

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 March 2023

**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 has requested a fairness analysis conducted into anti-fraud measures by the Department for Work and Pensions (DWP).
2. DWP refused to disclose this information on the basis of section 31(1)(a), the prevention and detection of crime.
3. The Commissioner's decision is that DWP is entitled to rely on section 31(1)(a) and the public interest favours maintaining the exemption.
4. The Commissioner does not require any steps.

#### **Request and response**

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5. On 8 July 2022, the complainant wrote to DWP and requested information in the following terms:

"Please provide the fairness analysis referred to on pp. 229-230:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1091361/annual-report-accounts-2021-22-web-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1091361/annual-report-accounts-2021-22-web-ready.pdf)"

6. DWP provided its response on 9 August 2022 and confirmed that it held the requested information.
7. DWP explained that it was withholding the requested information under section 31 as disclosure would compromise the effectiveness of its response to fraud. DWP did not specify which limb of section 31 it was relying on but it did set out that section 31 covers the prevention of crime.
8. DWP provided its public interest considerations. It explained that while there is a legitimate public interest in ensuring that DWP gathers and uses information legitimately to check accuracy and eligibility in the award and payments of benefits, it would not be able to provide more specific information as it would enable a perpetrator to understand DWP's services.
9. DWP explained that providing the level of detail requested would enable a perpetrator to understand the way its IT systems work. DWP explained that this would enable an offender to make false claims to benefit, divert public funds, affect the way the government pays benefits to claimants or collects taxes, and could otherwise compromise the provision of essential public services.
10. DWP explained that it is always careful to process data lawfully, proportionately, and ethically with meaningful human input and safeguards for the protection of individuals. DWP confirmed that it does not use Artificial Intelligence (AI) to replace human judgement to determine or deny a payment to a claimant, a human agent always makes final decisions. DWP explained that it is conscious to take into account the impact of decisions on protected groups under the Equality Act and carry out Data Protection Impact Assessments for large scale transformative initiatives that involve personal data, aligned with data-ethics frameworks, codes of practice, and working principles.
11. DWP stated that it is committed to ensuring individuals' rights are protected when personal data is processed for its functions and provide a link to its Personal Information Charter<sup>1</sup> which outlines how it uses data for fraud and error purposes.
12. The complainant requested an internal review on 12 August 2022 and disputed that section 31 was engaged.

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<sup>1</sup> <https://www.gov.uk/government/organisations/department-for-work-pensions/about/personal-information-charter>

13. DWP provided the outcome of its internal review on 6 September 2022 and upheld its original response. DWP explained that due to the technical content of the information requested, even a redacted disclosure would have a real and significant risk of revealing details of how the model works and weaknesses to its systems and processes. DWP explained that this would result in significant harm to DWP and the public more widely as any compromise to its capabilities to counter criminal activity would result in higher costs to the taxpayer and its ability to protect the data of DWP customers.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 9 September 2022 to complain about the handling of their request. Specifically, they disputed that DWP was entitled to withhold the requested information.
15. While DWP did not confirm the specific limb of section 31 that it was relying on, the Commissioner considers that DWP's confirmation that disclosure would prejudice the 'prevention of crime' means that DWP is relying on section 31(1)(a) of FOIA to withhold the information.
16. The Commissioner therefore considers that the scope of this investigation is to determine whether DWP is entitled to rely on section 31(1)(a) to withhold the redacted information.

### **Reasons for decision**

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#### **Section 31(1)(a): Prevention or detection of crime**

17. Section 31(1)(a) of FOIA states:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime".

18. In order for a prejudice based exemption such as section 31(1)(a) to be engaged, the Commissioner considers that three criteria must be met:
  - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;

- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view; this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
19. During the investigation, the Commissioner's officer met with DWP and undertook detailed discussions and reviewed the withheld information. The Commissioner has based his decision on these decisions and the information being withheld.
  20. DWP confirmed to the Commissioner that disclosure of the requested information would provide malicious actors with insight of how to avoid detection by the anti-fraud measures. The information requested does not comprise a formal report which could be redacted. Instead, it is raw data.
  21. With regard to the first criterion, the Commissioner is satisfied that the harm envisaged relates to the interest that section 31(1)(a) seeks to protect against, specifically, the prevention or detection of crime.
  22. The Commissioner next considered whether the prejudice being claimed is "real, actual or of substance", not trivial and whether there is a causal link between disclosure and the prejudice claimed.
  23. The Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant and he accepts that it is plausible to argue that there is a causal link between disclosure of the disputed information and the prejudice occurring. The prejudice in this case would be to DWP's ability to prevent and detect fraudulent activity within its systems and claims. There is a clear causal link between the disclosure of the withheld information and an increased risk of fraud.
  24. The Commissioner accepts that the threshold of 'would be likely' has been met.

25. The Commissioner finds that the prejudice test has been satisfied in the circumstances of this case and consequently the exemption at section 31(1)(a) is engaged.
26. Section 31(1)(a) is a qualified exemption. By virtue of section 2(2)(b), DWP can only rely on section 31(1)(a) as a basis for withholding the information in question if the public interest in doing so outweighs the public interest in disclosure.

### **The balance of the public interest**

27. The Commissioner acknowledges the public interest in understanding DWP's use of personal data and the impact on claimants when an incorrect suspicion of fraud leads to the suspension of benefits.
28. However, the Commissioner considers that, in the circumstances of this case, there is a strong public interest in ensuring that DWP is able to prevent and detect fraud within its systems. The cost of fraud to the public purse is significant and it is in the public interest to prevent this increasing and reduce it<sup>2</sup>.
29. Whilst the Commissioner accepts that there is a public interest in the disclosure of information which would increase the transparency of how DWP used personal data and how it prevents discrimination within its systems, the Commissioner notes DWP's confirmation in the annual report that the analysis only covers three protected groups and the results were inconclusive. In light of this, having viewed the information, the Commissioner is not persuaded that disclosure would significantly add to the public understanding of DWP's use of personal data and any measures taken to prevent discrimination.
30. He does, however, consider that the public interest in maintaining the integrity of DWP's anti-fraud measures carries significant weight and outweighs the public interest in disclosure.
31. The Commissioner therefore finds that DWP is entitled to rely on section 31(1)(a) to withhold the disputed information.

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<sup>2</sup> The Commissioner has based this consideration on evidence provided in case IC-160077-Z7M0

## Right of appeal

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32. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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

**Victoria Parkinson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**