

To Mr B Adams  
C/o request-121494-b7f5815b@whatdotheyknow.com

DWP Central Freedom of Information Team

e-mail: [freedom-of-information-xxxxxxx@xxx.xxx.xx](mailto:freedom-of-information-xxxxxxx@xxx.xxx.xx)

Our Ref: VTR 3706-IR508

DATE 13 September 2012

Dear Mr Adams,

Thank you for your email that was received by Department for Work and Pensions (DWP) Freedom of Information Requests on 17 August 2012 and forwarded to the DWP Medical Services Contracts Correspondence Team (MSCCT) for response.

As DWP MSCCT Freedom of Information (Fol) Internal Reviewing Officer, I have read your letter and accepted this as a request for an Internal Review of FOI reference 3548-2693 dated 16 August 2012.

I have therefore conducted a full investigation into your original request to check that the information previously supplied to you, clearly and accurately answered your request. I have also reviewed any decisions to withhold information and in doing so I have fully considered the public interest in disclosure.

In your email you asked to be provided with information answering the following questions:-

*I am writing to request an internal review of Department for Work and Pensions's handling of my FOI request 'HCP Acting Beyond Their Powers.. Ultra Vires?'.*

*Thank you for your reply .. unfortunately as you have not provided any of the information requested I must now request an internal review. Although the questions asked are clear and specific, I will expand on them to avoid further confusion.*

*With regards to Question (1), the question I asked was not whether the HCP's made decisions on entitlement to benefits as suggested in your reply, but where do the Medical Services obtain the power (vires) from to carry out the actions outlined below....*

*As legislation is in place which prevents the Contractor from acting on their own volition e.g. Data Protection Act, EU Directives, Medical Services Contract, then what authority now allows or requires the Medical Services to scrutinise or review the claimants evidence and then decide themselves whether further information is required from GP's and other sources and then further to request additional sensitive data and information without specific instructions being given at the time.*

*Similarly as there must be relevance, proportionality and necessity in a medical examination, again in the absence of specific instructions from the DM with regards to this, the HCP has been given the power to decide at the time of the examination what sensitive or other*

*information they feel that the DM may want, and whether a physical examination is required or not..*

*It is already understood that the DM makes the final decision, and that some of the procedures are to provide information and advice to the DM.. however it is up to the DM to request the specific advice or information at the time which they feel is needed to help make a decision, not to have it decided for them, similarly with the processing of data.. If however this is allowed for by Regulations, please could you provide me with the details, and also which “enabling Act” (of Parliament) provides the Secretary of State authority to make such Regulations allowing him to delegate his powers in such a way?*

*extracts from Atos site...*

*<http://www.atoshealthcare.com/claimants/faq>*

*Our health care professional will determine whether you need to attend an assessment in person. The ( ESA50 ) questionnaire helps with this decision.*

*On receipt of a completed questionnaire, a health care professional will review all available information provided to decide whether you should be asked to attend a medical assessment.*

*The health care professional will consider whether you fulfil any of the criteria for the Support Group for Employment and Support Allowance (and additionally for IB reassessment customers, the Work Related Activity Group), or can be treated as having limited capability for work (LCW) and limited capability for work related activity (LCWRA) based on the evidence held.*

*If the health care professional requires further medical evidence in order to decide whether an assessment is necessary, they can contact your GP.....*

*[http://www.direct.gov.uk/prod\\_consum\\_dg/groups/dg\\_digitalassets/@dg/@en/@disabled/documents/digitalasset/dg\\_177366.pdf](http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/@disabled/documents/digitalasset/dg_177366.pdf)*

*DWP Jan 2012 “Guide to Employment and Support Allowance” An assessment does not always mean that the approved healthcare professional will undertake a physical examination. They may just want to talk to the claimant about how their health condition or disability affects their everyday activities.*

*When the approved healthcare professional decides that the claimant should be medically assessed it is important that they keep the appointment and attend the assessment*

*The approved healthcare professional may consider that further information from the claimant’s doctor or other appropriate source is required and/or that the claimant should be medically assessed.. etc. etc .*

*I note that the original response advised that HCPs need to be aware of the facts of a claim to benefit in order to provide informed advice to the Department’s Decision Maker. In order to provide the advice evidence must be gathered from various sources and I can confirm that the Atos Healthcare HCPs act in line with the guidelines that are provided by the Department.*

I can confirm that in relation to ESA claims the Department (and those acting on our behalf) have no lawful bar on them asking for further information when required and under the Welfare Reform Act 2007 and the Employment and Support Allowance Limited Capability for Work / Limited Capability for Work Related Activity Amendment Regulations 2011 information in relation to an ESA claim or question as to ongoing entitlement may be required by the Secretary of State.

In reviewing your request I uphold the decision of the Freedom of Information Officer in part and have added information where appropriate. I am therefore satisfied now that all the information that DWP are able to supply to you has been supplied.

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

Yours sincerely,

DWP Central Fol 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 [xx@xxx.xxx.gov.uk](mailto:xx@xxx.xxx.gov.uk) or by writing to DWP, Central Fol Team, Caxton House, 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](http://www.ico.gov.uk)