

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2023

Public Authority: Department for Work and Pensions
Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested the Data Protection Impact Assessments (DPIAs) conducted in relation to the Integrated Risk and Intelligence Service (IRIS).
2. The Department for Work and Pensions (DWP) disclosed redacted versions of the DPIAs citing section 31(1)(a) for the exempt information.
3. The Commissioner's decision is that DWP has correctly engaged section 31(1)(a) and the balance of the public interest favours maintaining the exemption.
4. The Commissioner finds that DWP breached section 10(1) by disclosing the redacted DPIAs outside of the statutory time frame.
5. The Commissioner does not require further steps.

Request and response

6. On 5 April 2022, the complainant wrote to DWP and requested information in the following terms:

“I write to request information and records under the FOIA, regarding the Department’s DPIAs in relation to the Integrated Risk and Intelligence Service [IRIS].

Specifically, I am asking for the following:

 - Copies of all current Data Protection Impact Assessments relating to any use of profiling, machine learning or artificial intelligence in IRIS
 - A copy of any general policy or guidance held by the department about the DWP’s policy on publication or lack thereof of DPIAs”.
7. DWP provided its response on 5 May 2022 and confirmed that it held the requested DPIAs. DWP confirmed that it was withholding this information and cited section 31 as its basis for doing so. DWP did not confirm what subsection it was relying on. DWP stated that it would not disclose the DPIAs requested as this would compromise the effectiveness of its response to fraud.
8. DWP provided its public interest considerations. DWP explained that while there is a public interest in ensuring that it gathers and uses information legitimately to check accuracy and eligibility in the award and payment of benefits, it would not be able to provide more specific information as it would enable a perpetrator to understand its services.
9. DWP confirmed that its DPIAs are highly detailed documents describing;
 - the specific data attributes used;
 - the techniques used;
 - how the model is interpreted;
 - the business process;
 - and what the controls are to monitor and mitigate risks.
10. DWP explained that DPIAs are intentionally highly detailed to ensure that they can be understood by non-technical colleagues, Data Protection and Legal teams reviewing them. DWP confirmed that it would only share this information externally to the Information Commissioner’s Office.

11. DWP explained that providing the level of detail contained in these documents would enable a perpetrator to understand the way its IT systems work, as well as where and how it gathers information. DWP considered that this would enable an offender to make false claims to benefit, divert public funds, affect the way the government pays benefits to claimants or collects taxes, and could otherwise compromise the provision of essential public services.
12. In relation to the request for the policy or guidance on publication of DPIAs, DWP confirmed that there is no legal requirement for DWP to publish every DPIA.
13. The complainant requested an internal review of the handling of their request on 10 May 2022. They raised the following concerns:
 - DWP failed to approach the request from a disclosure by default position.
 - DWP failed to adequately demonstrate the balance of the public interest including only a brief mention of the public interest in disclosure.
 - The public interest in disclosure includes transparency and accountability in the use of data processing when allegations of discrimination exist, such as those made by Kate Osamor MP regarding disproportionality of benefit reviews in her constituency.
 - There is significant public interest in disclosure of information on high risk data processes conducted by DWP to hold DWP accountable for potential breaches. Without this, DWP can use people's information with minimal external checks which is of detriment to the public interest and ensuring individuals can exercise their data rights.
 - DWP had applied the exemption in a blanket manner and the DPIAs could be redacted prior to disclosure. It is likely that some of the information would not allow anyone to game the system.
14. DWP provided the outcome of its internal review on 31 May 2022 and upheld its original response. DWP did not confirm which subsection of section 31 it was relying on.
15. DWP stated that the public interest test was properly considered when considering not to disclose the requested information. DWP considered that it would not be in the public interest to release information which could potentially enable third parties to work around its models designed to prevent and detect fraud and error in the benefit system to commit

crime. DWP confirmed that it had considered the public interest in disclosure, however, it considered the balance of the public interest lay heavily in favour of withholding the requested information.

16. DWP stated that it takes data protection very seriously and it has published the personal information charter and provided a link to this. DWP confirmed that it does not use artificial intelligence to replace human judgement to determine or deny a payment to a claimant.

