

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2013

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1 9NA

Decision (including any steps ordered)

1. The complainant has requested information regarding whether or not two named individuals were in receipt of income support or job seekers allowance between two specified dates.
2. The Commissioner's decision is that the Department for Work and Pensions (the "DWP") was correct to withhold this information on the basis of the exemption at section 40(2) of the Freedom of Information Act 2000 ("FOIA").

Request and response

3. On 13 November 2012, the complainant wrote to the DWP and requested information. The request was worded as follows:
"Would you please confirm that between the dates of the 24/06/2001 and the 22/09/2002 that at the address of [address redacted] that [name redacted] was in receipt of income support, that [name redacted] was in receipt of job seekers allowance."
4. The DWP responded on 15 November 2012. It stated that the information requested is personal information and therefore would not be disclosed. The DWP clarified that "personal information about a third party is treated as exempt information under section 40(2) of the FOIA. This is because personal information is treated under the provisions of the Data Protection Act 1998 and can only be released to you where such disclosure would not breach that person's right to privacy."

5. Following an internal review the DWP wrote to the complainant on 23 November 2012. It stated that it had reviewed the request and confirmed that personal information about a third party is treated as exempt information under section 40(2) of the FOIA. It confirmed that the DWP policy on disclosure of personal information is that 'all personal information held in social security records is regarded as confidential. Information will not normally be disclosed to third parties without the consent of the person concerned.' The DWP would not therefore disclose the requested information.

Scope of the case

6. The complainant contacted the Commissioner on 10 December 2012 to complain about the way his request for information had been handled.
7. The scope of the Commissioner's investigation was to determine whether the information requested had been correctly withheld on the basis of the exemption at section 40(2).

Reasons for decision

8. Information is exempt from disclosure on the basis of the exemption at section 40(2) of the FOIA if the information constitutes personal data and either the first or second condition in section 40(3) is satisfied.
9. Personal data is defined in section 1(1) of the Data Protection Act 1998 (the "DPA") as:

'.....data which relates to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'
10. The Commissioner considers that the details of the benefits received by named individuals clearly constitutes their personal data as defined by the DPA.
11. Personal data of any other person (third party data) is exempt under section 40(2) of the FOIA if disclosure would breach one of the data protection principles.
12. The first data protection principle states:

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

at least one of the conditions in Schedule 2 is met, and

in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

13. The Commissioner first considered whether disclosing information about any benefits received would have been fair to the individuals in question.
14. The Commissioner agrees with the DWP that disclosure would have been unfair. In making this decision the Commissioner considered the following factors:
 - the reasonable expectations of the individual, taking into account expectations both at the time the information was collected and at the time of the request;
 - the nature of the information itself;
 - whether the information had been or remains in the public domain;
 - the freedom of information principles of transparency and accountability; and
 - any legitimate interests in the public having access to the information relevant to the specific case.
15. The information in question, namely any benefits received by named individuals is clearly personal data and by its nature the individuals concerned would have a strong expectation that the information will not be disclosed. This information is not in the public domain. Bearing in mind that this information related to two private individuals, the Commissioner considers that disclosure would be an unwarranted intrusion into their privacy.
16. The Commissioner considers that there is a legitimate interest in transparency and accountability when it comes to the payment of benefits, especially on a national level. However, he considers that this interest is lessened in relation to the payments of benefits in relation to specific individuals. Additionally, any legitimate interest in disclosure has to be balanced against any negative impact on the rights and freedoms of the data subjects. In this case the Commissioner does not consider that the public interest in disclosure, in this case, outweighs the negative impacts detailed above.

17. The Commissioner therefore finds that disclosing the information in question would be unfair to the individuals in question and consequently in contravention of the first data protection principle. He therefore finds that the requested information was exempt from disclosure on the basis of the exemption at section 40(2) of the FOIA.

Right of appeal

18. 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

19. 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.
20. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF