

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 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 benefits datasets from the Department for Work and Pensions (DWP).
2. The Commissioner's decision is that DWP is entitled to rely on section 44(1)(a) to withhold the majority of the information. The Commissioner considers, however, that section 44(1)(a) is not engaged in relation to the category titles within the datasets.
3. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation:
 - Disclose the category titles within the datasets.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant had previously requested information regarding the number of claimants fitting specific circumstances within various benefits. DWP relied on section 12 to refuse to comply with this request.

6. On 11 April 2023, the complainant wrote to DWP and requested information in the following terms:

"I refer back to your response with your reference FOI2023/11634 where you state:

"The requested breakdowns required multiple datasets to be joined to obtain the information and, as these datasets are structured differently and contain different information, this created complexities when attempting to combine the datasets. As a result of this, bringing these into alignment was not possible within the cost limit".

Please provide these datasets. I have the skills required to process these datasets. To be clear, I want these datasets in any computer readable format. I do not want a response telling me to use Stat-Xplore".

7. DWP provided its response on 11 May 2023 and confirmed that it held the requested information. DWP withheld the information on the basis of section 44(1)(a), prohibitions on disclosure.

8. DWP explained that the requested information relates to datasets which contain individual level information on benefit recipients and disclosure is prohibited by section 123 of the Social Security Administration Act 1992 (the SSAA).

9. DWP confirmed that section 123 of the SSAA makes it a criminal offence to disclose social security information relating to an individual without lawful authority to do so. DWP explained that if individual level data is provided, even with key variables masked, it may still be possible to potentially identify the individuals.

10. On 11 May 2023, the complainant requested an internal review of the handling of their request. They disputed that DWP could not disclose anonymised datasets.

11. DWP provided the outcome of its internal review on 7 July 2023 and upheld its position.

12. DWP explained that where data has been anonymised, it must not be possible, including in combination with other available information, to identify individuals (or groups of individuals) from the context in which

the information is collected or held. DWP explained that the datasets requested contain individual level data with direct personal identifiers removed and other key variables masked, however, it believed this was still not sufficiently anonymous. DWP considered that the information therefore remained personal data and it did not have a lawful basis to share this information.

13. DWP confirmed that it does allow limited access to suitably pseudonymised datasets, but these are in strictly controlled environments and only to those with a legitimate need to access the data. DWP explained that external users are limited to those who have been commissioned by, and under contract to, DWP.
14. DWP explained that it could provide quarterly summary statistics for the numbers of people in receipt of Universal Credit (full service) and the numbers receiving a reduction in their benefit payment due to a sanction, and the subsequent deaths in the following three months. DWP invited the complainant to confirm whether they would like this information.

Scope of the case

15. The complainant contacted the Commissioner on 7 July 2023 to complain about the way their request for information had been handled.
16. In particular, the complainant disputed:
 - That DWP could not provide anonymised datasets
 - That DWP was acting in accordance with data protection guidelines in their use of non-anonymised data as it was their understanding that software testing requires “Live” data to be made anonymous prior to its use.
17. The Commissioner considers that the scope of his investigation is to determine whether DWP is entitled to rely on section 44(1)(a) to withhold the requested information.

Reasons for decision

Section 44: Prohibitions on disclosure

18. Section 44(1) of FOIA states:

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment”

19. Section 123 of the SSAA makes the unauthorised disclosure of information acquired in the course of employment in social security administration, which relates to a particular person, a criminal offence.
20. Section 44(1) of FOIA specifically states that if disclosure is prohibited “otherwise than under this Act” then it is exempt. The Commissioner therefore cannot consider the right of access under FOIA as a lawful authority for disclosure.

DWP’s position

21. DWP provided the Commissioner with a detailed explanation regarding how the datasets were created to aid the Commissioner’s understanding. DWP confirmed that the datasets contain raw data relating to millions of benefits claimants.
22. DWP explained that the datasets contain individual level data which has been pseudonymised meaning that they contain personal information. DWP explained that there are other variables in each dataset which could also potentially allow individuals to be identified.
23. DWP explained that this pseudonymisation is necessary for secure handling of the files and to allow analysts to perform any necessary data matching of individuals within and between datasets in preparation of statistics. DWP considered that the removal of this pseudonymisation would render the datasets of no practical use, as no data matching would be possible. DWP stated that it therefore believed that the data remains personal information and it does not have a lawful basis to disclose it.
24. DWP confirmed that due to security and disclosure issues, the specific datasets requested have not been previously disclosed to the public. DWP confirmed that it had made information available “in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it”

via the official statistics routinely published on Stat-Xplore and the DWP statistics website¹.

