

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

### **Decision notice**

**Date:** 13 March 2018

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House, 4th Floor  
6 -12 Tothill Street  
London  
SW1H 9NA

#### **Decision (including any steps ordered)**

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1. The complainant has requested the telephone numbers of two senior personnel at the Department for Work and Pensions. The Department for Work and Pensions relies on, inter alia, section 40(2) (personal data) to withhold the requested data.
2. The Commissioner's decision is that Department for Work and Pensions correctly relied on section 40(2) (personal data) to withhold the requested information.

#### **Request and response**

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3. On 20 June 2017, the complainant made a request to the Department for Work and Pensions ("DWP") for information under the FOIA by saying:  
  
"I would like the new direct dial contact telephone numbers for Andrew Rhodes (Director General of Operations) & Richard Deverux (Permanent Secretary). The two numbers you have already released under other FoI .... Please would you furnish me with the new (and working) direct dial contact telephone numbers?"
4. The DWP responded by saying as follows;  
  
"Personal information about a third party is treated as exempt information under section 40(2) of the Freedom of Information Act 2000. This is because personal information is treated under the

provisions of the Data Protection Act 1998 and can only be released to you where such disclosure would not breach that person's right to privacy.

The Department for Work and Pensions will not therefore disclose direct dial telephone numbers to you in this instance. However, as both these posts are publically accountable we can provide you with the telephone number for the Switchboard at Caxton House which is the Head Office of the Department for Work and Pensions. The telephone number is 020 7340 4000".

5. The DWP provided an internal review on 5 July 2017 in which it stated that it upheld its decision to rely on section 40(2) and that section 21 was also applicable in any event

### **Scope of the case**

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6. The complainant contacted the Commissioner on 6 July 2017 to complain about the way his request for information had been handled.

### **Reasons for decision**

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#### Section 40(2) – third party personal data

7. This exemption provides that any third party personal data is exempt from disclosure, if that disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act ("DPA").
8. In order to rely on the exemption provided by section 40(2), the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

"personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual'.

9. The complainant has sought the telephone numbers of specified persons. This data (i.e. the telephone numbers) is data that clearly

relates to living individuals insofar as they are live numbers for contacting those individuals. Accordingly the data is personal data for the purposes of section 40(2).

### **Would disclosure breach the Data Protection Principles?**

10. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, which is the most relevant in this case, requires that personal data should only be disclosed in fair and lawful circumstances.
11. The Commissioner's considerations below have focused on the issue of fairness.
12. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure, and whether there is legitimate public interest in the disclosure of the information in question.

### **Reasonable expectations**

13. As to the consequences of disclosure upon a data subject, the question in respect of fairness is whether disclosure would be likely to result in unwarranted damage or distress to that individual.
14. Disclosure of the information is unlikely to be fair if it would have unjustified adverse effects on the individuals concerned. Although individuals may generally regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life.
15. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. She will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions.
16. The Commissioner notes and appreciates the reality of the contextual circumstances of this request. The Department for Work and Pensions (DWP) is responsible for welfare, pensions and child maintenance policy. As the UK's biggest public service department it administers the State Pension and a range of working age, disability and ill health benefits to around 18 million claimants and customers.
17. As stated above any release of the withheld information is deemed to be a release to the world at large. It requires no great imagination to foresee that there will be users and customers of DWP services that will use the numbers to call or attempt to call the two people given their rank and seniority within the DWP. It is simply not feasible to see how

these two people could continue to discharge their duties and responsibilities when these numbers may be utilised by so many people. This will severely compromise their ability to deliver the functions and discharge their duties as required in their posts. Additionally it is not difficult to realise that releasing the said numbers will effectively make these individuals available 24 hours a day, 7 days a week to the public.

**General principles of accountability, transparency and legitimate public interest in disclosure**

18. Notwithstanding a data subject's reasonable expectations or any damage or distress caused, it may still be fair to disclose information if there is a more compelling public interest in doing so. Therefore the Commissioner will carry out a balancing exercise, balancing the rights and freedoms of the data subject against the public interest in disclosure of the withheld information.
19. Given the importance of protecting an individual's personal data the Commissioner's 'default position' is in favour of protecting the privacy of the individual. The public interest in disclosure of the information must outweigh the public interest in protecting the rights and freedoms of the data subject if disclosure is to be considered fair.
20. Further, the interest in disclosure must be a legitimate interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.
21. The Commissioner doubts there is a serious legitimate interest that requires or makes desirable the dissemination of the requested telephone numbers. The Commissioner's view is that the public interest is better served by the said individuals being able to discharge their duties and responsibilities as to the running of a large government department for the betterment of the public.
22. She considers these arguments outweigh any legitimate interest in disclosure. She has therefore concluded that disclosure in this case would not be fair and would breach the first data protection principle. She therefore finds the exemption at section 40(2) to be engaged and the DWP was entitled to withhold the requested information.

## Right of appeal

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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 1234504

Fax: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

**[Name of signatory]**

**[Job title of signatory]**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**