IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]

ON APPEAL FROM:

Information Commissioner's
Decision Notice No: FS50430962
Dated: 12 February 2013

Case: EA/2013/0040

BETWEEN

Appellant:	**Mr Roy Oates**
First Respondent:	**The Information Commissioner**
Second Respondent:	**Dept. for Work and Pensions**

Case: EA/2013/0047

BETWEEN

Appellant:	**Dept. for Work and Pensions**
First Respondent:	**The Information Commissioner**
Second Respondent:	**Mr Roy Oates**

Heard at: Field House, 15 Bream's Buildings, London EC4A

Date of hearing: 24 September 2013

Date of decision: 20 December 2013

Before
CHRIS RYAN
(Judge)
and
GARETH JONES
STEVE SHAW

Attendances:

Mr Oates did not attend and was not represented.
For the Information Commissioner: Tom Cross
For the Dept. for Work and Pensions: Ben Lask

Subject matter:

Whether information held s.1 FOIA
Personal data s.1(1) DPA
Personal data s.40 FOIA

Cases:

Durant v Financial Services Authority [2003] EWCA Civ 1746
Information Commissioner v Financial Services Authority and Edem [2012] UKUT 464.
Corporate Officer of the House of Commons v Information Commissioner and others [2008] EWHC 1084 (Admin).

IN THE FIRST-TIER TRIBUNAL **Case No. EA/2013/0040**
GENERAL REGULATORY CHAMBER

DECISION OF THE FIRST-TIER TRIBUNAL

Appeal EA/2013/0040 is dismissed. Appeal EA/2013/0047 is allowed.
The Decision Notice dated 12 February 2013 therefore stands, although for different reasons than those recorded in it.

REASONS FOR DECISION

Background

1. In January 2010 Mr Oates was examined by a doctor in connection with his application for incapacity benefit. The doctor had been engaged for the purpose by Atos Healthcare ("Atos"), a division of Atos IT Services UK Limited. Atos had itself been appointed by the Department for Work and Pensions ("DWP") to carry out the assessment as part of the work it does for DWP in cases where medical information is required about an individual claiming benefits. Mr Oates was unhappy about some aspects of the examination and complained to Atos.

2. In compliance with its own complaints procedure Atos arranged for one of its Customer Relations Manager to investigate the complaint and respond to Mr Oates. In the course of that investigation Atos disclosed to Mr Oates the name of the doctor who had examined him. Mr Oates was dissatisfied with this first stage of the complaints procedure and a more senior member of staff, a Clinical Manager, therefore reviewed the investigation.

3. Mr Oates was still dissatisfied and exercised his right to have the matter referred to what is called the "Independent Tier" of the complaints procedure. This involved the appointment of a convener who in this case:
    a. appointed one of two Independent Medical Practitioners available to Atos ("the IMP") to comment on the quality of the report prepared by the examining doctor (but not the outcome of the application for benefit or the medical assessment that was taken into consideration by DWP); and
    b. engaged an independent company ("the Company") to provide an appraisal of how the complaint had been handled by Atos by reference to all other respects of the process.

    The investigation under b. above was carried out by an employee of the Company, acting as independent assessor ("the IT Assessor").

4. At the conclusion of the Independent Tier process the convenor was issued with a report on whether the handling of Mr Oates' complaint against Atos had been satisfactory in respect of both its administrative and medical aspects. The convenor then communicated the outcome of both responses to Mr Oates.

5. In response to that report Mr Oates asked the DWP to provide the following information:
    a. The name and qualifications of the IMP;
    b. The name and qualifications of the IT Assessor; and
    c. The name of the Company.

    We refer to this communication as "the Request".

6. The Request was made under section 1 of the Freedom of Information Act 2000 ("FOIA"), which imposes on the public authorities to which it applies an obligation to disclose requested information unless certain conditions apply or the information falls within one of a number of exemptions set out in FOIA.

7. The DWP refused to release the information requested on the basis that it did not hold some of it and, as to the rest, it was exempt information under FOIA section 40(2) (third party personal data). Mr Oates complained about the refusal to the Information Commissioner, who issued a Decision Notice in favour of the DWP on 12 February 2013, which forms the basis for this appeal.

