

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2020

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 of the datasets used by the DWP on its standard IT systems. The DWP relies on sections 31(1)(a) and 24, to withhold the requested information.
2. The Commissioner's decision is that DWP correctly relied on section 31(1)(a) to withhold the requested information.
3. The Commissioner does not require the public authority to take steps to ensure compliance with the legislation.

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 but was equivocal as to whether it held requested information. Ultimately, therefore, the Commissioner issued a Decision Notice¹ directing that the public authority complied with its section 1 obligation, to confirm or deny it held the requested information
6. On the 24 May 2019, the public authority informed the complainant it held the requested information but relied on sections 31(a) and 24 to withhold it from him. Given the passage of time, since the request for the information, the Commissioner commenced her investigation notwithstanding the absence of the DWP reviewing its decision.

Scope of the case

7. The complainant had initially contacted the Commissioner on 15 July 2018 to complain about the way his request for information had been handled. He then pursued his complaint, once the public authority confirmed it held the requested information but relied on sections 31(a) and 24 to withhold it from him.

¹ FS50767053

8. The Commissioner considers she must determine whether the public authority correctly relied on the exemptions to withhold the requested information

Reasons for decision

Section 31(1)(a) – the Prevention or Detection of Crime

9. By virtue of section 31(1)(a) information is exempt information if its disclosure would, or would be likely to, prejudice the prevention or detection of crime. This exemption is subject to consideration of the public interest.

Public Authority's Submission

10. Providing details of the datasets, their structures or components held by DWP, may aid a perpetrator attempting to hack into its systems. The details would help them to understand which areas, systems, or data to target to illegally obtain the information that they require, or where and how to target access in an attempt to make false claims for benefit or divert payments, or to seek to corrupt the department's internal systems or public services.
11. Its IT systems are designed specifically to enable the accurate assessment and payment of benefits to those members of society who are entitled to receive them. Unauthorised access to its systems from a perpetrator may enable them to make claims to benefits to which they are not entitled, make unauthorised adjustments to legitimate claims to benefit from claimants or divert benefit payments as part of a criminal activity. A perpetrator may also be able to illegally harvest information from its IT systems for use in criminal activity as has recently happened to the Bulgarian Government IT system. It is alleged that the data illegally harvested is now on the Dark Web and is being used for criminal activity.
12. Its IT systems are designed specifically for the assessment and payment of benefits and they do this by processing information that has been provided to them by its claimants. This may include, but is not limited to: Name, National Insurance Number, Address, and Dependant Details. Its claimants trust it to store this information securely.
13. Its IT systems work in synergy with each other and with the IT systems of the wider government. If a potential malicious actor was to have sight of the component elements and/or the structures of the datasets held on its IT systems, this could enable them to build a picture of those datasets and of which part of the systems is responsible for what. This

would enable them to make false claims to benefit, amend claims to benefit, divert payments or attempt to interfere with the collection of revenue for wider government.

14. Such an actor may also attempt to harvest the data from its IT systems for use in other criminal activities and – whilst it has strong protections in place – providing the type of information requested would provide useful material to aid (as described in paragraph 10 above) any such attempts.
15. Should DWP's IT systems be compromised, this may lead to the cessation of benefit payments to its claimants or enforce a temporary moratorium on the government's ability to collect the revenue that it needs to provide public services. This being caused because of its systems being maliciously corrupted or impaired by those utilising the withheld information if it were released.
16. Either of these scenarios could lead to major impacts on society, especially to vulnerable communities. It would also lead to significant loss of trust in Government (not just DWP) services and the Government's protection of citizen data.
17. The complainant helpfully provided the Commissioner² with his submissions as to whether the exemption was engaged. He argues that the public authority's own security measures would most likely thwart a malicious actor's attempts to access its systems. However, he does concede that "the DWP claim that knowing the structure of its databases will help people write queries that could perpetrate harm", is true.

