

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2012

Public Authority: Department for Work and Pensions
Address: Commercial Directorate
Commercial Management of Medical Services
North Fylde Central Office
Norcross
Block 3 Room 306
Blackpool
FY5 3TA

Decision (including any steps ordered)

1. The complainant has requested a working copy of the Logic Integrated Medical Assessment (LiMA) software. The Department for Work and Pensions disclosed some information but refused to disclose the software in question citing section 43(2).
2. The Commissioner's decision is that the Department for Work and Pensions has applied section 43(2) appropriately to the LiMA software.
3. The Commissioner does not require the public authority to take any steps as a result of this notice.

Request and response

4. On 19 January 2011 the complainant wrote to the Department for Work and Pensions ("the DWP") and requested information in the following terms:

'Please provide me with a working copy of the LiMA software used in the creation of the IB85 Incapacity for Work Medical Report Form on which the Decision Maker based their decision that I am capable of work. I require a copy of the software so that I can fully understand how the decision was reached that I am capable of work and, if necessary, to have the methodology of the LiMA a system independently evaluated. In particular, but not in total, I wish to know:

- *which questions the software's designer decided not to prompt the doctor to ask me because he or she did not consider them relevant, in order to ascertain whether there was relevant evidence I was prevented from giving;*
 - *what range of answers were set out before the doctor in relation to any given question, in order to discover whether there were options which more accurately reflect the effects of my condition in relation to the descriptor;*
 - *what weight is given by the LiMA software's designer to different types of evidence, such as clinical findings, informal observations and my own statements in order to discover whether these are in breach of guidance, for example that the report should not be a "snapshot" of my condition on the day;*
 - *what information (if any) about my health condition is pre-loaded by the designer into the software, in order to discover whether this is accurate and in accordance with currently accepted medical, psychological and psychiatric knowledge.'*
5. The DWP responded on 25 November 2010 disclosing some information to the complainant including an explanation of how the Logic Integrated Medical Assessment ("LiMA") software worked. It explained that the software was developed by Atos Healthcare ("AH") in conjunction with the DWP and that the DWP approved it. LiMA functions only as an interactive process during an assessment; it has no independent function and is designed to run on AH networked PCs not standalone PCs. The DWP also went on to explain that it was withholding the LiMA software under section 43(2).
6. Following an internal review the DWP wrote to the complainant on 30 December 2010. It explained that the LiMA software does not constrain health care professionals ("HCPs") from recording information how they want. It also confirmed that it was withholding the LiMA software on the same ground.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled in that it withheld the LiMA software. He explained that he wanted at least the executable versions of the LiMA server and client processes, together with all relevant user manuals. However the Commissioner notes that the

complainant did not request the user manuals initially and therefore he will be considering the request of 4 November 2010 as set out above.

8. The Commissioner will consider the DWP's application of section 43(2) in relation to the LiMA software.

Background

9. The complainant has requested the information because he is appealing a decision regarding his capability to work. The DWP explained that it had already disclosed the following to the complainant:
 - The IB85 medical report form
 - LiMA v2 Technical manual
 - LiMA Functional Requirements
 - LiMA User Acceptance Test
 - Incapacity Benefit Handbook for Approved healthcare Professionals
 - ESA (Employment and Support Allowance) Handbook
 - MSRS (Medical Services Referral System) Registration and Scrutiny Guide
10. The DWP also explained that the LiMA software is based on fully researched, up to date and reliable medical opinion. It also explained this information was drawn from standard medical texts, on the disabling conditions most commonly seen in people.

Reasons for decision

11. The DWP has applied section 43(2) to a working copy of the LiMA software.

Section 43(2) provides that –

Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

12. The complainant argued that the LiMA software should be disclosed as he wants to challenge the assessment that said he was capable of working. He also explained that there had been issues surrounding the accuracy of the LiMA software. He pointed out that the LiMA software does not prompt an examining healthcare professional ("EHP") to ask certain questions as the software designers did not consider them

- relevant to a particular disease or condition. The complainant also argued that this meant that the claimant may well be denied the opportunity to submit relevant evidence given that the process consists largely of questions asked by the EHP (in practice largely under the prompting of LiMA) and answers given by the claimant.
13. The complainant argued that when the outcome from either a Personal Capability Assessment or a Work Capability Assessment is favourable to a claimant, there is little need to question the outcome even if the means by which the outcome was reached were controversial and deeply suspect. However if there is an adverse outcome for a claimant there is a need to ensure that all the parts of the process that generated the outcome are scrupulously fair and reasonable.
 14. The complainant went on to argue that although the LiMA software does not insist on the use of its preset responses, it makes it clear that the use of preset responses is encouraged. He provided an extract from the LiMA training materials to support this assertion: *'Do not use this box for everything! LiMA will not recognise any diagnoses typed into this box. This means that LiMA will not be able to help you by offering specific (and therefore more useful) phrases on all the subsequent screens. You will still get a proper report, but you will have to work harder to get it.'*
 15. The complainant also pointed out that there had been a review of LiMA, the Harrington Review ("the review"), which noted that: *'It can, perhaps, be too easy for HCPs [healthcare professionals] to use stock phrases generated by the LiMA system that do not necessarily capture the whole assessment or allow nuanced responses to be reflected.'* The review also stated that it had found that: *'... each HCP has a target to complete their assessments in an average of 46-49 minutes each ... Evidence from some Atos HCPs to the review suggests that they felt constrained by these targets when interviewing complex cases'*.
 16. The complainant also explained that the DWP had admitted that there are an enormous number of customisable phrases in LiMA which were updated regularly. However it also explained to the complainant that there was not a separate list of these phrases.
 17. In support of his argument for disclosure the complainant also pointed to the Court of Appeal decision in *R (on the application of Eisai Limited) v National Institute for Health and Clinical Excellence* [2008] EWCA Civ438. This case concerned a request to the National Institute for Clinical Excellence ("NICE") for the financial model concerning the cost-effectiveness of drugs for the treatment of Alzheimer's disease. NICE had sent out an electronic read only copy of its financial model for consultation, to specific consultees; however the consultees could not