The Information Commissioner's Decision Notice and the Appeal to this Tribunal

8. The Decision Notice was to the effect that:
    a. The names of the two individuals (the IMP and the IT Assessor) and the Company should not have been considered by the DWP under FOIA because it constituted the personal data of Mr Oates and was therefore exempt from disclosure under FOIA section 40(1);
    b. Information about the qualifications of the IT Assessor were not held by the DWP, so that it did not have an obligation to disclose it; and
    c. Information about the qualifications of the IMP was held by DWP, but could properly be withheld as it constituted the personal data of the IMP and was therefore exempt information under FOIA section 40(2)(b).

9. Both Mr Oates and the DWP lodged appeals from the Decision Notice to this Tribunal. Such appeals are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.

10. In his Grounds of Appeal Mr Oates agreed that the names of the two individuals constituted his own personal data, but he did not accept that the Company name fell into that category of information. He also challenged the decision to withhold the qualifications of the IT Assessor and the IMP. He argued that, as the names of the individuals in question constituted his personal data, it was unrealistic to suggest that disclosure of their professional qualifications might breach their rights under the Data Protection Act 1998 ("DPA") by enabling them to be

identified. Implicit in that argument is a challenge to the finding that the DWP did not hold information about the IT Assessor's qualifications.

11. Mr Oates also suggested that any entitlement to anonymity had been compromised by the fact that the complaints process included a facility for representatives of certain welfare groups to monitor its operation in certain circumstances, even though this had not happened in the case of his complaint. Finally, he asserted that the Information Commissioner had not given proper weight to arguments and information supporting the case for disclosure.

12. We should record that Mr Oates' Grounds of Appeal also raised issues about the role of DWP and/or Atos as data controllers or data processors and their consequent obligations under the DPA. For the reasons set out below we do not believe that this Tribunal has jurisdiction to consider those matters.

13. DWP's grounds of appeal claimed that the Information Commissioner was in error in considering the Request under DPA and that he should have approached his decision on the basis that FOIA applied and that the correct approach was to refuse disclosure on the basis that, as this would have breached the data protection principles in respect of the personal data of the IMP and the IT Assessor respectively, it was exempt information under FOIA section 40(2). That argument was dependent in part on whether the Information Commissioner had been right to conclude that the DWP did not hold the name or qualifications of the IT Assessor. It was also qualified by the concession that the qualifications of the IMP should be disclosed.

14. DWP argued, in the alternative, that the information sought was exempt information under FOIA section 43(2) and the public interest in maintaining that exemption outweighed the public interest in disclosure.

15. The Information Commissioner filed a Response to each of the Appeals, substantially supporting the reasoning and conclusions in the Decision Notice in each case, but conceding that on some issues he had been in error.

16. The two appeals were heard together at a hearing that took place on 24 September 2013. Mr Oates decided not to attend the hearing, either in person or by video link. The DWP was represented by Mr Ben Lask of counsel and the Information Commissioner by Mr Tom Cross, also of counsel. We were provided with an agreed bundle of documents, which included the following two witness statements filed on behalf of the DWP:
    a. **Brian Pepper**, who is the National Customer Relations Manager for Atos' contract with the DWP. He provided background information on the Atos complaints procedure and the role performed by the IMP. He explained that an IMP would have an expectation of privacy based on the confidentiality regime

incorporated in the complaints procedures and the risk of dissatisfied complainants seeking to make direct contact. He also drew attention to the fact that other avenues of complaint were open to anyone dissatisfied with the Independent Tier and that, were direct contact to be made with an IMP, he or she would not have retained any record of the assessment giving rise to the complaint and may withdraw from further involvement in the process. This would deprive Atos of its pool of appropriately qualified assessors.

b. **Linda Badman**, who is a senior civil servant working for DWP. She explained the relationship between DWP and Atos. This included the degree of independence incorporated into the assessment process, which explained how it was that information about the identity of the IT Assessor was not held by DWP or on its behalf. Ms Badman also explained the extent to which recognised welfare groups have limited rights to conduct a document-based review of the work of both the IMP and the IT Assessor. Ms Badman also commented on the likely impact on individual IMPs if their identities were to be disclosed, leading to a risk of members of the public, including campaign groups, making contact with them. She cited a particular instance of harassment directed at an individual, working with Atos, whose identity had become public knowledge. While conceding that the name of the doctor carrying out the original medical assessment will frequently, but not invariably, be disclosed, Ms Badman distinguished the role at that stage of the process from the role of the IMP in the third stage of a complaint deriving from that assessment. Ms Badman also summarised the principles followed by the DWP in handling personal information held in social security records.

