ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: **8 November 2022**

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 the personal details of deceased parents who died in 2018 whilst in arrears with their child maintenance payments.

2. The Department for Work and Pensions (DWP) refused to confirm or deny whether it held the requested information on the basis of sections 44(2) and 41(2).

3. The Commissioner's decision is that DWP is not entitled to rely on section 44(2) or 41(2) to neither confirm nor deny whether it holds the requested information. However, the Commissioner finds that DWP is entitled to rely on section 44(1)(a) to withhold the requested information.

4. The Commissioner also finds that DWP breached section 17(1)(b) as it did not specify which exemption it was relying on at the time of its response.

5. The Commissioner does not require DWP to take any steps.

Request and response

6. On 29 November 2021, the complainant wrote to DWP and requested information in the following terms:

   "I am requesting the names of Child Maintenance Service (CMS) Paying Parents who died during 2018, were in arrears at the end of the month prior to their death, and were due to pay ongoing liability in that month. I note that you have supplied cumulative statistics around that dataset in FOI2021/34958.

   I would like the data to be presented in a populated table with the following column headings:

   1/ Full name of deceased parent.

   2/ Date of birth of deceased parent.

   3/ Date of death of deceased parent.

   4/ Gender of deceased parent.

   5/ Last known address of deceased parent (county/city or town)".

7. DWP provided its response on 9 December 2021. It stated that it considered personal information about deceased persons is exempt from disclosure under section 41 (information provided in confidence) and section 44 (prohibition on disclosure). DWP confirmed that it was prohibited from disclosing the information by section 123 of the Social Security Administration Act 1992 (SSAA). DWP did not confirm whether it held the requested information.

8. The complainant requested an internal review on 19 December 2021 and disputed that the information could be withheld.

9. DWP provided the outcome of its internal review on 20 January 2022 and upheld its position that sections 44 and 41 were engaged.

Scope of the case

10. The complainant contacted the Commissioner on 25 January 2022 to complain about the way their request for information had been handled.

11. During the course of this investigation, DWP confirmed that it had intended to rely on sections 44(2) and 41(2) to neither confirm nor deny whether it holds the requested information.

12. The Commissioner will therefore consider whether DWP is entitled to rely on either section 44(2) or 41(2).

13. In cases where a public authority has relied on an exemption to neither confirm nor deny holding the requested information, the Commissioner will ordinarily issue a decision only on that matter.

14. However, in the specific circumstances of this case (set out in paragraph 19), the Commissioner considers that it is appropriate to deviate from this approach. Therefore, if the Commissioner determines that DWP is not entitled to refuse to confirm or deny whether it holds the information, he will proceed to consideration of whether DWP is entitled to rely on section 44(1)(a) or 41(1) to withhold the requested information.

15. The Commissioner will also consider whether DWP complied with the procedural requirements of FOIA.

Reasons for decision

The duty to confirm or deny

16. Section 41(2) provides that the duty to confirm or deny does not arise if doing so would constitute an actionable breach of confidence.

17. Section 44(2) provides that the duty to confirm or deny does not arise if doing so is prohibited by or under any enactment, is incompatible with any retained EU obligation, or would constitute or be punishable as a contempt of court.

18. DWP has confirmed that the relevant prohibition on disclosure is section 123 of the SSAA which makes unauthorised disclosure of information acquired in the course of employment in social security administration which relates to a particular person a criminal offence.

19. As set out by the complainant in their request, DWP had already confirmed in a previous request, FOI2021/34958[1], that it held the requested information.

20. This response shows that over 600 paying parents fell within the scope of the request's parameters for the year 2018.

21. In light of this, the Commissioner considers that sections 44(2) and 41(2) are not engaged as DWP has previously confirmed holding the requested information and the volume of people falling within the scope of the request means that no individual could be identified by confirming the information is held.

22. As DWP has publicly confirmed that the information is held, and the complainant is aware of this, the Commissioner does not require DWP to confirm it holds the information as to do so would be academic.

