

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 February 2013

Public Authority: The Department for Work and Pensions
Address: 607 Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested the name and qualifications of the individuals who reviewed his case following his appeal against an incapacity benefit assessment. He has also requested the name of the company who conducted the review. The assessment was performed by Atos Healthcare ("Atos") on behalf of the Department for Work and Pensions (the "DWP") and the review was conducted by a company known as the Independent Tier (the "IT").
2. The Commissioner's decision is that, in the circumstances of this case, the names of the individuals and the company are the complainant's personal data. Therefore the DWP was not obliged to comply with section 1(1)(a) of the FOIA in relation to that information by virtue of section 40(5)(a). This information should have been considered for disclosure under the Data Protection Act 1998 (the "DPA").
3. The information about the individuals' qualifications is not the complainant's personal data and therefore has been considered under the FOIA. The Commissioner has determined that the qualifications of the assessor are not held for the purposes of the FOIA. The doctor's qualifications are held by Atos on behalf of the DWP in accordance with section 3(2)(b). The Commissioner is however satisfied that the DWP

was correct to refuse to provide that information on the basis that it is exempt under section 40(2)(b). It is the doctor's personal data and disclosure would, in the Commissioner's view, breach the first data protection principle.

4. The Commissioner has suggested that as a matter of good practice the DWP should consider making further general information publicly available about the minimum qualification requirements for those involved in incapacity benefit assessment reviews but no remedial steps are required.

Background

5. The DWP has a contract with Atos for the provision of services in connection with incapacity benefit assessments. Atos make an assessment which the incapacity benefit claimant can then appeal. If they decide to do so their complaint is escalated to what is known as the IT. This is the third stage of a three tier complaints process.
6. The IT is administratively supported by a Convenor who works for Atos. The Convenor receives the complaint and (if it is accepted) copies of the claimant's file are prepared and sent to the IT company. This is a private company that offers the complainant a review of the way in which their complaint has been handled by Atos. The DWP has confirmed that the IT company is only responsible for reviewing Atos' adherence to the process for handling the complaint.
7. The IT company appoints an independent assessor to perform the review.
8. If appropriate, Atos also send the claimant's file to an Independent Healthcare Professional ("doctor") to carry out a medical quality review of the initial assessment. Therefore Atos holds the identity of the doctor assigned to consider a particular review.
9. The DWP has confirmed that the IT assessor is trained and accredited in undertaking audits of quality management systems. The appointed doctor must be registered with the General Medical Council (the "GMC") and be highly experienced in the field of disability assessment medicine.
10. The name of the claimant is in the file that is passed to the doctor and the assessor. Atos obtains consent from the claimant for their case to be forwarded to the IT.

11. The assessor will conduct a review and write a report. The report is sent back to the Convenor. If the assessor finds a problem then the report goes to the National Customer Relations Manager at Atos who will determine the nature of any remedial action which should be taken.
12. The doctor will also write a report which again is sent back to the Convenor. If concerns are identified the report is sent to the DWP for a decision maker review about what to do next.
13. The Convenor communicates the outcome of both reports to the claimant. Neither the name of the assessor nor the name of the doctor is included on the report. The name of the IT company is not given.
14. The DWP has explained that the identity and qualifications of the assessor are not given to the complainant or Atos. This information is held by the IT and is not known to Atos or the DWP.
15. The identity and qualifications of the doctors are held by Atos and are approved by the DWP Corporate Medical Group.
16. The DWP has explained that the IT company is a private company which has been appointed to act as an IT, following approval by the DWP Contracted Customer Services Directorate.
17. The contract between the DWP and Atos states that "*A private company has been appointed to act as an IT. The name of this firm will not be divulged to any third party*". The DWP has explained that this is to ensure its impartiality.
18. The DWP has also explained that it is not in the agreed remit of the IT that it will be open to receive direct communication from the claimant (or any party). The Convenor is the point of contact between the IT and the claimant.
19. The IT is therefore made up of two bodies: the independent assessor and the doctor. Neither is known to the claimant whose assessment they review.

