



Department  
for Work &  
Pensions

DWP Central Freedom of Information Team

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request@dwp.gov.uk](mailto:freedom-of-information-request@dwp.gov.uk)

Frank Zola  
request-613556-23f17a88@whatdotheyknow.com

Our Ref: FOI2019/38471

12 November 2019

Dear Frank Zola,

Thank you for your Freedom of Information (Fol) request received on 18 October. You asked:

*Please disclose the information you hold on what procedures, processes and actions the DWP undertake, who does them, when a Universal Credit or ESA claimant says they do not agree to the DWP informing their:*

*"doctor or any doctor treating me, being informed about the Secretary of State's determination on*

*– limited capability for work*

*– limited capability for work-related activity, or– both"*

*(This "I agree" statement is included in your ESA1, ESA50 and UC50 forms)*

*If a UC claimant uses a UC Journal to withdraw consent from the above "I agree" statement, what precise processes and actions does their work coach have to undertake to ensure the DWP do not send the ESA65B, UCD90 and UCD210 letters to claimants Doctors, including their GP.*

*If a UC claimant wants to withdraw consent to this "I agree" statement, by sending a letter to the DWP, please provide the street address and named individuals they should write to.*

*In a recent reply, you said the DWP:*

*"has no plans to seek retrospective consent"*

*FOI reply IR2019/33113: 'Lack of claimant consent to process health information for ESA and Work Capability' – October 9th 2019*

*concerning claimants who have completed the multiple "I agree" statements in your ESA1, ESA50 and US50 forms, even though they currently do not comply with the GDPR and Data Protection Act 2018, as they do not give claimants opt-in consent to said "I agree" statement.*

*In your internal guidance on consent, it states:*

*[] Amend notifications and other documentation to reflect new basis for processing*

*Refer to the guidance on obtaining and managing consent to ensure you include everything the data subject must be told about for consent to be fully informed. An example consent statement is given to help you.*

*In addition to forms and leaflets, communications in operational instructions and processes, telephony scripts, and online information and services must be reviewed and made compliant with the new requirements where consent is being used as the lawful basis for processing personal data.*

*[] Consider whether people already in the process should be informed*

*Where DWP changes the lawful basis for processing personal data, especially if it changes people's rights, you must give consideration to notifying those affected.*

*[] Cease processing for all people who withhold or withdraw consent*

*Of course, in circumstances where we are relying on consent, we must be prepared for people to refuse to give or withdraw their consent, and to cease processing for those individuals.*

*<https://www.whatdotheyknow.com/request/585487/response/1398246/attach/html/3/2.Using%20consent%20as%20the%20lawful%20basis%20for%20processing%20personal%20data.pdf.html>*

*(disclosed 15 July 2019)*

*Please disclose a copy of the information the mentioned "risk register" or other information held on why the DWP is not seeking to "Refresh consent" for all the claimants that have completed your ESA1, ESA50 and UC50 forms, as you have already accepted that the "I agree" 'consent' statements contained in the claimant signed and dated Declaration are not "considered valid under the GDPR", in your FOI2019/25761 reply*

*[https://www.whatdotheyknow.com/request/lack\\_of\\_claimant\\_consent\\_to\\_send#incoming-1413128](https://www.whatdotheyknow.com/request/lack_of_claimant_consent_to_send#incoming-1413128)*

*After the ICO wrote to you about:*

*"we have in fact contacted DWP about the issues you raised with us. We took the view that DWP has not complied with its data protection obligations, because its ESA1, ESA50 and UC50 forms do not provide a way for claimants opt in to the statement "I agree to my doctor or any doctor treating me, being informed\* about the Secretary of State's determination on limited capability for work, limited capability for work-related activity, or both..."*

*\*[Doctors are "informed" by use of the DWP ESA65B 'fit-notes' letter]*

*[https://mrfrankzola.files.wordpress.com/2019/07/ico-letter-to-mr-zola-redacted-version-09\\_07\\_2019\\_page1.png](https://mrfrankzola.files.wordpress.com/2019/07/ico-letter-to-mr-zola-redacted-version-09_07_2019_page1.png)*

*Information Commissioner letter 9 July 2019*

*[] Refresh consent for people already in the process*

*It is unlikely that consent obtained under the requirements of the 1998 Data Protection Act will be considered valid under the GDPR. When the consent forms and process have been updated to comply with the GDPR, existing consent should be refreshed using the new*

*process in most circumstances. If consent is not refreshed the risks must be assessed, accepted, and recorded on the appropriate risk register.*  
*<https://www.whatdotheyknow.com/request/585487/response/1398246/attach/html/3/2.Using%20consent%20as%20the%20lawful%20basis%20for%20processing%20personal%20data.pdf.html>*

*Please also disclose a copy of information held on why you have not informed claimants who completed the GDPR invalid ESA1, ESA50 and UC50 forms that they now have new Data Protection rights:*

*[] Consider whether people already in the process should be informed*

*Where DWP changes the lawful basis for processing personal data, especially if it changes people's rights, you must give consideration to notifying those affected.*  
*<https://www.whatdotheyknow.com/request/585487/response/1398246/attach/html/3/2.Using%20consent%20as%20the%20lawful%20basis%20for%20processing%20personal%20data.pdf.html>*

*[Continues in subsequent correspondence below]*

## **DWP Response:**

I confirm that we hold the recorded information in response to a section of your request.

Please see attached the Employment and Support Allowance operational guidance if a customer withdraws permission to inform their doctor of the Work Capability Assessment outcome.

I confirm that we do not hold this information in response to the Universal Credit section of your request, as Universal Credit does not write to a claimant's doctor to inform them of the outcome of the Secretary of State determination.

In addition, I can confirm that the Department also holds the information you have asked for in other areas of your request. However, the information is exempt under Section 21 of the Freedom of Information Act because the information is reasonably accessible to you, as it is already in the public domain.

To be helpful I have attached some useful links which will be able to guide you in reference to our data protection procedures and consent.

Deposited Papers – Consent and Disclosure – Released on 21 October 2019:

[http://data.parliament.uk/DepositedPapers/Files/DEP2019-0980/33.\\_Consent\\_and\\_disclosure\\_v19.0.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2019-0980/33._Consent_and_disclosure_v19.0.pdf)

DWP's personal information charter (or privacy policy), tells you about how and why we use your personal information and your rights and responsibilities:

<https://www.gov.uk/government/organisations/department-for-work-pensions/about/personal-information-charter>

Please refer to the UC50 form (page 22 consent and disclosure & page 23 for personal info charter). Read the first page under 'what you need to do' - which refers to where claimants need to send their form:

<https://www.gov.uk/government/publications/uc50-form-universal-credit-capability-for-work-questionnaire>

**Additional links which may be useful:**

Sign into your Universal Credit:

<https://www.gov.uk/sign-in-universal-credit>

Free Helplines for Universal Credit:

<https://www.gov.uk/government/news/free-helplines-for-universal-credit-claimants>

Contact Jobcentre Plus:

<https://www.gov.uk/contact-jobcentre-plus>

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

Yours sincerely,

DWP Central FoI Team

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**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.gov.uk](mailto:freedom-of-information-request@dwp.gov.uk) or by writing to DWP, Central FoI Team, Caxton House, Tothill Street, 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  
Web: [ico.org.uk/Global/contact\\_us](http://ico.org.uk/Global/contact_us) or telephone 0303 123 1113 or 01625 545745