make changes to inputs or assumptions made by NICE. The court found that as NICE had made the decision to carry out the consultation exercise, in fairness it had to disclose the fully executable version of the model so that the consultees could test the model and make more informed decisions.

18. The complainant argued that this was similar to his request. He explained that it was to be expected that the DWP would not voluntarily agree that the use of the LiMA software in circumstances where claimants do not have access to it, constitutes procedural unfairness. The complainant also argued that the NICE decision had created a clear obligation on the DWP to release the LiMA software to those claimants who are subject to its use.
19. The DWP explained that AH employs HCPs who interview claimants and fill out the assessments. The information is then passed to a decision maker ("DM") based in Jobcentre Plus (an executive agency of the DWP). The relationship with AH is about obtaining medical evidence to enable the DM to make these formal benefit entitlement decisions.
20. The DWP argued that the LiMA software should be withheld under section 43(2) as its disclosure would be likely to prejudice the commercial interests of both itself and third party licensees of the DWP. The DWP explained that as holders of the Intellectual Property Rights of the LiMA software, it has the right to enter into commercial negotiations with any body with a view to selling LiMA.
21. The DWP also explained that it has licensed AH (who are the sole third party licensee of the DWP) to use, customise, distribute, incorporate, market, maintain, support, sell and sub-license LiMA (and other software) in return for payment of a royalty to the DWP.
22. Further the DWP explained that in the licence, it confirms that it will not, in effect, allow any other party similar rights. In light of this the DWP argued that disclosure of the information would be likely to place it at a significant disadvantage in seeking to secure similar licensing arrangements with third parties in the future.
23. The DWP also explained that its contract with AH was effective from 1 September 2005; on 1 November 2010 the contract was extended to 31 August 2015. During this time the DWP will be running a competitive tendering exercise for the award of a new contract with regard to licensees. It argued that disclosure of the information would be likely to place the DWP at a significant disadvantage when securing licensing arrangements with third parties in the future and would therefore prejudice its own commercial interests.

24. The DWP also explained that the completed IB85 form which is filled out during each assessment helps the DM make a decision. This completed form is also available to the benefit claimant and there is also a statutory right of appeal to an independent Tribunal against DM benefit decisions.
25. The DWP also argued that disclosure of the software would be setting a precedent for other public bodies.
26. The Commissioner is satisfied that the DWP has a current contract with a third party licensee who has paid a royalty fee to use the LiMA software. He therefore considers that the section 43(2) exemption is engaged. He will now go on to consider the public interest.
27. The Commissioner has considered the arguments from both parties. He accepts that there is a strong public interest in transparency and accountability. He also accepts there is a strong public interest in knowing how the LiMA software works as it will have an impact on many people's lives. He notes that there has been public concern about how the LiMA software works.
28. The Commissioner also notes that with regard to the review, various bodies who deal with and represent people who have medical conditions such as cancer and the mental health charity MIND, have responded to it. He further notes that this review was ongoing at the time of the request.
29. Further, the Commissioner notes the complainant's arguments regarding what should happen if there was an adverse assessment. The Commissioner also considered the complainant's reference to the NICE decision. However he notes that in the NICE case the financial model in question was sent out for consultation by NICE; because of this the court found that it was unfair not to disclose a fully executable version of the model to the consultees so they could test it for themselves.
30. The Commissioner further notes that claimants are given a copy of the completed IB85 form which they can use to appeal to an independent tribunal about a decision. An appeal covers both the decision maker's decision on entitlement to benefit and the process by which that decision was arrived at. Further the Commissioner also notes that the DWP has confirmed that the questions and options built into the LiMA programme are exactly the same as those in the clerical form IB85.
31. The Commissioner also notes that the DWP has explained that it has a contract with a third party licensee and that there will be a further tendering process before 2015.

32. The Commissioner considers that disclosure would increase public understanding of the way that the LiMA software works. It may also allow the public to enter into a more informed debate about the way in which the LiMA software is used. However the Commissioner notes that the review involved an examination of LiMA in light of negative comments that were expressed about it.
33. The Commissioner also considers that the fact that claimants can have a copy of their completed IB85 form and they can appeal against a decision maker's decision means that a particular claimant's case will be looked at again. He also acknowledges that the DWP has a contract with a licensee which includes the licensee paying a royalty fee for using the LiMA software. He considers that disclosure of this information would be likely to prejudice DWP's commercial interest and that of the licensee.
34. The Commissioner therefore considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Other matters

35. The Commissioner notes that the DWP has stated that it has concerns that the disclosure of such software as the LiMA software would set a precedent. However each complaint received by the Commissioner is considered on a case-by-case basis, therefore disclosure of information would not set a precedent.

Right of appeal

36. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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

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