Request and response

20. On 7 November 2010 the complainant wrote to the DWP and, with reference to the IT report, made the following request:

"I would be pleased therefore if you could let me know the name of the person who compiled the report, their qualifications and the name of the company they work for."

21. The DWP responded on 25 November 2010. It stated that the only information that it holds is confirmation that the terms of reference for the Medical Quality Review Board were issued to a named individual at Atos. The DWP confirmed that Atos is responsible for selecting independent medical experts and the private company to carry out investigations into its handling of complaints. The DWP explained that it therefore does not hold the names and qualifications of the individuals who compiled the IT report.
22. The DWP explained that Atos had advised that it does not wish to disclose the name of the private company as this would affect the basis of the contract between it and that company. It has explained that the contract agreed that the name of the firm would not be divulged to any third party.
23. The DWP has therefore applied section 43(2) of the FOIA to the requested company name.
24. The DWP (Jobcentre Plus) wrote to the complainant on 30 August 2011 and explained the complaints process. It explained that if a customer makes a complaint about a healthcare professional, Atos handles the complaint through its own process. The final stage is referral to the IT which will review the complaint. If a customer is still dissatisfied following the IT review, the complaint is passed to the Chief Executive of Jobcentre Plus.
25. The DWP confirmed that it has no access to the IT and cannot influence the review process.
26. During the course of the investigation the DWP informed the Commissioner that its starting point is that the names and qualifications of the IT members are not held. However, it then explained that if the Commissioner found that this information was held by the DWP for the purposes of the FOIA, it would apply section 43(2) to the name of the IT, and sections 43(2) and 40(2) to the name and qualifications of the independent assessor and the doctor in this case.
27. It argued that releasing the name of the IT company, the independent assessor and the doctor would, or would be likely to, prejudice the commercial interests of Atos and the DWP. It explained that Atos was already experiencing difficulties in recruiting doctors and that prospective doctors might be put off applying for posts for fear of being targeted by campaign groups.
28. The DWP considers that the name of the IT should remain anonymous in order to protect its independence. It argued that the IT company might withdraw its service if its name were published.

29. The DWP confirmed that the exemption at sections 43(2) and 40(2) would also apply to the names and qualifications of the doctors. If the IT could not recruit sufficient doctors, its ability to deliver its contractual obligations would be compromised and this would not be in the public interest. The DWP may then be forced to re-tender for the contract and this would not be in the public interest.
30. The DWP argued that there is some opposition from lobby groups, web based campaigners and members of the public to the government's policies on reassessing incapacity benefit recipients. There is a risk that elements of this opposition will focus on individuals rather than policies if doctors are identifiable as a result of their qualifications being disclosed. The DWP's position is that the potential harmful consequences to the named doctors outweigh any legitimate public interest in disclosure.
31. The DWP explained that it does not hold the names and qualifications of the independent assessors and that Atos does not hold this information either – this information is only held by the IT. It explained that if it did hold the names of the assessors, this information would be exempt under section 40(2) of the FOIA.

Scope of the case

32. On 28 October 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He did not accept that this information should be withheld from him.
33. The scope of this case has been to consider:
 - whether the exemption in section 40(5)(a) applies to any of the requested information on the basis that it is (or if it were held would be) personal data of the complainant;
 - for any information not subject to section 40(5)(a) is the information held by the DWP for the purposes of the FOIA; and
 - if information is held, whether it is exempt under section 40(2) and if not then under section 43(2).

Reasons for decision

Is any of the requested information subject to the exemption in section 40(5)(a)?

34. Section 40(5)(a) states that the duty to confirm or deny in section 1(1)(a) of the FOIA *"does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)"*.
35. Section 40(1) of the FOIA, states that *"any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."*
36. The Commissioner has therefore considered whether any of the requested information is, or if it were held would be, the personal data of the complainant.
37. Personal data is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller. The Commissioner is satisfied information that data subjects potentially have a right to access under section 7 of the DPA is also their personal data.
38. The Commissioner considers that, in the context of this case and irrespective of whether the information is held for FOIA purposes, the name of the independent assessor, the name of the doctor who provided the assessment report for the complainant and the name of the IT company constitute the complainant's own personal data. This is because they fall within the definition of a "recipient" specified in section 70 of the DPA and therefore the complainant potentially has a right to access the information in accordance with section 7(1)(b)(iii) of the DPA.
39. In view of the above, the Commissioner considers that the names of the IT doctor and assessor as well as the name of the IT company are, or if they were held would be, the personal data of the complainant. As such the DWP was not obliged to confirm or deny whether it held that information by virtue of section 40(5)(a). The Commissioner considers that access to this information should have been considered under the DPA.