17. Neither witness was called for cross examination at the hearing.

<u>The issues to be determined on appeal</u>

18. The issues to be determined on the appeal were:
    a. Did the DWP hold the name and qualifications of the IT Assessor at the date of the Request? The DWP and the Information Commissioner both asserted that the information was not held, but Mr Oates argued that it was.
    b. Did the name of the Company and the IMP (and, if Mr Oates is right on the first issue, the IT Assessor) constitute the personal data of Mr Oates?
    c. If the answer to b. is negative was the name of the relevant individual the personal data of that individual and was it exempt from disclosure under FOIA section 40(2)?
    d. If the outcome of c. is that the information should be disclosed, is it nevertheless exempt information under FOIA section 43(2)?

19. We will deal with each issue in turn.

Issue 1:Did the DWP hold the name and qualifications of the IT Assessor?

20. Mr Oates did not accept that the Information Commissioner had been entitled to conclude that DWP did not hold the information because, he said, it was not credible that it should select the IMPs but not the IT Assessor, particularly as this would suggest that the IT Assessor, as an appointee of Atos, would not be sufficiently independent for the task allotted to him or her in the complaints process.

21. We are satisfied, on the basis of the witness statement evidence provided to us, considered in the light of the overall structure of the complaints process, that DWP did not hold information about the identity of the IT Assessor at the date of the Request. Its response to the Request on this issue was therefore justified.

Issue 2: Was the Information Commissioner correct to apply DPA and not FOIA?

22. In light of our decision under the first issue we have to consider this question by reference only to the name of the Company and the IMP.

23. In order to put this issue in context it is necessary to summarise the different regimes under, respectively, the DPA and the FOIA and to consider the steps taken by Parliament to differentiate between them.

Information requests under the DPA

24. Under DPA section 7 an individual is entitled to be informed by a person or organisation holding his or her personal data ("a data controller") whether it holds that data and, if so, to have it communicated to him or her.

25. DPA section 1(1) defines "personal data" as:

> "*data which relate to a living individual who can be identified-*
> *(a) from those data, or*
> *(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller…"*

Nothing turns on this appeal on the definition of the word "data" itself.

26. An individual's right to disclosure of his or her personal data is not absolute. The DPA identifies certain categories of information that are exempt from the obligation to disclose. In addition section 7(4) provides that, where an individual's personal data cannot be disclosed without disclosing the personal data of another individual, the data

controller is not obliged to make disclosure unless the other individual agrees or it is reasonable in all the circumstances to disclose.

27. If a data controller refuses an individual's request in respect of his or her own personal data the individual has a right of appeal to a court. Alternatively he or she may request the Information Commissioner for an assessment as to whether the data controller has complied with its obligations under the DPA. If the Information Commissioner concludes that the data controller has contravened the DPA in refusing the request he may issue an enforcement notice requiring disclosure to be made. Although the data controller may appeal against an enforcement notice to this Tribunal, the individual who asked the Information Commissioner for an assessment has no right of appeal in the event that the Information Commissioner concludes that the data controller was entitled to refuse the request.

28. In contrast to the rights of an individual to access his or her own personal data a third party, understandably, has no rights under the DPA to access the personal data of another individual. This results from the requirement under DPA section 4(4), for a data controller to comply with the Data Protection Principles, which are set out in Schedule 1 and include the obligation to process the data fairly and lawfully (under the First Data Protection Principle) and to take appropriate measures to prevent disclosure of an individual's personal data (under the Seventh Data Protection Principle).

Information requests under the FOIA

29. One of the exemptions to the obligation on a public authority to disclose information requested under FOIA section 1 (see paragraph 6 above) is to be found in FOIA section 40.