The Commissioner's position

25. DWP confirmed that the withheld information comprised 83 datasets² which contained between a few thousand to a few million lines of data. The Commissioner has therefore considered a representative sample of the withheld information.
26. The Commissioner is satisfied that the disclosure of the withheld information, as it is held by DWP, would be disclosure of the information that relates to particular individuals.
27. The Commissioner accepts that, as disclosure would be made by DWP, it would therefore be disclosure by those 'employed in social security administration or adjudication'.
28. The Commissioner has considered whether the datasets can be anonymised and he accepts DWP's argument that the data cannot be anonymised whilst retaining its usefulness or meaning.
29. The Commissioner's guidance on anonymisation³ sets out that recital 26 of the UK GDPR says this is:

"...information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable".
30. The Commissioner notes that DWP has confirmed that the datasets are pseudonymised rather than anonymised in order to allow data matching between the datasets. The Commissioner's guidance on pseudonymisation⁴ sets out that Article 4(5) of the UK GDPR defines it as:

"...processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept

¹ <https://www.gov.uk/government/organisations/department-for-work-pensions/about/statistics>

² DWP acknowledged that it had previously told the complainant there were 63 datasets.

³ <https://ico.org.uk/media/about-the-ico/consultations/2619862/anonymisation-intro-and-first-chapter.pdf>

⁴ <https://ico.org.uk/media/about-the-ico/consultations/4019579/chapter-3-anonymisation-guidance.pdf>

separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person”.

31. This guidance confirms that pseudonymised data is still personal data. Pseudonymisation can reduce the risks to individuals and help an organisation meet its data protection obligations but it does not change the status of the data as personal data. This is because the data protection legislation is clear that information is personal data if an individual is identified or identifiable, directly or indirectly.
32. The guidance sets out that the status of data can change depending on who holds it. For example, pseudonymous data which is still identifiable using a key or other separate identifiers might no longer be identifiable in the hands of a different organisation who does not have access to that key. However, it cannot be assumed that the pseudonymised data will become anonymous information in another party's hands. This will depend on several factors, including:
 - the ability of the recipient to use other information to enable identification, whether in their possession or in the public domain;
 - the likelihood of identifiability, considering things like the cost of and time required for identification and the state of technology at the time of the processing;
 - the techniques and controls placed around the data once in the recipient's hands.
33. As disclosure under FOIA is disclosure to the world at large, it is essentially disclosure into the public domain with DWP no longer having control of its use.
34. The Commissioner has considered whether entire columns could be removed to anonymise the remaining data. However, having reviewed a representative sample of the dataset categories and explanations of the information contained within them, it is not apparent to him what combination of data categories could be disclosed without potentially identifying an individual. The Commissioner accepts that the various combinations of data categories could allow a motivated intruder to identify individuals.
35. The Commissioner does, however, consider that the category titles themselves do not relate to particular individuals. This is supported by the First Tier Tribunal decision in *John Pring v Information Commissioner*

EA/2015/0237⁵ which found that the headings within the 'peer reviews' of claimants' cases were not information which related to the individual the reviews were about. The Commissioner therefore finds that section 44(1)(a) is not engaged in relation to the category headings.

36. Section 123(3) of the SSAA provides two conditions in which the disclosure of identifiable information by DWP will not constitute an offence. These are that:
- The information in question has previously been disclosed to the public with lawful authority.
 - If the information in question is disclosed in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
37. In relation to the first of these, the Commissioner has not been provided with any evidence that the withheld information has been previously disclosed to the public with lawful authority – therefore he does not consider that this condition applies.
38. In relation to the second of these, as set out above, the Commissioner considers that the data cannot be sufficiently anonymised. The Commissioner notes that DWP has previously disclosed summaries and aggregated statistics, however, his decision in the specific circumstances of this case must be based on the information that has been requested, ie the datasets themselves. As such, he considers that this information is exempt under section 44(1)(a) of FOIA.
39. The exemption is absolute and is therefore not subject to the public interest test.
40. The Commissioner requires DWP to disclose the category titles within the requested datasets.

Other matters

41. As set out in the 'Scope of the case' section, the complainant has concerns regarding DWP's use of non-anonymised data. The
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Commissioner cannot issue a decision notice under section 50 of FOIA on this issue as it relates to data protection legislation. However, he notes the reassurances provided by DWP at internal review regarding the restricted access to this data.

42. As part of its submissions, DWP explained to the Commissioner that it considered that it could disclose the following information that the complainant may find helpful:

“using our existing sanctions rate methodology to provide some information on UCFS⁶ caseloads and sanctions and deaths within 3 months. Using this method would allow us to produce a spreadsheet ods [OpenDocument Spreadsheet] file which would contain the following summary information, broken down by region:

For the count date in April 2019, and every 3 months after that,

- (a) the number of people on UCFS in the sanctionable conditionality groups,
- (b) the number of people in a) who died in the following 3 months
- (c) number of people on UCFS receiving a sanction,
- (d) the number of people in c) who died in the following 3 months”.

⁶ Universal Credit Full Service

Right of appeal

43. 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

44. 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.
45. 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
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