

16 August 2023

Case reference: IC-245469-Y8Q8

We are now in a position to respond to your information request.

Request

"DWP's ARA 2022-23 states that "the Department participated in the ICO's investigation into the use of Artificial Intelligence and Algorithms in the Welfare System. The ICO found that there was no evidence to suggest that people in the benefits and welfare system are subjected to any undue harm or financial detriment as a result of the algorithms used. In addition, the ICO found that there was sufficient and meaningful human involvement in the processes examined." [\[link\]](#)

That section of the ARA could be read as suggesting that the ICO carried out an investigation into benefits and systems administered by DWP, the department responsible for administering the bulk of the welfare system.

However, this ICO blog refers to a review focused only on local authorities (LAs): [\[link\]](#)

The response to an earlier FOI suggests that the ICO review referred to in the blog focused on LAs, which included some systems provided by DWP to LAs, and included a fact finding exercise looking at the welfare system more broadly with potential to incorporate additional providers/suppliers of algorithms into the investigation: [\[link\]](#)

- 1. did the ICO investigate the use of AI and algorithms in the benefits and systems administered by DWP? If so, please provide the results of this investigation.*
- 2. If the ICO did not carry out an investigation into the use of AI and algorithms*

in the benefits and systems administered by DWP then please provide the internal justification for not expanding the scope of the investigation, if any."

We have handled your request under the Freedom of Information Act 2000 (FOIA).

Our response

The ICO conducted an inquiry into the use of algorithms and similar technologies in the welfare and social care sector, which included consideration of any relevant systems used by the Department for Work and Pensions (DWP). We engaged with DWP for this purpose.

Please find enclosed the information within scope of your request in question 1 to which you are entitled. This is the relevant information from sections 3 'Key findings' and 5 'Closure decision and reasoning' of the inquiry closure record for this piece of work. The other sections of this internal document are not in scope of your request.

We are withholding an ICO letter to DWP following the conclusion of our inquiry, along with some of the information contained in section 3 of the inquiry closure record, pursuant to section 31(1)(g) and 44 of the FOIA. Further information on these exemptions is provided below.

Section 31 FOIA

We consider that the information identified is exempt from disclosure under section 31(1)(g) of the FOIA. This section states:

"Information... is exempt information if its disclosure under this Act would, or would be likely to, prejudice – (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)"

The purposes referred to in sections 31(2)(a) and (c) are:

- a. the purpose of ascertaining whether any person has failed to comply with the law
- c. the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise

The purposes at section 31(2)(a) and (c) apply when the Information Commissioner is determining whether or not data controllers are complying with

their obligations under data protection legislation. As such, we find this exemption is engaged and we consider that disclosure of the information would be likely to prejudice our ability to effectively carry out our regulatory function.

The exemption at section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of this information, as well as any prejudice or harm which may be caused by disclosure.

In this case, the public interest factors in disclosing the information are:

- Openness and transparency in the way in which the ICO engages with data controllers on their compliance with data protection legislation and their use of algorithms and similar technologies.
- Disclosure would help to demonstrate that the ICO is complying with its duties as regulator by conducting enquiries with data controllers on matters of concern that have been brought to our attention.

The public interest factors in favour of maintaining the exemption are:

- Maintaining the confidentiality of information provided and evidence considered as part of our enquiries.
- Ensuring that the ICO is able to have effective relationships with data controllers and that they continue to work with us in an open and collaborative way. Disclosure of information provided in confidence, or considered to be confidential, would be likely to have a long term detrimental effect on our ability to engage with them on inquiries we may conduct in the future.
- We have published our findings on this inquiry in a blog by our Deputy Commissioner online [here](#). The inquiry's findings were also highlighted in a speech by the Information Commissioner which is available as a transcript or video on our website [here](#).

Having considered all of these factors, we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it and the information is exempt from disclosure under section 31(1)(g) of the FOIA.

Section 44 FOIA

We also consider that the exemption at section 44 of the FOIA applies to this information.

Section 44 is an absolute exemption which means that it can be withheld without further consideration if other legislation prevents its release, if it meets certain conditions, and if none of the circumstances that would give us lawful authority to release it apply. Section 44(1)(a) of the FOIA states;

'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it – a. is prohibited by or under any enactment'

In this case, the Data Protection Act 2018, Part 5, Section 132 prohibits the disclosure of confidential information that:

- a. has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,
- b. relates to an identified or identifiable individual or business, and
- c. is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources, unless the disclosure is made with lawful authority.

We do not have lawful authority to disclose to you information provided to us by DWP and the other organisations we engaged with as part of this inquiry as this information was provided to us in confidence.

Section 132(3) imposes a criminal liability on the Commissioner and his staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so or it has been made public from another source.

This concludes our response to your request. We hope you found this information helpful.

Next steps

You can ask us to review of our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days. You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority. You can [raise a complaint through our website](#).

Your information

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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