Is the requested information about qualifications held by the DWP?

40. In view of the conclusion above the outstanding information is the qualifications of the doctors and assessors which is not personal data of the complainant. The Commissioner has considered whether this information is held by DWP for the purposes of the FOIA.
41. Section 3(2)(b) states that for the purposes of the FOIA information is held by a public authority if, *"it is held by another person on behalf of the authority"*. The Commissioner has therefore considered the relationship between the DWP, Atos and the IT company, including the terms of any contracts between the parties, in order to determine whether the qualifications are held by Atos or the IT company on behalf of the DWP for the purposes of the FOIA.

Information held by Atos

42. The DWP has confirmed that Atos holds the qualifications of the doctors who perform the reviews.
43. The DWP has explained that Atos is contractually obliged to provide it with information the DWP needs to respond to FOIA requests. The DWP has provided the Commissioner with an extract of the contract which outlines how Atos is expected to deal with requests made under the FOIA.
44. The Commissioner is satisfied that the qualifications are held by Atos in connection with the functions it is carrying out on behalf of the DWP. He is also satisfied that it is information caught by the clause in the contract that obliges Atos to provide the DWP with information that it requires to respond to an FOIA request. Having concluded that, in accordance with section 3(2)(b), the doctor's qualifications are held by Atos on behalf of the DWP for the purposes of the FOIA, he will go on to consider whether that information is exempt. However, before doing so, it is necessary to consider whether the assessor's qualifications are held.

Information held by the IT

45. The DWP has confirmed that the IT holds the qualifications of the independent assessors.
46. However, it has argued that neither Atos nor the DWP know or hold the qualifications of the independent assessors who work for the IT. It has explained that there is no relationship between the DWP and how the IT is managed. The DWP has explained that the services of the IT company are procured on a fee per case basis. It is apparently not deemed to be a subcontractor of the DWP or Atos subject to the same or similar

contractual obligations as Atos to provide information to the DWP to assist with responses to FOIA requests.

47. As there is no relationship between DWP and the IT company there is no contractual obligation placed upon the IT company to provide the DWP with the qualifications of its independent assessors. It will not provide this information so as to maintain its independent function.
48. The Commissioner queried how, in the event of concerns about performance, the DWP could verify that the IT assessors were appropriately qualified. The DWP re-iterated that there is no relationship between it and the IT company and explained that the need to verify qualifications has never arisen. The Commissioner understands that all IT independent assessors are trained and accredited in undertaking audits of quality management systems. On the basis of the information provided to the Commissioner it appears that there is no means of the DWP obtaining the assessor qualifications in the event of concerns about performance on the basis of the existing contractual arrangements.
49. The Commissioner has considered the information the DWP has provided regarding the appeal process, the services provided by the IT company and the contractual arrangements in place. It appears that the DWP does not require the qualifications to be held in connection with the functions carried out by the IT company nor is there any contractual obligation on the company to provide Atos or the DWP with the qualification information for FOIA or any other purpose. In view of this the Commissioner has concluded that the assessor qualifications are not held by the IT company on behalf of the DWP for the purposes of the FOIA under section 3(2)(b).

Is the information held for the purposes of the FOIA exempt?

50. As explained above the Commissioner's considers that the qualifications of the doctor are held on behalf of the DWP for the purposes of the FOIA. The DWP has applied sections 40(2) and 43(2) of the FOIA to this information. The Commissioner has first considered the application of section 40(2) to the doctor's qualifications.