30. In relevant part the section reads:

"(1) Any information to which a request for information relates is exempt information if it constitutes the personal data of which the applicant is the data subject.
(2) Any information to which a request for information relates is also exempt information if –
(a) it constitutes personal data which do not fall within subsection (1), and
(b) either the first or second condition below is satisfied."

31. The first condition, as it applies to the facts of this appeal, is that disclosure would contravene one of the Data Protection Principles. The only one having application to the facts of this Appeal is the First Data Protection Principle. It reads:

"Personal data shall be processed fairly and lawfully, and in particular shall not be processed unless-

(a) at least one of the conditions in Schedule 2 is met …"

Schedule 2 then sets out a number of conditions, but only one is relevant to the facts of this case. It is found in paragraph 6(1) and reads:

> *"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."*

The term "processing" has a wide meaning (DPA section 1(1)) and includes disclosure.

32. Section 40(5) provides that, in respect of an information request falling under section 40(1) – a request by an individual for disclosure of his or her own personal data – a public authority is entitled to issue a "neither confirm nor deny" response.

Differentiation between the DPA and FOIA regimes

33. The effect of FOIA section 40, subsections (1) and (5), is that a request by an individual for a public authority to disclose his or her own personal data falls to be considered only under the DPA. The process for considering it and dealing with any failure by the public authority to respond appropriately will be that summarised in paragraphs 24 – 28 above. The individual who submitted the request will have no recourse to this Tribunal in the event that the Information Commissioner considers that the public authority had complied with its obligations in refusing disclosure.

34. In the case of a request for a public authority to disclose the personal data of a third party the effect of FOIA section 40(2), read with the other provisions dependent on it, is that a balancing exercise must be carried out in relation to the public interest in disclosure and the individual's privacy rights in order to determine whether disclosure ought to be made. In that case the original requester may complain to the Information Commissioner if disclosure is refused and has a right of appeal to this Tribunal if the Information Commissioner decides that the refusal was justified.

35. It follows that if we decide that the information requested constituted the personal data of Mr Oates it would not follow that he would automatically be entitled to receive it. The possible application of DPA section 7(4) would still have to be considered (namely, whether disclosure could be made without the unjustified disclosure of the personal data of the IMP). One or more of the exemptions set out in

the DPA might also apply. However, this Tribunal would have no jurisdiction to entertain any complaint by Mr Oates as to the outcome of the Request. If the information did not constitute the personal data of Mr Oates then we have jurisdiction to consider whether it constituted the personal data of the IMP and if so, whether any legitimate interest in its disclosure should outweigh the IMP's interest in maintaining privacy.

The parties' submissions on the categorisation of the requested information

36. As we have indicated, Mr Oates supported the view taken by the Information Commissioner in the Decision Notice. However, the DWP argued that the Information Commissioner was wrong. The true effect of the definition of "personal data" in EU Directive 95/46/EC (which the DPA was intended to implement in domestic law) required us to consider whether the name of the IMP and the Company was information that could be said both to "relate to" Mr Oates and to be of a type that enabled Mr Oates to be identified from it, either on its own or when viewed with other information held by the DWP.

37. Both sides referred us to the leading authority on the "relate to" element of the test, the Court of Appeal decision in *Durant v Financial Services Authority* [2003] EWCA Civ 1746. That was a case in which Mr Durant had made a request to the Financial Services Authority under the FOIA for, among other information, the contents of various files that referred to a complaint he had made about Barclays Bank. The Court of Appeal was concerned only with the "relate to" test, which it said should be given a narrow construction. Auld LJ, in a much quoted passage then said:

> *"27 ….the purpose of section 7, in entitling an individual to have access to information in the form of his 'personal data' is to enable him to check whether the data controller's processing of it unlawfully infringes his privacy and, if so, to take such steps as the Act provides, for example in sections 10 to 14, to protect it. It is not an automatic key to any information, readily accessible or not, of matters in which he may be named or involved. … As a matter of practicality and given the focus of the Act on ready accessibility of the information – whether from a computerised or comparably sophisticated non-computerised system – it is likely in most case that only information that names or directly refers to him will qualify …*
> *" It follows from what I have said that not all information retrieved from a computer search against an individual's name or unique identifier is personal data within the Act. Mere mention of the data subject in a document held by a data controller does not necessarily amount to his personal data. Whether it does so in any particular instance depends on where it falls in a continuum of relevance or proximity to the data subject as distinct, say,*

