

## Freedom of Information Act 2000

### Decision notice

**Date:** 17 September 2015

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### Decision (including any steps ordered)

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1. The complainant requested peer review documents carried out by the Department for Work and Pensions (the DWP) following the death of a benefit claimant. The DWP refused the request under section 44 of the Freedom of Information Act 2000 (the Act) as disclosure was prohibited by section 123 of the Social Security Administration Act 1992 (the SSAA).
2. The Commissioner's decision is that the DWP is entitled to refuse the requested information under section 44 of the Act. No steps are required.

#### Request and response

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3. On 13 October 2014, the complainant wrote to the DWP and requested information in the following terms:

*"Further to your Freedom of Information response 2014-3714, on 22 September 2014, in connection with the records that DWP keeps of deaths that have been found to be connected to, or linked to, or partially caused by, the withdrawal or non-payment of disability benefits...*

*On 10/10/14, I was told by the Department for Work and Pensions press office: "We take the death of any claimant seriously. Where it is appropriate, we undertake reviews into individual cases but we do not accept the argument of those who seek to politicise people's deaths by*

*linking them inaccurately to welfare policy. We keep guidance on dealing with vulnerable claimants under constant review."*

*Can you therefore please tell me now:*

- 1. How many such reviews of individual cases involving deaths have taken place in each of the last 10 years?*
  - 2. Please give me as many details as possible for each review ie circumstances of death, date and location of death, which benefits were involved, and conclusion of review.*
  - 3. Please provide me with copies of each of these reviews."*
4. The DWP responded on 10 November 2014 as follows:
    1. Refused under section 12 of the Act, as complying with this item of the request would exceed the appropriate limit.
    2. Refused under section 44 of the Act, as there was a statutory bar placed on disclosure from section 123 of the SSAA.
    3. Refused due to the responses provided to items 1 and 2 of the request.
  5. The complainant requested an internal review on 11 November 2014, and in light of the application of section 12 asked that the DWP provide information about as many of the most recent reviews that it could provide within the appropriate limit. In effect, the complainant was removing item 1 from his request as he made it clear he wanted to obtain the information relevant to items 2 and 3 and was prepared to limit the timeframe the request covered.
  6. The DWP issued its review on 19 February 2015. The DWP accorded with the complainant's instructions and focussed only on the reviews that it would be able to extract within the appropriate limit. The review upheld the section 44 refusal.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 21 February 2015 to complain about the way his request for information had been handled.
8. At the outset of his investigation, the Commissioner informed the complainant that he considered the scope of the investigation to be whether the DWP had correctly applied section 44 of the Act. The complainant indicated he was satisfied with this, and raised some

further points for consideration which the Commissioner has taken into account in reaching his decision.

9. The Commissioner considers that items 2 and 3 of the request are essentially asking for the same information. The relevant information for item 2 of the request is contained within the peer review documents requested in item 3 of the request. For the purposes of this decision, the Commissioner will refer only to the request rather than the specific items.
10. The Commissioner considers the scope of the case to be whether the complainant's request can be refused under section 44 of the Act.

### Reasons for decision

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11. Section 44(1)(a) of the Act provides that a public authority may refuse to disclose information if its disclosure by the public authority holding it is prohibited by, or under, any enactment. As an absolute exemption it is not subject to the public interest test.
12. The DWP stated that disclosure is prohibited by section 123 of the Social Security Administration Act 1992 (Commissioner's emphasis):

*(1) 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 and which **relates** to a particular person.*

...

*(3) It is not an offence under this section—*

*(a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it; or*

*(b) to disclose information which has previously been disclosed to the public with lawful authority."*

13. For the Commissioner to find that section 44(1)(a) of the Act applies he will need to consider the following:
  - Does section 123 of the Social Security Administration Act 1992 (SSAA) apply to the requested information?
  - Does the complainant have lawful authority to obtain the information?

- Has the information already been disclosed to the public?
- Can the information be disclosed in a summary or collection which would not enable information relating to a particular person to be ascertained from it?

*Does section 123 of the SSAA apply?*

14. The Commissioner is satisfied that members of staff at the DWP are "employed in social security administration or adjudication".
15. The information requested by the complainant is peer review documents carried out by a member of DWP staff following the death of a claimant. These seek to catalogue the claimant's interaction with DWP staff and services to consider whether this contributed to the factors that caused the claimant's death.
16. The DWP provided the Commissioner with a selection of review documents to inspect. The Commissioner is conscious that the information only need "relate" to a particular person in order for it to come within section 123 of the SSAA.
17. Having reviewed these the Commissioner considers that the specific information within the documents can be split into two distinct sections: that which was generated by the staff member carrying out the review, and that which was obtained from the DWP's records.
18. The Commissioner considers that section 123 of the SSAA applies to both of these. The first is acquired by the staff member carrying out the review and relates to the deceased claimant. Whilst some of the information is more specifically about how members of DWP staff went about their jobs, the information still relates to the deceased claimant and how their case was handled. The second is information already stored in the DWP's records about the deceased claimant, and this would have been acquired by DWP staff members in the course of their professional functions.

*Does the complainant have lawful authority to obtain the information?*

19. Section 44(1) expressly provides that the Act should be discounted when considering whether disclosure is prohibited. The Commissioner cannot consider that the Act provides lawful authority for disclosure. No justification is self-evident or been argued by any party in the investigation for why there is lawful authority to disclose the requested information to the world at large – which a disclosure under the Act would represent.

*Has the information already been disclosed to the public?*

20. The DWP confirmed that the information has not been disclosed to the public. In submissions to the Commissioner the DWP stated:

*"[T]hese Reviews contain large amounts of personal information about the claimants and details of their interactions with the Department. They can also include significant amounts of personal information relating to relatives or other third parties.*

*DWP is one of the largest data controllers in the UK and takes its responsibilities to protect the confidentiality of claimants' personal information extremely seriously. That is why section 123 of the SSAA makes it a criminal offence for anyone employed by the Department to disclose information relating to an individual without lawful authority."*

21. The DWP's submissions show the approach it takes to the deceased claimants' personal information. The Commissioner is satisfied that this approach shows that it would be highly irregular for the DWP to disclose the withheld information to the public.
22. The Commissioner is unaware of any evidence to suggest that the information has been released into the public domain. Based on this, in addition with the DWP's assurances, the Commissioner is satisfied that the information has not been disclosed to the public.

*Can the information be disclosed in a summary or collection which would not enable information relating to a particular person to be ascertained from it?*

23. In making his appeal to the Commissioner the complainant specifically asked for an attempt to be made to have the review documents disclosed to him with the particularly sensitive or confidential information redacted.
24. The Commissioner does not consider that this can be done. The information only has to "relate" to a particular person in order for the exemption to apply and, even if identifiers such as names were redacted, the remaining information contained in the documents will nevertheless relate to a deceased claimant because that is the purpose of the review.
25. Similarly, the information within the review documents is entirely specific to the circumstances of each claimant and so relates to them. The Commissioner cannot discern any sensible way to disclose the information in a summary which would not provide information relating to the deceased claimants.

### *Conclusion*

26. The Commissioner is satisfied that all of the considerations for section 44 have been met: section 123 of the SSAA applies; within that, there is no legal authority to disclose the information, the information has not been disclosed to the public, and the information cannot lawfully be disclosed as a summary or collection. Therefore, section 44 of the Act applies. As section 44 is an absolute exemption the Commissioner cannot consider whether there is a public interest argument in disclosing the information.
27. The Commissioner finds that the DWP is entitled to refuse the request under section 44 of the Act. No steps are required for the DWP.

### **Other matters**

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28. The Commissioner wishes to note the length of time taken by the DWP to issue its internal review. Whilst there is no statutory provision within the Act for how long a review should take, internal reviews are covered in the section 45 codes of practice. Paragraph 42 of the code states that public authorities are allowed to set their own targets for responding but that these must be "reasonable".<sup>1</sup>
29. The DWP took 69 working days to issue its internal review to the complainant. Given the relatively straightforward decision that was required it does not seem to the Commissioner that this is a reasonable length of time. The Commissioner asks that the DWP take greater steps to ensure reviews are issued promptly.

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<http://webarchive.nationalarchives.gov.uk/20150730125042/http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf#page=12>

## Right of appeal

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30. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

31. 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.
32. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Wilmslow**  
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