

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2016

Public Authority: Department of Work and Pensions

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

Decision (including any steps ordered)

1. The complainant has requested information regarding deceased former ESA claimants and the government's work programme.
2. The Commissioner's decision is that the DWP's reliance on section 44 to withhold the requested information was incorrect.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - To provide the complainant with the requested information it holds.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. Employment and Support Allowance (ESA) is the government's main income replacement benefit for working age claimants who are not able to work as a result of the effects of a physical or mental health condition. It was introduced in 2008 by the Welfare Reform Act 2007. Eligibility for ESA is tested by the Work Capability Assessment (WCA).

6. The DWP has informed the Commissioner that a Peer Review is its internal review of case handling in relation to a particular individual. They are one of a range of continuous improvement tools available to DWP staff to monitor and improve processes.
7. The DWP has previously made public that it had carried out 49 peer reviews in circumstances where the claimant had died (22 in 2012/13, 16 in 2013/14, and 11 in an incomplete 2014/15¹).

Request and response

8. On 12 June 2015, the complainant wrote to the DWP and requested information in the following terms:
 - a) How many of the 49 claimants whose deaths were peer reviewed were ESA claimants who were, or had recently been, on the work programme.
 - b) How many of these were deemed to be vulnerable claimants in relation to 'safeguarding' procedures.
9. The DWP responded on 28 July 2015. It stated that;

"The Department considers this to be confidential information about our clients gathered by civil servants in the course of their duties. This being the case Section 123 of the Social Security Administration Act 1992 (SSAA) prohibits the release of such information.

As the SSAA is prior legislation this engages Section 44 of the FOI Act making the information ineligible for release under the terms of that Act.

As section 44 is an absolute exemption the Department has no duty to consider where the public interest lies".
10. Following an internal review the DWP wrote to the complainant on 3 August 2015. It stated that it upheld its original decision.

¹ [http://www.informationtribunal.gov.uk/DBFiles/Decision/i1778/Pring,John%20EA-2015-0237\(12-04-16\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1778/Pring,John%20EA-2015-0237(12-04-16).pdf) (see paragraph 6)

Scope of the case

11. The complainant contacted the Commissioner on 21 September 2015 to complain about the way his request for information had been handled.

Reasons for decision

12. Section 1(1) of FOIA provides that:

Any person making a request for information to a public authority is entitled:

“(a) to be informed in writing by the public authority whether it holds information of the description specified in the request,

and

(b) if that is the case, to have that information communicated to him.”

13. 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.

14. The relevant parts of s123 of SSAA 1992 read as follows:

(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;

15. The Commissioner is readily satisfied that the withheld information is sought from a person employed in social security administration. He is further satisfied that the information relates to a particular person. That being a person in receipt of EWA and in the circumstances delineated by the complainant's request for information.

16. The Commissioner next considered whether s123(3)(a) of SSAA 1992 applied. That is, would the disclosure of the withheld information be a disclosure of information in a summary form in such a way that does not enable information relating to any particular person to be ascertained from it? If it would then s123(1) SSAA 1992 is not applicable and consequentially neither would s44 FOIA apply in this matter.
17. In the context of the above paragraph, the Commissioner asked the DWP to confirm what ascertainable information of any particular person would be disclosed if the requested information was released.
18. DWP's response was;

"The Department has considered whether section 123(3) could apply to this information. However, the legislation requires information disclosed under this gateway to be framed in such a way that it cannot enable information relating to a particular person to be ascertained. The Department is of the view that, in the circumstances, it is not possible to frame this information in a way which would not allow the individuals concerned, or information about them to be ascertained."
19. The DWP went on to elaborate that the complainant's query involves a small number of individuals only: a very small sample of an already small group of 49 individuals. These cases involved claimants who had committed suicide; there will have been a Coroner's inquest in each case. Records of inquests are available in the public domain thereby providing a route way to enable information relating to a particular person to be ascertained. In addition, the DWP is aware that in these cases links to DWP have been made in the wider public domain which could enable identification of these individuals.
20. The DWP further stated that it recognises and understands the media and public interest in this matter. The Department believes that it is important to maintain the principle of confidentiality embodied in s123 SSAA 1992. The DWP is of the view that it is likely to be relatively straightforward for a member of the public to cross-reference information obtained through this kind of request with information already in the public domain and thereby identify at least some of the claimants concerned and possibly all. Indeed, simply by releasing this information the Department would be providing information which is not necessarily in the public domain now, but when put together with other information could lead to the identification and publication of the identities of the individuals concerned. This is because, simply by answering the questions, it would be confirming information relating to those individuals.

21. Notwithstanding the submissions of the DWP, the Commissioner (on the balance of probabilities) is not persuaded that releasing the withheld information would enable information regarding a particular person to be ascertained. He is of the view that specific individuals are not likely to be confirmed or not confirmed as falling within the parameters of the requested information as a result of disclosing those specific numbers.
22. Accordingly the Commissioner must find that the DWP wrongly relied on section 44 of FOIA read together with section 123 SSAA 1992 to withhold the requested information from the complainant.

Right of appeal

23. 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

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

24. 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.
25. 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
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