

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 May 2025

Public Authority: Department for Communities
Address: Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG

Decision (including any steps ordered)

1. The complainant has asked about claims for Universal Credit being closed, and individuals prosecuted, as a result of being found to have spent significant time outside of the United Kingdom. The Department for Communities refused to confirm or deny that it held the requested information, citing section 31(3) in conjunction with section 31(1)(a) (prejudice to the prevention or detection of crime).
2. The Commissioner's decision is that the Department was not entitled to refuse to confirm or deny that it holds the requested information.
3. The Commissioner requires the Department to take the following steps to ensure compliance with the legislation.
 - Confirm or deny whether the requested information is held.
 - To the extent that the requested information is held, either disclose it to the complainant or in respect of any information the Department wishes to withhold, issue a refusal notice that meets the requirements of section 17 of FOIA.
4. The public authority must take these steps within 30 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 22 August 2024 the complainant requested the following information from the Department:

“Regulation 9 of The Universal Credit Regulations (Northern Ireland) 2016 details the requirement to be habitually resident/right to reside as a condition of entitlement to Universal Credit. Regulation 11 details exceptions for temporary absence.

To ask, within the context of fraud, focusing on Universal Credit, how many claimants have had their claims closed and/or been prosecuted, since February 2018, as a result of being found to be spending significant time outside the United Kingdom contrary to Regulations 9 & 11.”
6. On 19 September 2024 the Department issued a response refusing to confirm or deny that it held the requested information, citing section 31(3) in conjunction with section 31(1)(a) of FOIA (prejudice to the prevention or detection of crime).
7. The complainant requested an internal review on 20 September 2024.
8. The Department communicated the outcome of the internal review on 18 October 2024. The outcome was that the Department upheld its neither confirm nor deny (NCND) response in reliance on section 31(3).

Scope of the case

9. The complainant contacted the Commissioner on 31 October 2024 to complain about the way their request for information had been handled. The complainant challenged the Department’s reliance on section 31(3) and its consideration of the public interest.
10. For the avoidance of doubt, the Commissioner has not sought to establish whether the requested information is in fact held in this case. He is required to consider only whether the Department was entitled to refuse to confirm or deny that it held the requested information.

Reasons for decision

Section 31(1)(a): prejudice to the prevention or detection of crime

11. Section 31(1)(a) of FOIA provides an exemption from disclosure where this would, or would be likely to, prejudice the prevention or detection of crime. Section 31(3) further provides that a public authority may refuse to confirm or deny that the requested information is held to the extent that to do so would, or would be likely to, prejudice this interest.
12. In order to engage a prejudice based exemption or exclusion such as section 31, there must be the likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption or exclusion protects. In the Commissioner's view, three criteria must be met:
 - first, 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 of 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.
13. The Department's position is that confirming or denying whether it holds the requested information in this case would prejudice its ability to detect and investigate cases where individuals are claiming benefit fraudulently by spending significant time outside the UK.
14. The Department referred the Commissioner to a decision notice issued in respect of a separate request for information on the same theme, ie whether the Department has the ability to detect the geographical

location of claimants logging into Universal Credit accounts.¹ In that case the Commissioner accepted that the Department was entitled to rely on section 31(3) of FOIA to refuse to confirm or deny that it held the requested information. The Department argued that many of the same arguments were equally applicable to the request which is the subject of this decision notice.

15. The Commissioner understands that a condition for entitlement to Universal Credit is that the claimant is resident in the UK. Information published on "nidirect", the Northern Ireland government information website, advises that claimants may keep receiving Universal Credit for up to one month during temporary trips abroad, such as holidays. However, entitlement may be affected if the claimant lives abroad, and claimants are required to contact their case manager or work coach if they plan to go abroad.²
16. The Department has also explained that it has powers under the Social Security Administration (Northern Ireland) Act 1992 to investigate allegations of fraud. Where fraud is detected the Department submits a file to the Public Prosecution Service, who will decide whether or not to bring a prosecution. The Department also has the power to close a claim, whether or not a prosecution is brought.
17. The Department explained the consequences of confirming or denying that relevant information is held in this case. If the Department confirmed that it holds relevant information, it would effectively confirm to the public that the Department does have the ability to detect the geographical location of claimants logging into Universal Credit accounts. This would defeat the purpose of the Department's NCND response in the previous case.
18. On the other hand, if the Department denied that it holds relevant information, it would have the effect of informing the public that the Department does not have the ability to detect the geographical location of claimants logging into Universal Credit accounts. Again, this would defeat the purpose of the previous NCND response, but it would also assure fraudulent claimants that they could claim Universal Credit while

¹ <https://ico.org.uk/media2/migrated/decision-notice/4030674/ic-286471-z4z1.pdf>

² <https://www.nidirect.gov.uk/articles/going-abroad>

living outside the UK for significant periods, and may encourage fraudulent claims.