from transactions or matters in which he may have been involved to a greater or lesser degree. It seems to me that there are two notions that may be of assistance. The first is whether the information is biographical in a significant sense, that is, going beyond the recording of the putative data subject's involvement in a matter or event that has no personal connotations, a life event in respect of which his privacy could not be said to be compromised. The second is one of focus. The information should have the putative data subject as its focus rather than some other person with whom he may have been involved or some transaction or event in which he may have figured or have had an interest, for example, as in this case, an investigation into some other person's or body's conduct that he may have investigated. In short it is information that affects his privacy, whether in his personal or family life, business or professional capacity."

38. The Information Commissioner did not disagree as to the two elements of the test to be applied. However, he argued that, at the moment when the DWP received the Request, it was put into possession of all the information it needed to relate the information requested to an identifiable individual, namely Mr Oates himself. The fact that he sought information about individuals who had been involved in the assessment of his particular complaint created the necessary connection between himself and the requested information – it both related to him and he could be identified from it. A contrast was suggested to illuminate the argument. On the one hand a request might be made for the name of the Company engaged by the DWP to review complaints or the names of its employees who carried out assessments. Contrasted with that was a request for the names of the Company or employee who involved with a particular report on a complaint by a named individual. In the second case, it was suggested, the names were the personal data of the complainant because, in the context of the request, it constituted data that related to him and identified him.

39. The DWP did not accept that the requested information related to Mr Oates. It merely identified an individual who reviewed a medical report prepared by another doctor and the Company that prepared a report on the handling of a complaint he had made. The information was as remote from Mr Oates as the information on the handling of his complaint in *Durant,* which was found to have insufficient connection with Mr Durant to constitute his personal data. The DWP also rejected the Information Commissioner's suggestion that the necessary connection with Mr Oates could be established by considering the information in the context of the Request.

40. In respect of the "identification" test the DWP argued that Mr Oates could not be identified from the names alone, so that the first limb of the definition of personal data ("from those data") was not satisfied.

And if he could be identified from other information in DWP's possession at the time it was that information alone that enabled the identification to be made. The combination required by the second limb of the definition ("those data and other information") in order to establish identification could not be established. In this respect the DWP relied on the decision of Upper Tribunal in *Information Commissioner v Financial Services Authority and Edem* [2012] UKUT 464. In that case Upper Tribunal Judge Jacob said:

> *"If the data can only be related to an individual by the other information, it is not personal. That takes the case outside the scope of the data protection legislation, because the data plays no part in identifying a living individual."*

41. As we have mentioned, the DWP challenged, in particular, the Information Commissioner's argument that the information request itself could contribute the "other information" for the purpose of the second limb of the definition. Nor, it said, could it be taken into account when applying the first limb: the words "those data" could not sensibly be construed as meaning that the context of the request should be taken into account in order to identify the individual requester from the information requested. This, it was said, was very different from the situation considered in *Edem* where it was the ability to link a name to other information held by the data controller (such as the employment grade and dates of employment) that enabled the individual to be identified.

Our conclusion on this issue.

42. Neither party suggested that the facts of this case were the same as those that led to the decisions in either *Durant* or *Edem.* The guidance provided in those decisions, and in particular *Durant*, must therefore be approached at an appropriate level of generality. We derive particular assistance from the general guidance in *Durant* encouraging us to consider where the information requested lies along a "*continuum of relevance or proximity to* [Mr Oates] *as distinct, say, from transactions or matters in which he may have been involved to a greater or lesser degree…"* It is certainly closer to Mr Oates zone of privacy than the information about the FSA's investigation was to Mr Durant: in this case the complaint in question was not just instigated by Mr Oates but also derived ultimately from his original medical assessment. That takes it some way along the continuum towards information about his personal circumstances but not far enough, in our view, for it to constitute his personal data. A degree of separation, created when the complaint procedure was set in motion, had become sufficiently wide by the time that the IMP was instructed to review the original medical practitioner's report as to justify the conclusion that the identity of the person carrying out the review was more closely associated with the review process (the transaction or matter referred to by Lord Justice Auld) than the individual whose original medical assessment had led to

the instigation of that process. We place particular significance, in this respect, on the fact that the IMP's review was of the quality of the report and was not a re-consideration of the medical appraisal recorded in it.