Commissioner's Analysis

18. For a prejudice-based exemption to be engaged the Commissioner considers that three criteria must be met:
 - First, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information were disclosed must relate to the applicable interests within the relevant exemption.
 - Second, 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

² Letter to the Commissioner, 18/7/18

exemption is designed to protect. Furthermore, the resultant prejudice, which is alleged must be real, actual or of substance; and

- Third, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
19. 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. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.
 20. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the occurrences mentioned in section 31(1)(a) i.e. the prevention or detection of crime. The Commissioner accepts that the potential prejudice (criminal interference to its IT systems) described by the public authority relates to the occurrences which the exemption contained at section 31(1)(a) is designed to protect.
 21. The Commissioner next considered whether DWP has demonstrated a causal relationship between the would-be disclosure of the information at issue and the prejudice that section 31(1)(a) relates to, the prejudice to the prevention or detection of crime.
 22. The Commissioner accepts that there is a causal relationship between the would-be disclosure of the requested information and the stated risk to the public authority of the criminal action it fears. That is, she is persuaded that releasing the information could lead to the prejudicing of the prevention or detection of crime. Releasing the information, could be wrongly utilised as described above (paragraph 13) and any resultant prejudice would not be insignificant but of substance. In making this judgment the Commissioner takes cognisance that disclosing the withheld information is a disclosure to the world. These recipients would include those malicious actors, that would be likely to utilise the information as described by the DWP in paragraph 13.

Is the exemption engaged? Would disclosure be likely to prejudice the prevention or detection of crime/apprehension or prosecution of offenders?

23. The Commissioner is also persuaded that the occurrence of the said prejudice would be likely. Any dissemination of the withheld information is deemed to be a dissemination to the world. This would include people

who would be likely to utilise the requested information to facilitate their own criminal activity against the public authority's computer system and IT infrastructure. The Commissioner therefore finds the exemption engaged.

24. The complainants above arguments do have some traction. However ultimately, as he himself concedes, knowing the structure of its databases will help some people write queries that could perpetrate harm.
25. Section 31 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 31(1)(a) outweighs the public interest in disclosing the information.
26. The public authority explained that whilst there may be a genuine interest from the public for knowledge that it has IT systems in place for the assessment and payment of benefits, it is not in the public interest for the information about the 'building blocks' of its IT systems to be in the public domain as this may enable a perpetrator to attack and attempt to penetrate its IT systems.
27. It further said that providing details of the datasets that it holds about claimants on its standard IT systems may enable a potential perpetrator to try and affect the way that it works, again this not in the public interest.
28. The complainant advanced the following arguments why the public interest favoured releasing the information
 - Having access to raw data rather than just 'official' DWP information will also help the public to understand what is really happening. The DWP is regularly criticised by organisations such as the UK Statistics Authority for using misleading statistics. By being able to gain access to the raw data, people and organisations will be able to carry out their own analysis and that can only help hold the DWP to account.
 - Organisations such as the House of Commons public accounts select committee ("PAC") and House of Commons work and pensions select committee ("W&P") often have no greater access to data than the public. Good examples are the universal credit project assessment review reports. Without knowing they existed and being able to ask for them via the FOIA they would never have been made available to the W&P and then to the public.

29. The complainant eloquently, re-states the worth and desirability of openness and transparency when it comes to public authorities, democracy, and good governance.
30. The Commissioner also considers the extent to which DWP itself is transparent about information it uses to make benefit assessments and provides confidence/is accountable for that. Though in this regard, the Commissioner notes that there is an appeal process for benefit claimants who believe that the DWP is in error, when determining their benefit payments.
31. The UK Statistics Authority describes itself as “an independent body at arm’s length from government. We have a statutory objective of promoting and safeguarding the production and publication of official statistics that ‘serve the public good’”³. This in the Commissioner view provides a degree of independent scrutiny of the DWP, as regards its usage of data, which to an extent meets the observations of the complainant summarised in the above paragraph 28. Though the Commissioner acknowledges that the legitimate usage of the data may go beyond the ambit of UK Statistics Authority scrutiny of the data.
32. Notwithstanding the adroit submissions of the complainant, the Commissioner does not see a strong public interest in releasing the withheld information when compared to the need to protect a critical part of the nation’s infrastructure. In reaching this conclusion, the Commissioner took cognisance of that she has found the exemption engaged, that is releasing the information would likely prejudice the prevention or detection of crime. At its extremis, this could cause significant damage to the nation’s infrastructure and hardships to some of the most vulnerable members of the public. On balance and by some margin the Commissioner decision is that the public interest in maintaining the exemption outweighs that in disseminating the information.
33. Having found that the exemption afforded by section 31(1)(a) operates to withhold the requested information, the Commissioner did not consider the applicability of section 24.

³ <https://www.statisticsauthority.gov.uk/about-the-authority/what-we-do/>

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: 0300 1234504

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
Gerrard Tracey
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