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Date

23 April 2013

Ben Owen
(sent by email)

Dear Mr Owen,

Freedom of Information Act – Internal Review
Our Reference: IR 283

Thank you for your Internal Review request dated 22 March 2013 following our response to your FOI request (reference 559). You asked:

"I am writing to request an internal review of Department for Work and Pensions's handling of my FOI request 'A4e audit', your reference: FOI 559

In your response, the department asserts that:

"Disclosure of unproven (or unfounded) allegations could result in litigation against the Department and damage a provider's commercial standing."

In the broader context of the information release, including the audit documents, which the department asserts find no evidence of fraud, I cannot envisage a situation where defamation would be an issue. Furthermore, given that these allegations are already known to the public, and the DWP has not faced litigation for defamation, I cannot see how the release of these documents would risk litigation against the department.

The department goes on to assert:

"The Police may pursue investigations where patterns in suspected offences (e.g. highlighting links between people, organisations, location and events) become evident from such intelligence collected over time."

I stated in my original request that I was happy for personal information, including names, to be redacted/anonymised. The ICO makes it clear that information that can be anonymised in documents requested under the FOIA cannot render a document as a whole exempt under the FOIA. I can once again confirm that I am happy for any sensitive information to be anonymised, provided any individuals or organisations can be distinguished from each other (eg. Individual A, Individual B, etc.)

I assert that the public interest in this document is very strong. If the Department is going to 1) pay money from the public purse and 2) mandate claimants to attend

services provided by a private company, then the public interest must be served by providing all assurances possible that these companies are providing these services in an honest and fair way.

Furthermore, based on the above, I assert that where an allegation of fraud has been made against a private company providing services on behalf of the DWP, the public cannot be expected to keep confidence in these services and the DWP's providers, as well as the DWP's own processes for dealing with evidence of fraud, without these kinds of documents being available to the public. The public interest in these documents is therefore very strong.

I am writing to request a re-assessment of the public interest test, after which I will refer this request to the Information Commissioner if I am not satisfied with the result."

We can confirm that we have carried out an internal review of the Department for Work and Pensions handling of the FOI request 'A4e audit' (reference: FOI 559). We can also confirm that the Reviewer played no part in the original decision or the A4e investigations and audits.

After careful consideration, we have concluded that FOI 559 request was appropriately handled and all relevant information in respect of the application of the exemption set out under section 36 of the Act was made available to the Minister for Employment on 4 March 2013, to enable an informed decision to be made.

The Ministry of Justice guidance on the Public Interest Test states that:

"the public interest both for and against the disclosure of information falling within the terms of Section 30 needs to be considered on a case-by-case basis. In balancing public interest considerations you will need to consider the potential effects of disclosure of the specific information requested and the nature and seriousness of the matter being pursued.

The factors to be taken into account in considering the balance of the public interest will depend upon the circumstances of the particular case. In determining whether the public interest in withholding the information outweighs the public interest in disclosing the information, one or more of the following factors may be of assistance, namely, the extent to which either disclosing or withholding information would:

- promote or diminish the chances of a successful prosecution, bringing future charges, or making arrests;
- promote or diminish the chances of a fair trial taking place;
- be fair, in cases where decisions have been taken not to proceed, to those who have not been prosecuted;
- assist or hamper the gathering of intelligence information from confidential sources (for instance, informants/whistleblowers/calls to Crimestoppers);
- further the interests of justice in the participation of victims, witnesses, informants, suspects or offenders in investigations and proceedings – and either protect or endanger them as they do so; and
- assist or impede other ongoing or future proceedings."

From the review of the audit documentation, we believe that the Public Interest Test has been correctly applied. Premature disclosure of cases where there is evidence of prima facie fraud may potentially prejudice or damage future DWP or Police investigations. The Police have been clear when conducting investigations that publishing any details of an investigation may carry a serious risk of prejudice to any further action by the Police and/or the courts. The Police may pursue investigations where patterns in suspected offences (e.g. highlighting links between people, organisations, location and events) become evident from such intelligence collected over time. Intelligence of this nature remains relevant and must be held for a minimum of 6 years in line with guidance produced by the National Policing Improvement Agency. Therefore, in this instance non-disclosure under Section 30(2) of FOI is valid.

Section 36 is unique in that it only applies if the reasonable opinion of a qualified person is that certain forms of adverse effect would or would be likely to follow from disclosure. Information can be withheld only if it is the reasonable opinion of a qualified person that its disclosure would have the adverse effect specified, and if in all the circumstances of the case the public interest in withholding it outweighs the public interest in disclosure.

We believe that the decision to support non-disclosure under Section 36(2)(b) and (c) has been made by a qualified person, and that this was based on all relevant information being made available.

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

Yours sincerely

CD Communications 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-requexx@xxx.xxx.xxx.uk or by writing to DWP, Central FoI Team, Caxton House, 6-12 Tothill Street, London. SW1H 9NA. 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