

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2019

Public Authority: The Department for Work and Pensions

Address: 4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested the names and email addresses of managers and area managers of Jobcentre Plus and Benefit Delivery Centres.
2. The Department for Work and Pensions (DWP) provided some of the information and relied on section 21 in relation to an element of the request. DWP has withheld the remaining information under section 40(2) of the Act.
3. The Commissioner's decision is that DWP is entitled to rely on section 40(2) to withhold the remaining information. She does however find that DWP breached section 10(1) of the Act as it did not confirm or deny whether it held some of the information requested within the specified timeframe.
4. The Commissioner does not require DWP to take any steps.

Request and response

5. On or before 26 July 2018, the complainant wrote to DWP and requested information in the following terms:

"Please provide a list of the following information:

(1) Full name of managers and areas managers attached to each BDC¹ and Jobcentre Plus in England and Wales

(2) Email addresses and fax numbers for the BDC and Jobcentre Plus managers above.

(3) Please state which department picks up UC² and JSA³ complaints made online, please provide their actual office address (not a PO box) and the full name of the most senior manager responsible."

6. On 22 August 2018, DWP provided its response. It provided a link to information regarding District Managers⁴ and cited section 21 to refuse to provide this information. DWP confirmed that complaints made online regarding Universal Credit or Jobseekers Allowance are passed to the relevant Complaints resolution Team and provided the details for each district's team. DWP confirmed the name of the Director General for Operations as the most senior manager responsible for complaints.

7. DWP withheld the names and contact details of the managers of Jobcentre Plus and Benefit Delivery Centres under section 40(2). DWP went on to state:

"Under the Act, DWP is not obliged to confirm or deny that it holds personal information about third parties, but in any event, even if was held [sic], the Department would not disclose personal information to you about the details of managers attached to each Benefit Centre/Service Centre, Jobcentre and Complaint Resolution Team."

¹ Benefit Delivery Centre

² Universal Credit

³ Jobseeker's Allowance

⁴ <https://www.gov.uk/government/publications/local-partnership-opportunities-with-jobcentre-plus/jobcentre-plus-district-managers-contacts-for-partnership-opportunities>

8. DWP also confirmed that any disclosure made under the Act must comply with the GDPR⁵ 2018 principles.
9. On, or before, 24 August 2018, the complainant wrote to DWP to request an internal review. He disputed that the managers' details should be withheld as he considered them to be senior DWP employees. He also set out that manager names appear on Benefit Decision Notices sent to claimants.
10. The complainant clarified that he was seeking the name and address of the department who receives the online Universal Credit and Job Seekers Allowance complaints prior to forwarding them on to the relevant teams and made a new request for the organisational chart of this department.
11. DWP responded on 3 October 2018 and provided the details of its internal review. DWP upheld its reliance on section 40(2) to withhold the names and email addresses of the Jobcentre Plus and Benefit Delivery Centre managers as releasing this information would breach the data protection principles set out in the GDPR.
12. DWP provided the name and address of the team that received online Universal Credit and Jobseekers Allowance complaints⁶.

Scope of the case

13. The complainant contacted the Commissioner on 3 October 2018 to complain about the handling of his request for information, specifically, DWP's reliance on section 40(2) to withhold the requested information.
14. The Commissioner confirmed to the complainant that as he did not appear to dispute DWP's reliance on section 21 regarding the District Managers or the information provided regarding complaints made online, she would not investigate the handling of these elements of the request. The complainant did not dispute this position.
15. The Commissioner confirmed to DWP that, despite its reference to neither confirming nor denying that information is held⁷, her

⁵ General Data Protection Regulation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1532348683434&uri=CELEX:02016R0679-20160504>

⁶ DWP provided the organisational chart separately during the course of the investigation.

investigation would focus on the application of section 40(2) as she considered it nonsensical to neither confirm nor deny whether it held the names and work email addresses of its own employees.

16. During the course of the investigations, DWP confirmed to the complainant that it did not hold fax numbers for each of the Jobcentre Plus or Benefit Delivery managers or District Managers as fax numbers are for general use and not assigned to specific employees.
17. The Commissioner considers the scope of this investigation is to determine whether DWP is entitled to rely on section 40(2) to withhold the names and email addresses of Jobcentre Plus and Benefit Delivery Centre⁸ managers.

Reasons for decision

Section 40(2): Third party personal data

18. Section 40(2) of the Act provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
19. In this case, the relevant condition is contained in section 40(3A)(a)⁹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the GDPR.
20. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (the DPA). If it is not personal data, then section 40 of the Act cannot apply.

⁷ Section 40(5) of the Act provides that a public authority may neither confirm nor deny whether it holds information if such a confirmation or denial in itself would disclose information that would be exempt under section 40 of the Act.

⁸ DWP confirmed that Benefit Delivery Centres are now called Service Centres.

⁹ As amended by Schedule 19 Paragraph 58(3) of the Data Protection Act 2018

21. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

22. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual"

23. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
24. An identifiable living individual is one who can be identified directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
25. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
26. The withheld information comprises the names of the managers of Jobcentre Plus sites and Benefits Delivery Centres and their email address. DWP has confirmed that its employee email format is employee.name@dwp.gov.uk.
27. In the circumstance of this case, having considered DWP's explanation of the withheld information, the Commissioner is satisfied that the withheld information clearly both relates to and identifies the managers concerned. This information therefore falls within the definition of "personal data" in section 3(2) of the DPA.
28. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the Act. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
29. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

30. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."

31. In the case of a request made under the Act, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
32. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
33. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child¹⁰."

34. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the Act, it is necessary to consider the following three part test:
 - i. **Legitimate Interest Test:** Whether a legitimate interest is being pursued in the request for information;
 - ii. **Necessity Test:** Whether disclosure of the information is necessary to meet the legitimate interest in question.
 - iii. **Balancing Test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
35. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

¹⁰ Article 6(1) goes on to state that -
"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) of the Act (as amended by Schedule 19 paragraph 58(8) of the DPA) provides that:

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted."

Legitimate Interests

36. In considering any legitimate interests in the disclosure of the requested information under the Act, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
37. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
38. DWP acknowledged that there is a public interest in transparency and accountability of public officials, especially when dealing with complaints from claimants whose household income can be reliant on receiving the correct amount of benefits.
39. The Commissioner accepts that there is a legitimate interest in holding public servants accountable for decisions made in the course of their duties.

Is disclosure necessary?

40. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involved consideration of alternative measures which may make disclosure of the requested information necessary. Disclosure under the Act must therefore be the least intrusive means of achieving the legitimate aim in question.
41. DWP provided an explanation of its managers based in Jobcentre Plus Sites and Benefit Delivery Centres.
42. In the network of over 600 Jobcentres, customer facing staff will be either at the Administrative Officer (AO) or Executive Officer (EO) grade. They are line managed by colleagues at the Higher Executive Officer (HEO) grade. The HEO grade has responsibility for the day to day running of the Jobcentre.
43. The HEO(s) will report to a Senior Executive Officer (SEO) who will oversee a group of Jobcentres based on a geographical area. There is no set number of Jobcentres that the SEO will be responsible for but typically it will be between 2 and 6 depending on the size of the Jobcentres and geography. The SEO will then report to a Grade 7. Again, there is no prescribed number of areas the Grade 7 will be responsible for, this will be dependent on the size of the Jobcentres and geography within the individual areas but usually it is between 2 and 4.

44. The Grade 7 is line managed by the District Service Leader (Manager). The name and email address of all District Service leaders are published on the GOV.UK website and a link to this has been provided to the complainant.
45. Within the Benefit Delivery Centre, the customer facing staff, who handle customer calls, will be of AO Grade and managed by staff of EO grade. Overall accountability for day to day operational delivery of Service Centre would be the responsibility of a member of staff at Grade 7.
46. Therefore, the grades in scope of this request are HEO's for the JobCentre managers and Grade 7 managers for the Benefit Delivery Centres.
47. DWP explained that disclosing the names and emails of the managers could potentially leave them open to being targeted, either through social media or in public, because they work for the Department.
48. DWP considers that it has shown transparency by disclosing the emails of the Complaints Resolution Teams and providing the details of the Senior Civil Servant responsible for its Operations directorate.
49. The complainant has confirmed that he considers that the managers of Jobcentre Plus sites and Benefit Delivery Centres are senior members of staff and are involved in making decision regarding claimants' benefits entitlement. The complainant directed the Commissioner to decision notice FS50456138 (2012) which states:

"21. It is reasonable to expect that a public authority would disclose more information relating to senior employees that [sic] more junior ones. However, the terms 'senior' and 'junior' are relative. It is not possible to set an absolute level across the public sector below which personal information will be released; it is always necessary to consider the nature of the information and the responsibilities of the employees in question.

22. HMRC should be mindful of the public perception that a 'manager' is likely to be in a senior role, regardless of the internal grading system of the public authority.

23. having considered the information requests, and the fact that the team managers are likely to be involved in the decision making process of claims or complaints, it is the Commissioner's view that HMRC's arguments that these individuals are 'junior' staff in this context does not carry any significant weight."

50. DWP has confirmed that whilst employees may be named as the Jobcentre Plus or Benefit Delivery Centre manager, they are not solely responsible for the office. This responsibility lies with the District Managers, whose contact details are available online.
51. DWP has also explained that while the managers may be involved in the decision making process regarding individual claims, this is in the context of a set framework which is adhered to nationally. The managers input into the decision making process is to ensure that the framework has been interpreted and applied in line with DWP's policies and objectives. The managers do not have authorisation to amend or deviate from the framework or policies.
52. The Commissioner understands the complainant's position that managers should be held accountable and his reliance on a previously issued decision notice. However, each case must be considered on its own merits. Whilst previous decision notices can inform her decision making, the Commissioner bases her decision on the specific circumstances of each case.
53. The Commissioner considers that disclosure of the names and email addresses of the Jobcentre Plus and Benefit Delivery Centre Managers would not be the least intrusive method of ensuring transparency and accountability. The Commissioner notes that DWP has disclosed the emails through which claimants can contact the relevant Complaints Resolution Team and it has proactively published the names and emails of the District Managers, to whom the Jobcentre Plus and Benefit Delivery Centre managers are accountable. The Commissioner considers that this is a reasonable alternative to disclosure of the withheld information with regard to fulfilling the legitimate interest in transparency and accountability.
54. The Commissioner acknowledges that the Grade 7 staff are relatively senior managers and would therefore have a more reasonable expectation of disclosure of their details. However, in spite of their seniority, the Commissioner does not consider that disclosure is necessary in order to meet the legitimate interests identified above.
55. The Commissioner acknowledges the complainant's position that the managers' names are used when writing to claimants with DWP's claim decision. However, disclosure under the Act is disclosure to the world at large, essentially placing it into the public domain.
56. A letter sent to a claimant is not placing this information into the public domain, it is provided information to the intended recipient in specific circumstances. Whilst DWP may not have control over how the recipient

goes on to use this information, DWP has not placed this information into the public domain.

57. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
58. The Commissioner has therefore decided that the DWP was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Right of appeal

59. 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

60. 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.
61. 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

Jonathan Slee
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