43. In reaching this conclusion we reject the Information Commissioner's suggestion that we should take into account the Request itself. We are satisfied that the correct approach is to consider the body of relevant information held by the public authority in question immediately before the request was received. If that information can be seen to relate to the individual, and to identify him or her, then the case for characterising it as that individual's personal data is made out. But if it does not do so then it is not appropriate, in our view, to close the circle by taking into account the additional information (as to the name of the individual who is both requester and data subject) which is set out in the request itself, in order to.

44. Accordingly we conclude that the names of the IMP and the Company were not the personal data of Mr Oates and that the DWP was right to consider the Request under FOIA. The Decision Notice was therefore in error on this point although, for the reasons given below, the error does not lead to a different overall result in terms of disclosure.

Issue 3: FOIA section 40(2) exemption

45. As a preliminary point of detail, the DWP indicated in its skeleton argument that it was willing to disclose the name of the Company to Mr Oates, but wished to know, before it did so, whether such disclosure would be to Mr Oates alone, under the DPA (if we found in favour of the Information Commissioner on Issue 2) or to the world at large under FOIA (if we found in favour of the DWP on that issue). It follows from the conclusion recorded in the previous paragraph that it is not necessary for us to consider the name of the Company in our consideration of Issue 3.

46. We have summarised the relevant statutory provisions affecting this part of our decision in paragraphs 30 - 32 above.

47. It may be seen from that summary that a broad concept of protecting, from unfair or unjustified disclosure, the individuals whose personal data has been requested is a thread that runs through the data protection principles. This includes the determination of what is "necessary" for the purpose of identifying a legitimate interest. In order to qualify as being "necessary" there must be a pressing social need for it - C*orporate Officer of the House of Commons v Information Commissioner and others* [2008] EWHC 1084 (Admin).

48. In determining whether or not disclosure of the name of the IMP would be contrary to the data protection principles we have to consider:

i. whether disclosure at the time of the Request would have been necessary for a relevant legitimate purpose; without resulting in
ii. an unwarranted interference with the rights and freedoms or legitimate interests of the IMP himself or herself.

And if we are satisfied on those points we have also to consider:

iii. whether disclosure would have been unfair or unlawful for any other reason.

49. In respect to the issue of fair and lawful processing under (iii) above we have to bear in mind guidance provided in paragraph 1(1) of Part II of Schedule 1 to the DPA, which provides:

> *"In determining for the purposes of the* [first data protection principle] *whether personal date are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed."*

50. We have previously mentioned the evidence filed in the course of this appeal. We found it convincing both as to the expectations of the IMPs (based on the circumstances in which they were appointed and the manner in which they carry out their duties) and the degree of vulnerability they might be expected to suffer if their identity was disclosed in response to the Request. We therefore regard the case for treating disclosure as a significant interference with the IMP's rights and freedoms as strong. Against that, the public interest in disclosure of the name of the individual seems to us to be slight. There may certainly be a legitimate interest in the public being aware of the detailed provisions, as to rigour and independence, which govern the complaints process, but the name of the individual appointed to perform the role of IMP within that process does not appear to us to add significantly to it.

51. On balance, therefore, we consider that the individual's right to privacy should prevail and that the DWP was entitled to refuse the Request in respect of this element of information.

52. In light of our conclusion that the DWP would have been entitled to refuse disclosure under FOIA section 40(2) it is unnecessary for us to consider whether it would have been entitled to rely also on the exemption available under FOIA section 43(2).

Conclusion

53. The outcome of our conclusions in respect of Issues 1 to 3 is that the conclusion reached in the Decision Notice was right, in that it confirmed that (subject to the concessions which we have mentioned) the DWP had been entitled to refuse the Request, but that the Information

Commissioner had based his conclusion on the wrong statutory regime. Mr Oates' Appeal is therefore dismissed and the DWP's appeal is allowed. The outcome is that the DWP was entitled to refuse the Request, as the Decision Notice concluded, but on different grounds.

54. Our decision is unanimous.

Signed on the original

Judge Chris Ryan
20 December 2013