

2 August 2012

Dear Mr Zola

Thank you for your Freedom of Information request which we received 23 June 2012. You asked:

On Jobcentre Plus/DWP form ES3JP (Jobseekers Agreement) Page 4 there is a Section that requests the Jobseekers Allowance (JSA) customer to:

"consent to Jobcentre Plus retaining my CV and sending it to prospective employers by the most appropriate method including email over the internet excluding email over the internet"
<http://www.whatdotheyknow.com/request/94390/response/232922/attach/3/Appendix%201.pdf>
which without doubt means consent is required for DWP (Jobcentre Plus/DWP) to collect (retain) your JSA customer's CV. (personal data)

Now please confirm that all Work Programme Providers equally require the consent of Work Programme Jobcentre Plus Customers to collect their existing CV, as when they collect a customers CV they are in effect collecting it on behalf of and with the authority and permission of DWP/Jobcentre Plus as the Data Controller of the JSA customer's CV and as the Data Controller (Jobcentre Plus/DWP) require consent to collect a Customer's CV themselves, then straightforward logic dictates that so do Work Programme Providers as they do not collect JSA customers data in their own right but for you as the Data Controller, as if they are part of the DWP for the Purposes of the Work Programme.

This need for consent with regards the collection of a JSA customer's personal data (CV) by DWP/Jobcentre Plus Employment Service Providers (Data Controller) has been stated thus:

"Customer Consent to Sharing/Disclosure of Personal Information "Providers are reminded that they are required to obtain customer consent prior to their collecting of customer's personal information and sharing/disclosure of such information with the Department and/or other providers."

<http://www.dwp.gov.uk/supplying-dwp/what-we-buy/welfare-to-work-services/notices-to-providers/generic-prov-guide-ch-5.shtml>

whilst the above memo has apparently been withdrawn the Data Protection Act (1998)/European Data Protection Directive 95/46/EC Principle of consent to collect personal data still applies. Work Providers are given freedom to provide services to Work Programme customers on an individual basis. However, as they are your Data Processor it is

you (DWP/Jobcentre Plus) as the Data Controller that dictates how customer's personal data should be processed.

When considering the information or comment you supply please note:

The e-mail consent declaration Providers are required to use before they can share a Jobcentre Plus Customers CV by email.

http://www.whatdotheyknow.com/request/policy_change_on_emailled_cv_exem#incoming-274612

In summary the information requested is confirmation that prior informed voluntary consent is required from a Work Programme Jobseekers Allowance Customer before a Work Programme Provider can collect their CV? (personal data)

This request is not concerned with any Work Programme Jobseekers Allowance Customer showing a copy of their CV to a Work Programme Provider, as a Mandatory Activity, but customer consent for them to retain it as a DWP Data Processor.

With regard to your point about form ES3JP, and a jobseeker's consent to Jobcentre Plus retaining and sending a customers CV to prospective employers, the same rule applies to Work Programme providers.

When a provider is contracted to undertake part of DWP's business, they in effect become part of DWP for that sole purpose. When collecting and processing information in the performance of their contracted functions, the provider does so as Data Processor while DWP remains the Data Controller as defined in the Data Protection Act 1998.

With regard to sharing personal information with a third party eg a prospective employer, Work Programme providers are required to comply with the terms and conditions of their contract with the DWP, which includes compliance with the requirements of the Data Protection Act, when dealing with personal data; DWP is not in a position to prescribe for providers the detailed processes and procedures they must implement in every case in order to meet their obligations in relation to the correct handling of personal data. In fact as the need for consent could vary from case to case this is impossible to do as every case has to be treated on its own circumstances. I can confirm though that contracts with providers require them to undertake that they will, at all times, act in compliance with the Data Protection Act and with their obligations in maintaining confidentiality of information received.

In reference to your specific question in which you ask for confirmation that Work Programme providers require consent to collect customers CVs. Consent is not required to simply collect a CV. The Department chooses to gather consent when we disclose it electronically to third parties. This is as this particular method of transmission and sharing to a third party over the internet is not something we believe most people would expect to occur on a regular basis, and for this part of the process it is an optional extra to assist people.

In the case of our providers where people are expected to take all reasonable steps to gain employment, including taking up normal methods of job applications such as sending CVs by email, there are other ways in which the data subject could be made aware of this action and through agreement with the actions to be taken that consent would be provided.

A person may choose not to agree with this, and this refusal would need to be referred to DWP decision Makers to consider whether the refusal to take part in what is now a common method

of applying for jobs could demonstrate that the individual is not taking all reasonable steps to gain employment and take part in the programme, and whether therefore a sanction should be applied..

Further information relating to the above points can be found in the generic provider guidance - paragraph 33 onwards: <http://www.dwp.gov.uk/docs/pg-chapter-8.pdf>

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@dwp.gsi.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.gov.uk