Scope of the case

17. The complainant contacted the Commissioner on 14 June 2022 to complain about the way their request for information had been handled, specifically DWP's refusal to disclose the requested DPIAs.
18. The Commissioner confirmed to the complainant that as they had not raised any concerns regarding DWP's response to the request for its policy on the publication of DPIAs, he would not investigate this element of their complaint. The complainant did not dispute this approach.
19. During the course of the investigation, DWP disclosed redacted versions of the requested DPIAs. DWP also confirmed that it was relying on section 31(1)(a) to withhold the redacted information.
20. The Commissioner therefore considers that the scope of this investigation is to determine whether DWP is entitled to rely on section 31(1)(a) to withhold the remaining information.

Reasons for decision

Section 31(1)(a): Prevention or detection of crime

21. Section 31(1)(a) of FOIA states:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime".

22. In order for a prejudice based exemption such as section 31(1)(a) to be engaged, the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was

disclosed has to relate to the applicable interests within the relevant exemption;

- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view; this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

DWP's position

23. In its response to the complainant, DWP explained that IRIS DPIAs are highly detailed documents describing the specific data attributes used, the techniques used, how the model is interpreted, the business process and what the controls are to monitor and mitigate risks.
24. DWP explained that they are intentionally highly detailed to ensure that they can be understood by non-technical colleagues, Data Protection teams and Legal teams reviewing them.
25. DWP explained that providing the level of detail contained in these documents along with the data requested would enable a perpetrator to understand the way IRIS IT systems work, as well as where and how they gather information. DWP explained that this would enable an offender to make false claims to benefit, divert funds, affect the way the government pays benefits to claimants or collects taxes, and could otherwise compromise the provision of essential public services.
26. DWP explained that the scale of the attacks on the welfare system are therefore very real and actual, and the harm is substantial. These attacks extend beyond those by individual opportunistic non-technical citizens to attacks by sophisticated, technical and organised criminal enterprises. DWP considered that the sophistication of such organised attacks and the increasing speed and the scale at which they occur cannot be overlooked or underestimated.

27. In its submissions to the Commissioner, DWP explained to the Commissioner that one of the very real threats it has to deal with is not just individuals targeting the benefits system, but also organised criminal gangs who have conducted systematic and large scale attacks on its welfare systems. DWP explained that they are able to operate at considerable speed and the versatility at which they are able to modify their behaviour means that even without the withheld information being in the public domain, it is constantly battling to ensure it is one step ahead.
28. DWP confirmed that the latest Annual Report and Accounts sets out that the challenge of combatting fraud has increased significantly and DWP needs to find new and innovative ways to combat that activity.
29. DWP explained that its DPIAs are extremely detailed documents and cover a range of different ways in which it is detecting fraud. DWP confirmed that the level of detail contained within its DPIAs is to help different stakeholders understand technical topics with confidence. DWP explained that these include:
 - AI models: DWP explained that DPIAs in this area include information about its technical infrastructure and how it gathers information when detecting potential fraud activity. DWP explained that providing the level of detail requested would enable a perpetrator to tailor their answers to circumvent its systems. DWP explained that this would enable an offender to make fraudulent claims to benefit, divert public funds, affect the way the government pays benefits to claimants or collects taxes, and could otherwise compromise the provision of essential public services.
 - DWP's data shares: DPIAs in this area include detailed information about the type of data DWP receives from elsewhere and send on to others. DWP explained that it has complex sharing agreements with other organisations and so would require considerable co-operation from a number of organisations. DWP explained that, if it discloses who or how it shares data with, it may be harmful to its stakeholder relationships and may hinder progress that has been made in this area. DWP considered that it could make departments or companies reluctant to share if they know DWP is disclosing this publicly and this would seriously hinder its ability to detect fraud in the future.
30. DWP explained that the prejudice is 'real, actual or of substance' as the scale of attacks already taking place on the welfare system is very real and the harm is substantial. DWP explained that in 2020-21, the

monetary value of fraud and error overpaid had increased to £8.6billion. DWP set out that this is without disclosing the details of its methodologies when detecting fraud as outlined in its DPIAs. DWP explained that once the information is in the public domain, the fraud detection method is as good as obsolete. DWP confirmed that there would be no way of mitigating against this harm other than develop new measures in detecting that type of fraud.