23. The Commissioner will go on to consider whether DWP is entitled to rely on section 44(1)(a) to withhold the requested information.

24. As set out in the 'Scope of the case' section above, this approach is based on the specific circumstances of this case and the Commissioner stresses that this does not set a precedent for future decisions.

Section 44(1)(a): Prohibition on disclosure

25. As set out above, DWP confirmed that disclosure of the requested information is prohibited by section 123 of the SSAA.

26. The complainant has disputed that disclosure is prohibited as child maintenance does not fall within the scope of 'social security administration'.

27. Section 123 of the SSAA states:

    "(6) For the purposes of this section, the persons who are "employed in social security administration or adjudication" are –

    (a) Any person specified in Part I of Schedule 4 to this Act or in any corresponding enactment having effect in Northern Ireland;"

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1 https://www.whatdotheyknow.com/cy/request/749146/response/1792062/attach/3/Response%20FOI2021%2034958.pdf?cookie_passthrough=1

28. Part I of Schedule 4 states:

    "A civil servant in –

    the Department for Work and Pensions"

29. Part II of Schedule 4 confirms:

    "The reference in Part I of this Schedule to the Department for Work and Pensions is a reference to that Department only to the extent that the functions carried out in it relate to social security, to the investigation or prosecution of offences relating to tax credit, **to child support** or to occupational or personal pension schemes" [emphasis added].

30. The Commissioner is therefore satisfied that for the purposes of the SSAA, child maintenance falls within social security administration.

31. The complainant also considers that section 123 does not relate to personal information about deceased individuals. They consider that the wording of the SSAA implies that it is intended to only apply to the data of living people.

32. The Commissioner respectfully disagrees and, having reviewed the wording of the SSAA, can find no reference to the protection of personal information ceasing at the point of an individual's death.

33. The Commissioner also notes that in Pring v Information Commissioner & DWP, EA/2015/0237[2], the Information Tribunal accepted that section 123 of the SSAA applied to deceased individuals' information.

34. As section 44(1) expressly provides that FOIA should be discounted when considering whether disclosure is prohibited, the Commissioner cannot consider that FOIA provides a lawful authority for disclosure.

35. The Commissioner is satisfied that the disclosure of the withheld information, as it is held by DWP, would be disclosure of information that relates to particular people.

36. He accepts, as set out above, that disclosure would be made by those 'employed in social security administration or adjudication'.

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2 https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1778/Pring,John%20EA-2015-0237(12-04-16).pdf

37. Section 123(3) of the SSAA provides two conditions in which the disclosure of this kind of information by DWP will not constitute an offence. These are that:

    - The information in question has previously been disclosed to the public with lawful authority.
    - If the information in question is disclosed 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.

38. In relation to the first of these, the Commissioner has not been provided with any evidence that the withheld information has been previously disclosed to the public with lawful authority – therefore he does not consider that this condition applies.

39. In relation to the second of these, the Commissioner considers that the requested information cannot be provided in an anonymous manner as the request is for the personal information of each of the 600 individuals who died in 2018.

40. The Commissioner considers that the disclosure of the requested information is prohibited by section 123 of the SSAA. As such, he considers that this information is exempt under section 44(1)(a) of FOIA.

41. This exemption is absolute, and is therefore not subject to the public interest test.

Section 17: Refusal notice

42. Section 17(1) sets out that where a public authority is relying on an exemption it must issue a notice which states that fact, specifies the exemption in question and states why the exemption applies.

43. In this case, DWP confirmed that it was relying on sections 44 and 41 but did not confirm which subsection and therefore failed to inform the complainant that it was refusing to confirm or deny it held the requested information.

44. DWP's response was not, therefore, in accordance with section 17.

45. The Commissioner reminds DWP of the importance of specifying the relevant subsection when confirming what exemption it is relying on.

Right of appeal

46. 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
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. 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.

48. 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
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