



Department
for Work &
Pensions

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Ref No: FOI 784 (IR218)

Dear Mr Slater,

Thank you for your Freedom of Information (Fol) internal review request received on 22 April 2018. You asked:

I am writing to request an internal review of Department for Work and Pensions's handling of my FOI request 'Datasets & Type of Data Held for Various Benefits About Claimants'.

Section 24 - Required for the purposes of safeguarding national security The Department's reliance on S.24 has not been made out. It has failed to meet the most basic requirements to engage S.24.

S.24 applies where withholding the information is "required for the purposes of safeguarding national security". It is not sufficient for the information sought simply to relate to national security; there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged."

In order to engage S.24 the Department must show:

- 1. Why the requested information is "required for the purposes of safeguarding national security".*
- 2. That disclosure would undermine national security (a causal effect).*

The Department has failed to show this to date and frankly I fail to see how it can so going forwards.

I will address the public interest test later.

Section 31 – Law Enforcement

The Department has failed to explain which subsection and paragraph of S.31 it is claiming to engage.

Based on the limited information provided by the Department I assume that it is relying on S.31(1)(a) the prevention or detection of crime.

The Department has clearly failed to address the prejudice test in respect of S.31 and this further damages its reliance on this exemption. The Commissioner is clear that the Department must demonstrate that it has taken the following steps:

- One of the law enforcement interests protected by section 31 must be harmed by the disclosure.*
- The prejudice claimed must be real, actual or of substance. Therefore, if the harm was only trivial, the exemption would not be engaged.*
- The public authority must be able to demonstrate a causal link between the disclosure and the harm claimed.*

- *The public authority must then decide what the likelihood of the harm actually occurring is, ie would it occur, or is it only likely to occur?*

The Department hasn't demonstrated a causal link between disclosure of the requested information and the harm claimed. Further it has failed to address the likelihood of the harm actually occurring. I suggest that the Department read the Commissioner's published guidance on the prejudice test.

I will address the public interest test later.

"Harm" claimed by the Department

The claim that disclosing the datasets held and the type of information they contain would allow individuals to attempt to circumvent the Department's security controls is not credible. A suitable analogy would be a library claiming that it can't tell people what books, periodicals and other types of publications it holds as that would allow people to break into the library itself.

If the Department's IT security is so poor that it truly believes that disclosing the requested information would compromise it then I suggest that there is a very strong public interest in the Department explaining why this is the case.

Public Interest Test

The Department's public interest test is inadequate. I suggest that the Department refer to the Commissioner's published guidance on carrying out the public interest test if it hopes to rely on these exemptions going forward. Binding Upper Tribunal judgements mean that any public interest test must be "contents based" rather than consisting of bland generic statements that the Department usually relies on.

I also remind that Department that the Commissioner has been highly critical of previous public interest tests it has carried out.

DWP Response

In response to your request, I can confirm that the handling of your original request and response has now been appropriately reviewed by someone unconnected with the handling of your original request.

As a result of this review

I confirm that the specific part of section 31 of FOIA that is engaged is section 31(1)(a) relating to the prevention or detection of crime. The reason that this exemption is engaged is that the information requested would be likely to help to enable perpetrators with ill-intent to attempt to devise a means of accessing this data. A perpetrator who understands the structure of our databases and the relevant information fields may be able to write queries against them and attempt to remove or compromise data which may include personal or payment information. The Department takes the security of its information technology systems and the information held on them very seriously and has layered protections in place: withholding such details from the public domain is one such layer in our security defences.

The prejudice test applied when engaging the exemption in section 31(1)(a) is not limited to the harm that could be caused by the requested information on its own. The department has taken account of harm likely to arise if the requested information were put together with other information in the public domain, or which the department is forced to place in the public domain in future. This is known as the "mosaic effect".

With regard to the application of the exemption in section 24 of the Act, “national security” means the security of the United Kingdom and its people. The interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people. The protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence. In engaging the exemption the department has considered the significant risk that cyber-attacks on IT systems which administer benefits payments and taxation could seriously disrupt the lives and wellbeing of virtually the entire population of the UK.

I am satisfied that the original response was handled properly and that the outcome of your request was correct. The reasoning behind this decision is as follows: the Department may hold the information you have requested; however, the Department would withhold any information on the basis of the provisions contained in Sections 31 and 24 respectively. Section 31 and 24 are qualified exemptions, and as such, a public interest test needs to be applied. Whilst there is a legitimate public interest in knowing that the Department holds personal data on claimants, that this data is held only for legitimate purposes, and that an individual may seek confirmation of the nature of that data under the Data Protection Act; it is not in the public interest for the Department to provide information on such data to a wider audience, because this may help to enable perpetrators with ill-intent to attempt to devise a means of accessing this data. A perpetrator who understands the structure of our databases and the relevant information fields may be able to write queries against them and attempt to remove or compromise data which may include personal or payment information. The Department takes the security of its information technology systems and the information held on them very seriously and has layered protections in place: withholding such details from the public domain is one such layer in our security defences. To provide such information is not in the public interest, and therefore we are withholding the information in accordance with Section 17 of the Act.

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

Yours sincerely,

DWP Central FoI Team

Your right to complain under the Freedom of Information Act

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