31. DWP confirmed that there is a causal link as, if the withheld information was disclosed, it would see an increase in the types of fraud being committed, either on an individual or organised crime basis, utilising the methodologies outlined in its DPIAs.
32. DWP considered that the harm caused by disclosure of the DPIAs potentially goes one step further and DWP has also considered the 'mosaic effect' of disclosure and, more particularly, that relating to a precedent being set.
33. DWP considered that disclosure would lead to fraudsters having a complete picture of how it is combatting fraud now and any new DPIAs that included methods for detecting fraud in the future would also potentially be disclosed. DWP explained that this will greatly hamper its ability to stay one step ahead of the fraudsters and would undoubtedly lead to greater losses to the public purse in the future.
34. DWP explained that the sophistication of the organised attacks on the benefit system cannot be overlooked, notwithstanding those ordinary members of the public who also abuse the benefit system. DWP stated that all it would take for the higher threshold to be met was for one individual to read one of the DPIAs and modify their behaviour accordingly so that they were not picked up by its systems.
35. DWP explained that given the scale of the challenge it is already facing in combatting fraud, and the numbers it is dealing with in terms of those committing fraud, it considers that the chain of events stemming from disclosure of the withheld information would lead to further losses to the state.
36. DWP confirmed that it considers that the higher threshold of 'would' prejudice applies.

The Commissioner's position

37. With regard to the first criterion, the Commissioner is satisfied that the harm envisaged relates to the interest that section 31(1)(a) seeks to protect against, specifically, the prevention or detection of crime.

38. The Commissioner next considered whether the prejudice being claimed is “real, actual or of substance”, not trivial and whether there is a causal link between disclosure and the prejudice claimed.
39. The Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant and he accepts that it is plausible to argue that there is a causal link between disclosure of the disputed information and the prejudice occurring. The prejudice in this case would be to DWP’s ability to prevent and detect fraudulent activity within its systems and claims. There is a clear causal link between the disclosure of the withheld information and an increased risk of fraud.
40. The Commissioner notes that DWP is arguing that disclosure of the withheld information **would** prejudice the prevention or detection of crime. The Commissioner accepts that this threshold is met.
41. During the investigation, the Commissioner’s officer met with DWP to discuss the disclosure of redacted versions of the DPIAs. This included detailed discussions and a line by line review of a representative sample of the DPIAs. The Commissioner has based his decision on these discussions and the representative sample viewed. The Commissioner is satisfied that DWP’s understanding of the exemption following these discussions has led to appropriate redactions being made.
42. The Commissioner finds that the prejudice test has been satisfied in the circumstances of this case and consequently the exemption at section 31(1)(a) is engaged.
43. Section 31(1)(a) is a qualified exemption. By virtue of section 2(2)(b), DWP can only rely on section 31(1)(a) as a basis for withholding the information in question if the public interest in doing so outweighs the public interest in disclosure.

The balance of the public interest

44. The Commissioner acknowledges the complainant’s arguments regarding DWP’s use of personal data and the potentially devastating impact on individual claimants when an incorrect suspicion of fraud leads to the suspension of benefits.
45. However, the Commissioner considers that, in the circumstances of this case, there is a strong public interest in ensuring that DWP is able to prevent and detect fraud within its systems. As DWP set out in its prejudice arguments, the cost of fraud to the public purse is significant and it is in the public interest to prevent this increasing and reduce it.
46. Whilst the Commissioner accepts that there is a public interest in the disclosure of information which would increase the transparency of how

DWP uses personal data, he considers that the public interest in maintaining the integrity of these measures by withholding the information outweighs this.

47. The Commissioner therefore finds that DWP is entitled to rely on section 31(1)(a) to withhold the disputed information.

Procedural matters

Section 10(1): Statutory time for compliance

48. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled, subject to the exemptions:
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
49. Section 10(1) of FOIA provides that public authorities must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
50. As DWP provided the redacted DPIAs during the Commissioner's investigation, outside the statutory time frame of 20 working days, DWP has breached section 10(1) of FOIA.

Right of appeal

51. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
53. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF