

Department for Work and Pensions (DWP)
Central Freedom of Information Team

freedom-of-information-request@dwp.gsi.gov.uk

Our reference: IR501

Date: 24 October 2017

Dear Mr James,

Thank you for your Freedom of Information (FOI) review request, ref VTR3653, which we received on 09 October 2017.

You asked :

As you have not provided information to my satisfaction that the exemptions laid out in Section 31 (a) and (b) were correctly applied I am requesting an internal review of the response to the the original decision. In your answer to the internal review, in the event that you decide to uphold the original decision, I am requesting that you lay out your reasoning clearly (with the notes to each of the relevant tests) in your response.

With respect to the request VTR3924 I am also requesting an internal review on the answer provided on October 9th 2017.

In particular, your reliance on Section 42 to my question of

"Copies of their policies and procedures; including any legal guidance that is routinely relied on during the course of their work in their function to "provide advice on complicated issues around both employed and self-employed income, advising caseworkers on any issues around director's income, including variations." (i.e. non criminal functions)."

As you will be well aware, Section 42 relates to Legal Professional Privilege (LPP) which protects confidential communications between lawyers and clients.

Request VTR3924 did not request information on specific cases but was concerned with the policies and procedures and legal guidance "routinely relied on" in the course of their work. Essentially, I am looking for the FIU's equivalent of "Policies, Law and Decision Making Guidance" which is used by other staff within the CMG.

At this point, I would also request that you disclose the Act's or Regulations (citing Sections where necessary) that give the FIU its statutory authority. If not clear from the legislation, please provide a list of investigatory powers available to the FIU and include a list of systems that are used by FIU investigators in the course of their work. If they use a centralised system,

please provide a copy of the RFP used to tender for its development and disclose who administers the system (if a private organisation).

Please provide copies of the notes to the public interest test showing reasoning for whatever decision you come to in the internal review of VTR3924.

With respect to the organisational chart, please provide a copy with personal information redacted.

DWP Response:

I have reviewed the response to your Freedom of Information request and can confirm that I am upholding the response previously provided to you; however, I will provide further information at your request.

Most parents want to provide for their children; unfortunately some want to avoid paying fair child maintenance and disguise their incomes, through self-employment loopholes, creative accounting or fraudulent tax returns. The release of this information would support those parents who wish to avoid paying fair child maintenance, by providing them detailed information on how to avoid detection methods used by FIU and HMRC to investigate fraudulent crime; this information could also be used as a guide for individuals who wish to commit fraud.

For non criminal complex earner cases and variations we use the Policy, Law and Decision Making Guidance (PLDMG) and the relevant tax legislation for self-employed which is the Income Tax (Trading and Other Income) Act and the Child support maintenance calculations regulations 2012.

With regards to applying Section 42; some of these cases will involve criminal activities which are highlighted through the investigations; if these investigations enter into criminal proceedings, lawyers will be involved. Section 42 is exempt information.

Please find included with this response; Annex A - FIU organisational chart which has been redacted.

Personal information about a third party is treated as exempt information under section 40(2) of the FOIA if one of the conditions set out in section 40(3) of the FOIA is satisfied. This is because access to personal information is treated under the provisions of the Data Protection Act 1998 (DPA) and can only be released to you where such disclosure would not breach that person's right to privacy. In this case disclosure of details of expenses claimed by an individual would breach the fair processing principle of the DPA.

Names of staff below Senior Civil service grade are considered (as confirmed by the Information Commissioner's Office) exempt from release under section 40(2) of the Freedom of Information Act as this constitutes their personal data.

The Senior Civil Servant who leads Child Maintenance Group Legal Enforcement is Marc Gill, Arrears and Enforcement Director.

The FIU operates under the Child Support Act 1991 & The Child Support (Collection and Enforcement) Regulations 1992.

With regards to your request of a list of systems that are used by FIU investigators, a copy of the RFP used to tender for its development and disclose who administers the system (if a private organisation); this will be added as a supplementary request to your FOI ref: VTR3924.

We estimate that to comply with the full request this would exceed the appropriate cost limit, which for central Government has been set in Regulations at £600. This represents the estimated cost of one person spending 3.50 working days in determining whether the Department holds the information, and locating, retrieving and extracting the information. Under section 12 of the Freedom of Information Act the Department is not obliged to comply with your request and we will not be processing it further.

Under section 16 of the FOIA we are obliged to assist you in providing options to narrow your request, by reforming or refocusing it, so that it will fall beneath the cost limit. It may help if I outline some possible ways to do this; however, as your request is too narrow we are unable to provide advice.

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@dwpgsi.gov.uk or by writing to: DWP, Central Fol 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
www.ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745