Section 40(2) – Personal data of a third party

51. Section 40(2) of the FOIA states that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the DPA states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

52. As previously mentioned personal data is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
53. The Commissioner is satisfied that the doctor's qualifications are biographically significant information about him/her and that he/she would be identifiable from that information when combined with other information. Specifically, given the potential for the doctor's name to be provided to the complainant under the DPA, it would be possible to link the qualifications to the name. Even if the doctor's name were not disclosed under the DPA the Commissioner is nevertheless of the view that the doctor is likely to be identifiable from the detail of the qualifications and other information in the public domain.

Is disclosure fair?

54. In considering whether disclosure would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- the consequences of disclosure;
 - the data subject's reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
55. Whilst it has not been necessary to consider whether disclosing the doctors name would be fair and lawful, given the section 40(5) conclusion above, the Commissioner acknowledges that the doctor's reasonable expectations about the disclosure of his/her qualifications is inextricably linked to their expectations regarding their identity being revealed given the guarantees of anonymity given by Atos.

Consequences of disclosure

56. The Commissioner accepts that disclosure of the qualifications would result in some intrusion into the doctor's privacy. The DWP has also argued that there are targeted campaigns against those involved in the delivery of the Medical Services Contract and in some instances there have been concerns for the health and safety of staff members. It is

therefore likely that if the qualifications were disclosed from which the doctor could be identified they would also then be subjected to pressure from those campaign groups and in some instances to threats to their health and safety. This is also likely to result in considerable distress to the doctor concerned.

57. The Commissioner acknowledges that the DWP has in no way suggested that the complainant in this case is likely to use the withheld information for this purpose. However disclosure under the FOIA is to the world at large. As there are groups and individuals seeking to pressure those involved in incapacity assessments the Commissioner is satisfied that if this information were released under the FOIA then the consequences specified by the DWP are a realistic possibility.

Reasonable expectations

58. The DWP has argued that it is fundamental that the IT remain independent of Atos. The expectation set by the DWP and Atos is that the IT doctors will remain anonymous and will therefore not be subject to contact or pressure from claimants or groups who oppose the government's policies on reassessing incapacity benefit recipients as mentioned above. Given the likelihood of the qualifications identifying the doctor the Commissioner accepts that he/she also has a reasonable expectation that this information will not be disclosed under the FOIA. The Commissioner also notes that the doctor has not consented to the disclosure.

The balance between the rights and freedoms of the data subject and the legitimate interests of the public

59. The Commissioner recognises that the public has a legitimate interest in knowing that doctors who perform reviews of assessments are appropriately qualified. There is a clear argument that those individuals who perform such a public role should be transparent about their qualifications and accountable to the public.

Conclusion on analysis of fairness

60. A balance therefore has to be struck between transparency and accountability and the duty to respect the doctor's right to privacy. The Commissioner recognises that there is a legitimate interest in the public being able to confirm that doctors conducting reviews of incapacity benefit assessments are appropriately qualified and that this argument has significant weight. However he does not believe that it is sufficient to warrant the prejudice to the rights and freedoms of the data subject (the doctor) in this case given the aforementioned reasonable expectations and the consequences of disclosure. The Commissioner has

therefore concluded that it would be unfair to disclose the doctor's qualifications and as such this would breach the first data protection principle. In view of this he is satisfied that the DWP appropriately refused to provide the qualifications on the basis that the information was exempt under section 40(2) of the FOIA.

61. Notwithstanding his conclusion in relation to section 40(2) the Commissioner has made some additional observations about information that could be made public as a matter of good practice in the 'Other matters' section below.
62. Having determined that section 40(2) was correctly relied on by DWP to refuse to provide the qualifications it has not been necessary for the Commissioner to go on to consider section 43(2).

Other matters

63. The DWP has suggested that it would be prepared to provide the minimum education or professional requirements expected of IT members in this case. The Commissioner considers that as a matter of good practice the DWP should consider making more information publicly available about the minimum qualifications required by those conducting the incapacity benefit assessment reviews. Such general information would not identify any individual and therefore would not constitute personal data. However it would provide further transparency and accountability and go some way to meeting the legitimate interests of the public in demonstrating that professionals fulfilling that role are appropriately qualified.

Right of appeal

64. 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

65. 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.
66. 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

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