19. The Department set out that either response would harm its ability to effectively deliver its investigative functions which are aimed at protecting the public purse from fraudulent claims. This includes deterring those who may be considering submitting fraudulent claims.
20. The complainant did not accept that the Department's ability to deliver its investigative functions would be compromised by confirming or denying that it held the requested information. They suggested that fraudulent claimants were already likely to take action to avoid detection if they were spending time abroad, such as the use of VPNs (virtual private networks).
21. In any event the complainant argued that the Department had overstated the risk of fraud, relating to Universal Credit, if it were to confirm or deny that it held the requested information. They set out that the Department should "get its own house in order" by reducing errors and overpayments.
22. The complainant repeated an argument from the previous case that, if a claimant is not made aware whether their location can be determined from login, then a question arises as to whether the Department is complying with sections 44 and 67 of the Data Protection Act 2018 (the DPA). Section 44 of the DPA sets out the general duties of a person (in this case the Department) processing personal data. Section 67 sets out the duty to notify the Commissioner (as the data protection regulator) of personal data breaches in certain circumstances.
23. The Commissioner would stress that he has carefully considered all of the circumstances of this particular case. The Commissioner cannot rely solely on his previous decision with regard to a request for different information, although he will take proper account of all arguments that are relevant in this case. The previous decision notice explains why the Commissioner was unable to accept the complainant's arguments set out at paragraphs 21 and 22 above, and the Commissioner is not persuaded that he should take a different approach in this case.
24. The Department referred the Commissioner to sections 105A and 106 of the Social Security Administration (Northern Ireland) Act 1992.³ These

³ <https://www.legislation.gov.uk/ukpga/1992/8/section/105A>

provisions set out criminal offences relating to dishonest or false representations for obtaining benefits, including Universal Credit. Consequently the Commissioner accepts that the Department's arguments regarding fraudulent claims relate to the prevention and detection of crime. Therefore the first part of the prejudice test is met.

25. The Commissioner has then gone on to consider the causal effect between confirming or denying that the requested information is held, and the prejudice identified.
26. Having done so the Commissioner is not satisfied that the causal link is made out in the circumstances of this particular case. The Department has provided arguments in confidence, and while they are broadly summarised at paragraphs 17 and 18 above, the Commissioner cannot reproduce them in detail within this decision notice.
27. The Commissioner is prepared to accept that confirming or denying that the requested information is held would provide fraudulent claimants with some, albeit limited, insight into the Department's ability to identify where they were logging in from. Although indirect and not of particular substance, it may offer insight into the Department's actions, relevant to the first part of the prejudice test.
28. However, the Commissioner is not persuaded that confirming or denying that the requested information is held would accurately inform the public as to the Department's ability to detect the geographical location of claimants logging into Universal Credit accounts. It would need to be the case that this was the only way the Department could obtain the requisite evidence to take action.
29. The Commissioner understands that the Department has a wide range of investigative tools and strategies, and is cautious about assuming that the Department is limited to one way of assessing where claimants are spending time. The Commissioner considers it possible that the Department could obtain relevant information from a range of sources, not limited to a claimant's login location. Therefore the Commissioner does not accept that the consequences of providing confirmation or denial would be as clear-cut as the Department has set out.
30. For example, if the Department does hold relevant information, ie that there have been one or more prosecutions or claims stopped, it may be on the basis of information or intelligence other than an ability to detect the geographical location of claimants logging into Universal Credit accounts.
31. Similarly, if the Department does not hold relevant information, ie that there have been no prosecutions or claims stopped, this would not

necessarily be because the Department was unable to detect the geographical location of claimants logging into Universal Credit accounts. It could be that no case had yet progressed as far as having the claim stopped, or a prosecution brought.

32. In light of the above, the Commissioner is not satisfied that the Department has demonstrated a causal relationship between confirming or denying that the requested information is held, and the prejudice that section 31(1)(a) is designed to protect. For clarity, the Commissioner wishes to emphasise that he has not asked the Department to confirm or deny to him whether it holds the requested information. His analysis is based on consideration of the effect of providing confirmation or denial.
33. Since the Commissioner is not satisfied as to the causal relationship, the second part of the prejudice test is not met. The Commissioner cannot be satisfied that the Department is entitled to rely on section 31(3) in respect of the request in the circumstances of this particular case. He is not therefore required to consider the public interest.

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Sarah O'Cathain
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF