

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 2024

Public Authority: Information Commissioner
Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The Commissioner's decision is that, under section 44(1) of FOIA, the ICO is entitled to withhold information it received from the Department for Work and Pensions as there's a prohibition on its disclosure. It's not necessary for the ICO to take any corrective steps.
2. This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He is therefore under a duty as regulator to make a formal determination of a complaint made against him as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Background

3. The complainant submitted a request to the Department for Work and Pensions (DWP) on 11 April 2023. On 4 January 2024, the Commissioner

made a decision on the resulting complaint to him about DWP's handling of that request, under the reference IC-244085-D1T2¹.

Request and response

4. On 15 January 2024, the complainant requested the following information from the ICO:

"21. DWP provided the Commissioner with 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." 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." Please provide a copy of this detailed explanation."

5. On 9 February 2024, the ICO responded. It disclosed relevant information and withheld one document under section 44(1) of FOIA.
6. The ICO provided an internal review on 6 March 2023 and maintained its reliance on section 44(1) in respect of the information it withheld.

Reasons for decision

7. This reasoning focuses on whether the ICO is entitled to withhold some of the information within scope of the complainant's request under section 44(1) of FOIA .
8. In correspondence to the Commissioner, the complainant noted that DWP had provided the ICO with an explanation as to why requested data sets couldn't be provided to them for the reason of anonymity. The complainant said that the DWP explanation to the ICO included data that isn't anonymous and therefore the explanation wasn't provided to them. They confirmed that they want the same explanation that was provided to the ICO but without any non-anonymous data, "Ie, please explain in

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4027911/ic-244085-d1t2.pdf>

detail exactly why the data sets requested from DWP are not and can not be provided with anonymity.”

9. Section 44(1)(a) of FOIA says that information is exempt information if its disclosure (otherwise than under FOIA) by the public authority holding it is prohibited by or under any enactment. Section 44 is an absolute exemption which means it's not subject to the public interest test.
10. The ICO explained to the complainant that the enactment that prohibits it from disclosing the information is the Data Protection Act 2018 (DPA 2018). It said that this imposes a criminal liability on the Commissioner and his staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out its regulatory functions, unless they have the lawful authority to do so, or it has been made public from another source.
11. In relation to the Commissioner or his staff, section 32(1) of the DPA 2018 prohibits the disclosure of information which (a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions, (b) relates to an identified or identifiable individual or business, and (c) isn't available to the public from other sources at the time of the disclosure and hasn't previously been available to the public from other sources.
12. In a submission to the Commissioner, the ICO confirmed to him that, in relation to the earlier FOIA complaint, DWP had advised that it didn't want the ICO to disclose the withheld information. The ICO says that when it came to handle the complainant's associated FOIA request being considered here, it took that statement as the DWP's views on disclosure and didn't consult further on the specific document that it's withholding (although it did consult on other information in scope). At internal review, the ICO says, the reviewing manager consulted with DWP as its views on disclosure may have changed. DWP confirmed that it still didn't want the ICO to disclose the information.
13. The ICO has confirmed that information was provided to it for the purposes of the ICO discharging one of its functions, it relates to an identified business (DWP), and it wasn't otherwise available from other sources. As such, the ICO has further confirmed that it considers that the provisions of section 132(1) of the DPA 2018 apply to the information and, by extension, section 44 of FOIA. Its consultation confirmed that the ICO doesn't have consent to disclose the information and it doesn't consider any of the other lawful gateways to disclosure under section 132(2) DPA 2018 apply.

The Commissioner's conclusion

14. With regard to the criterion at section 132(1)(a) of the DPA 2018, the information was provided to the Commissioner by DWP during the course of the Commissioner's investigation under section 50 of FOIA into a complaint submitted to him. As such, the information being withheld under section 44(1) was provided to the Commissioner for the purposes of discharging the Commissioner's functions.
15. The Commissioner has noted the complainant's argument but regarding section 132(1)(b), the information relates to an identifiable public authority – DWP - which the Commissioner considers to be a business for the purposes of the legislation. The information doesn't have to be individuals' personal data which could be anonymised. The criterion is met if, as here, the information relates to an identifiable business and has been provided to the Commissioner for the purposes of discharging his functions.
16. The Commissioner is also satisfied that the criterion at (c) was met ie that the information was not, and had not previously been, available to the public at the time of the disclosure. If it were public, the complainant would not have had to request it under FOIA.
17. Finally, and as the ICO noted, section 132(2) of the DPA 2018 provides gateways for lawful disclosure. The Commissioner accepts that none of these gateways have been met.
18. In view of the above criteria being met, the Commissioner considers that the ICO correctly applied section 44(1) of the FOIA to the disputed information. This is in line with his decision in numerous other similar cases.²
19. Section 44 is an absolute exemption and isn't subject to the public interest test. The Commissioner's decision is therefore that the ICO is entitled to withhold the information under section 44(1) of FOIA.

² [ic-206342-b1z8.pdf \(ico.org.uk\)](#)

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
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