

Mr S Fyl
C/O
Request-52100-0ad1b566@whatdotheyknow.com

DWP Central Freedom of Information Team

e-mail: freedom-of-information-request@dwp.gsi.gov.uk

Our Ref: 1759-3228

DATE 13 December 2010

Dear Mr Fyl,

Thank you for your Freedom of Information request dated 17 November 2010 that was received by Department for Work and Pensions (DWP) Adelphi and forwarded for response by the DWP Commercial Management of Medical Services Freedom of Information Officer. In your email you asked to be provided with information answering the following questions:-

"In this Freedom of Information request the expression 'DWP' should be taken to include the Department of Work and Pensions and their medical services contractor' ATOS Healthcare; and 'medical assessment' should be taken to include any form of work capability assessment or other medical or capacity related interview carried out by or on behalf of the DWP in respect of a claimant in connection with any form of benefit."

You requested full details, policies, memoranda or other information on or with regard to:-

- 1 Whether the DWP will currently try in any way to prevent a claimant overtly taking their own audio-recording of his or her medical assessment;
- 2 If the answer to the above is 'yes', full and specific details of any statute, regulation or other legal provision or ruling which the DWP claims supports any entitlement whatsoever on the DWP's part to try prevent a claimant's so proceeding;
- 3 Whether the DWP acknowledges that it would NOT be in any way illegal or unlawful for a claimant to record such an assessment covertly.

If the answer to 3 is 'no' (the DWP does not so acknowledge), full and specific details of any statute, regulation or other legal provision or ruling which the DWP claims supports such a contention.

- 4 The processes to allow\as to how claimants can request the recording of their medical assessments;
- 5 Whether or not any recording currently made by or on behalf of the DWP must "must be made by a professional operator, on equipment of a high standard, properly calibrated by a qualified engineer immediately prior to the recording being made" (as is currently stated in the 'ESA Handbook');
- 6 Arrangements for a claimant to obtain copies of any personal data stored by the DWP as result of the DWP's making a recording of any medical assessment;

- 7 Specifically as to whether the DWP acknowledges that any recording so taken will be, in respect of the claimant, 'personal data' as defined by the Data Protection Act and subject to therefore to subject access rights and the data protection principles;
- 8 Whether the DWP will refuse to conduct a telephone conversation with a claimant or his/her advisers if the latter say they are recording the call;
- 9 Whether the DWP currently permits or will in the future permit ATOS to refuse to conduct a telephone conversation with a claimant or his/her advisors solely on the ground that the calls are being recorded by or on behalf of the claimant;
- 10 All steps taken by the DWP to inform claimants of their current rights in respect of requiring the recording of medical assessments;
- 11 More specifically, where the DWP has published or will publish all relevant information as to such rights on-line;
- 12 Whether the DWP acknowledges that arranging affairs such that claimants can only be fully advised of current procedures as to their medical assessment by means of Freedom of Information requests, which the DWP acknowledges will not be complied with within the period of notice of medical assessments given to individual claimants is a disgrace.

In response to **Qs 1, 2 & 3** It is not reasonably expected that an individual acting on behalf of DWP would be aware that a customer is overtly recording a conversation or assessment. However if conversations are overtly recorded and they are then published on the internet then the customer will have exceeded the private and domestic use of information that they would be allowed by the Data Protection Act 1998. There is also the possibility that they could record other customers' information which is not acceptable.

In answer to **Qs 4 & 5** the current arrangements for undertaking the recording of assessments are included within: - the attached extract (paras 4.1.3 and 4.1.4) from both the Employment and Support Allowance (ESA) and the Incapacity Benefit Handbooks for Approved Health Care Professionals; the Update to Standard 5/2000 Audio or Video Taping of Assessments and the Update to Standard 51/2009 - Recording of Assessments. The current guidance is contained in Update to Standard 51/2009 which is currently under review.

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Professor Malcolm Harrington's report on the Work Capability Assessment recommended that Atos Healthcare and DWP undertake a pilot to record assessments in 2011. Professor Harrington's report is in the public domain and can be accessed at: <http://www.dwp.gov.uk/docs/wca-review-2010.pdf> . The Government has accepted that recommendation and DWP is currently working with Atos Healthcare to undertake a pilot in the first quarter of 2011.

The pilot is still in the design and planning stage so I am unable to give you further information at this stage, and the information is therefore exempt for release under Section 22 of the Freedom of Information Act as it is due for future publication. We will forward a copy of the guide to you on its completion. In applying this exemption DWP has balanced the public interest in withholding the information against the public interest in disclosing the information and consider there is no overarching public interest argument in favour of releasing this information.

In relation to **Qs 6 & 7** a customer can make a request for copies of any personal data held by DWP under the Data Protection Act.

In answer to **Qs 8 & 9** if a customer indicates that he intends to record a telephone conversation, interview and the DWP staff involved are uncomfortable about being recorded, then the matter would be raised with local DWP management. This is the principle which is used by Atos Healthcare. I am unable comment on changes that may occur in the future. Changes in future legislation and alterations to procedure, are usually the result of decisions made by Social Security Commissioners, and/or reviews such as that undertaken by Professor Harrington.

In reply to **Qs 10 & 11** there is currently no requirement to record a medical assessment, however as stated previously Professor Malcolm Harrington has recommended that Atos Healthcare and DWP undertake a pilot to record assessments in 2011.

In answer to **Q 12** it is expected that requests made to DWP under the Freedom of Information legislation will be responded to within 20 working days.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwp.gsi.gov.uk or by writing to DWP, Central Fol Team, 5th Floor The Adelphi, 1-11, John Adam Street, London WC2N 6HT. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information

Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House,
Water Lane, Wilmslow Cheshire SK9 5AF www.ico.gov.uk