

2 August 2024

Case reference: IC-319011-N8S9

We are now in a position to respond to your information request of 11 July.

Request

"The Information Commissioner published the following Practice Recommendation: [[link](#)]

- (a) The document states that DWP should write to the Commissioner by the end of 23 June 2023 to confirm that it has complied with his recommendations and how it has achieved this.*
- (b) The document also recommends that DWP should request a consensual audit of the DWP's FOIA policies and practices and procedures from the ICO.*

Please provide:

- (1) the correspondence between DWP and the Commissioner regarding (a); and*
- (2) please provide the result of the consensual audit."*

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

Our response

Please find enclosed the information to which you are entitled within scope of your request in part (1).

This is correspondence between the ICO and the Department for Work and Pensions (DWP) which includes the issuing of the practice recommendation of March 2023 and the DWP's response to it received in June 2023. Some of the information has been withheld and further detail on this is provided below.

The practice recommendation can be found on our website [here](#), and is technically withheld under section 21 of the FOIA as it is already reasonably accessible to you from another source.

We do not hold the information within scope of your request in part (2).

We publish information about our completed audits on our website [here](#).

Section 40 FOIA

We have withheld the name and contact details of members of staff at DWP under section 40(2) by virtue of section 40(3)(a)(i), which is the exemption under FOIA concerning personal information.

Section 40(2) of the FOIA allows a public authority to withhold information from a response to a request when the information requested is personal data relating to someone other than the requestor, and its disclosure would contravene one of the data protection principles.

Section 44 FOIA

Some of the information has been withheld under section 44 of the FOIA. This is an absolute exemption which means that information 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 the information provided to us by DWP as this 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.

Section 31 FOIA

A small amount of information has been withheld 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 a regulator is determining whether or not there has been a breach of relevant legislation, and whether any further action is appropriate.

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 the information we hold at this time, as well as any prejudice or harm which may be caused by disclosure.

To release this information would be likely to prejudice the ICO's ability to conduct future engagement and undertake enquiries with DWP on compliance with the legislation we oversee.

We have considered the public interest test for and against disclosure. In this instance the public interest factors in favour of disclosure are:

- Openness and transparency in the way in which the ICO conducts its work as regulator of the FOIA.

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

- The need for the ICO to continue to encourage DWP, and other public authorities, to engaged with us as regulator of the FOIA.
 - To allow the ICO to maintain the trust and confidence of public authorities by affording information exchanged an appropriate level of confidentiality.
- Disclosure of information considered to be confidential, would be likely to have a

long term detrimental effect on the cooperation of public authorities to our enquiries.

- The ICO has a demonstrable history of sharing information about our regulatory activities when it is appropriate to do so, in line with our [Communication our regulatory and enforcement activity policy](#). This includes the publication of practice recommendations issued under section 48 of the FOIA.

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.

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

Next steps

You can ask us to review 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 sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



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**For information about what we do with personal data
see our [privacy notice](#)**