding would prejudice that information allowing attackers to attempt to identify and target where those vulnerabilities lie for the purposes of criminal activity. DWP considered that the nature of the potential prejudice is real as the consequences of disclosure would be significant.
18. DWP confirmed that it was relying on the lower prejudice threshold of 'would be likely to'.
19. DWP considered that there is a logical connection between IT security vulnerabilities and subsequent cyberattacks. DWP confirmed that it was of the view that cyber attackers wishing to exploit the disclosure of this

information for the purposes of crime would be likely to achieve this due to the volume of local authorities that would be impacted.

The Commissioner's position

20. With regard to the first criterion, the Commissioner is satisfied that the harm envisaged relates to the interest that section 31(1)(a) seeks to protect, specifically, the prevention of crime.
21. The Commissioner next considered whether the prejudice being claimed is "real, actual or of substance", not trivial and whether there is a causal link between disclosure and the prejudice claimed.
22. The Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant and he accepts that it is plausible to argue that there is a causal link between disclosure of the disputed information and the prejudice occurring. The Commissioner acknowledges the complainant's view that disclosure of the figures only would not provide malicious actors with specific targets. However, the Commissioner accepts that the disputed information could provide them with insight into the compliance or non-compliance with the Memorandum of Understanding's standards and could influence the behaviour of those attempting illegal access. The disputed information could lead to increased attacks if the number is low or increased efforts to increase the sophistication of the attacks if the number is high.
23. The Commissioner therefore considers that there is a clear causal link between the disclosure of the disputed information and the envisaged prejudice to DWP's ability to prevent cyberattacks.
24. The Commissioner accepts that the threshold of 'would be likely' has been met.
25. The Commissioner finds that the prejudice test has been satisfied in the circumstances of this case and consequently the exemption at section 31(1)(a) is engaged.
26. Section 31(1)(a) is a qualified exemption. By virtue of section 2(2)(b), DWP can only rely on section 31(1)(a) as a basis for withholding the information in question if the public interest in doing so outweighs the public interest in disclosure.

The balance of the public interest

27. The Commissioner acknowledges the public interest in transparency and accountability regarding the use of data originating from DWP. He considers that there is clearly insight and understanding to be gained by

the public regarding the extent to which local authorities are complying with DWP's security requirements.

28. However, the Commissioner considers that, in the circumstances of this case, there is a stronger public interest in ensuring that DWP, and local authorities, are able to prevent cyberattacks on their systems.
29. Whilst the Commissioner accepts that there is a public interest in the disclosure of information that would increase the transparency of how DWP secures and shares its data, he considers that the public interest in maintaining the integrity of these measures by withholding the information outweighs this.
30. The Commissioner therefore finds that DWP is entitled to rely on section 31(1)(a) to withhold the disputed information.

Other matters

31. The Commissioner reminds DWP of the requirement under section 10 of the section 45 Code of Practice which states that if some or all of the information cannot be disclosed, the public authority must provide details setting out why this is the case, including the sections (with subsections) the public authority is relying on if relevant.
32. The Commissioner has issued a practice recommendation regarding DWP's request handling which included concerns regarding DWP's failure to cite the relevant subsections¹.
33. The Commissioner expects DWP to ensure that all relevant sections and subsections are cited in future refusal notices.

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

Right of appeal

34. 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

35. 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.
36. 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
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