

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 2014

Public Authority: Department for Work and Pensions

Address: Caxton House
6-12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has made a request to the Department for Work and Pensions (the "DWP") for information broadly concerning an Order for Sale of a property.
2. The Commissioner's decision is that the DWP has correctly set out the exemption at section 44 of FOIA.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 6 September 2013, the complainant wrote to the DWP and requested information in the following terms:

"1. Copies of the letters sent to the CSA by the purchasers' solicitors relating to the sale/removal of the restriction.

2. Copies of the letters sent to the CSA by the vendor's solicitors regarding the sale/restriction.

3. Details of the solicitors employed by the CSA in relation to the Order for Sale Application.

4. Copies of the letters sent by the CSA to the vendor's and purchasers' solicitors

5. Copies of any correspondence sent by the CSA to the Land Registry regarding the Order for Sale/removal of the restriction.

6. Copies of the documents on my file relating to the steps taken by the CSA to enforce the Order for Sale after it was granted.

7. Contact details for both the vendor's and purchasers' solicitors'.

5. The DWP responded on 28 November 2013. It provided the information sought within the scope of request 3. However it withheld the remaining information under section 40.
6. The DWP sent the complainant its internal review response on 1 April 2014. It explained that it considered request 6 to be a request for the requestors own personal data and it was therefore exempt under section 40(1). It advised the complainant to make a subject access request for this information. With regards to the remaining requests, it upheld its original position.
7. During the Commissioner's investigation the DWP also sought to rely upon section 44 of FOIA.

Scope of the case

8. The Commissioner accepted a complaint from the complainant on 25 February 2014. She specifically complained about the handling of her request and that the information she sought did not contain personal data.
9. The Commissioner has had to consider the DWP handling of this request. The Commissioner considers that the DWP has provided the complainant with the information sought in request 3. This notice will consider whether the DWP handled requests 1, 2, 4, 5, 6 and 7 in accordance with the FOIA.
10. With regards to request 6, the Commissioner returned to the DWP on this point and it has confirmed that the information requested within the scope of request 6 is not the complainant's own personal data and it was therefore incorrect to rely upon section 40(1). It sought to rely upon section 40 and section 44 of FOIA to withhold this information.
11. The Commissioner will first consider whether the DWP was entitled to rely upon section 44 to withhold the requested information. In the event section 44 is not engaged, he will then go on to consider section 40.

Reasons for decision

Section 44 – prohibitions on disclosure

12. Section 44 of FOIA states that:

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

- (a) is prohibited by or under any enactment*
- (b) is incompatible with any Community obligations, or*
- (c) would constitute or be punishable as contempt of court.*

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of the paragraphs (a) to (c) of subsection (1)".

13. Under section 1(1)(a) of FOIA a public authority is required to confirm whether the information that has been requested is held. However, as far as is relevant to this case, section 44(2) means that if another piece of legislation prohibits it from providing such a confirmation, the public authority is not required to do so.

14. Importantly when applying section 44(2) a public authority is not restricted to considering only the response it would have to provide. It can also consider whether either a hypothetical confirmation or a hypothetical denial would engage the exemption. For example, if the public authority did not hold the information, it should not just consider whether denying the information was held would breach the statutory prohibition, it should also consider the consequence if it had to confirm the information was held.

15. The DWP has argued that section 123(1) of the Social Security Administration Act 1992 (the SSAA) prohibits disclosure of the kind of information that has been requested in this case.

16. Section 123(1) of the SSAA states the

"A person who is or has been employed in social security administration or adjudication is guilty of an offence if he discloses without lawful authority any information which he acquired in the course of his employment which relates to a particular person".

17. In view of the above, the Commissioner has considered whether, if the DWP confirmed whether or not it held information in this case, this

would amount to disclosure without lawful authority of information which if held would have been acquired in the course of an individual's employment which relates to a particular person.

18. The Commissioner is satisfied that the confirming or denying of information if held by the DWP, would be a disclosure of information that relates to a particular person. He is also satisfied that if the information is held, it would be information that would have been acquired in the course of an individual's employment which relates to a particular person. The Commissioner is therefore satisfied that the requested information, if held, falls under the exemption set out under section 44(1)(a)
19. The Commissioner considers that confirmation or denial that information is held relating to an Order of Sale would itself reveal information to the public about an identifiable person.
20. Confirming or denying that information is held would therefore fall within section 123(1) of the SSAA and thus by virtue of sections 44(1)(a) and 44(2) of the FOIA, the duty to confirm or deny contained at section 1(1)(a) of FOIA does not apply.
21. The Commissioner finds that section 123(1) of the SSAA prohibited the DWP from providing a hypothetical confirmation that the requested information was held. It follows that the DWP was entitled to refuse to confirm or deny whether the information was held by virtue of section 44(2) of the FOIA.

Right of Appeal

22. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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
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Wilmslow
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SK9 5AF