

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 August 2024

**Public Authority:** Department for Communities  
**Address:** Causeway Exchange  
1-7 Bedford Street  
Belfast  
BT2 7EG

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the ability of the Department for Communities to determine the geographical location of claimants logging into Universal Credit accounts. The Department refused to confirm or deny that it held the requested information, citing section 31(3) in conjunction with section 31(1)(a) (prejudice to the prevention or detection of crime).
2. The Commissioner's decision is that the Department was entitled to refuse to confirm or deny that it holds the requested information. No steps are required.

#### Request and response

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3. On 23 November 2023 the complainant requested the following information from the Department:
  - "1. When a customer logs into their online Universal Credit account can their location be determined by an Officer from, or acting on behalf of, the Department for Communities?
  2. If the location of the customer can be determined, how is that information communicated to the Department for Communities? For example, if a customer logs into their online Universal Credit account from a location outside of the United Kingdom is the

'System/Software' designed in such a way as to automatically send a notification to the Department for Communities?"

4. On 2 January 2024 the Department issued a response refusing to confirm or deny that it held the requested information. The Department cited section 30(3) of FOIA (investigations).
5. The complainant requested an internal review on 3 January 2024.
6. The Department communicated the outcome of the internal review on 26 January 2024. The outcome was that the Department upheld its neither confirm nor deny (NCND) response in reliance on section 30(3).

### **Scope of the case**

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7. The complainant contacted the Commissioner on 4 February 2024 to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation the Department withdrew reliance on section 30(3) and claimed a late reliance on section 31(3) in conjunction with section 31(1)(a) of FOIA (prejudice to the prevention or detection of crime). The Department maintained its NCND stance, albeit in reliance on a different provision of FOIA.
9. The Department informed the complainant of its change in position, and the complainant confirmed that he remained dissatisfied. Therefore the scope of the case is to determine whether the Department was entitled to rely on section 31(1)(3) in conjunction with section 31(1)(a) in order to refuse to confirm or deny that it holds the requested information.
10. For the avoidance of doubt, the Commissioner has not sought to establish whether the requested information is in fact held in this case. He is required to consider only whether the Department was entitled to refuse to confirm or deny that it held the requested information.

### **Reasons for decision**

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#### **Section 31(1)(a): prejudice to the prevention or detection of crime**

11. Section 31(1)(a) of FOIA provides an exemption from disclosure where this would, or would be likely to prejudice the prevention or detection of crime. Section 31(3) further provides that a public authority may refuse to confirm or deny that the requested information is held to the extent that to do so would, or would be likely to prejudice this interest.

12. In order to engage a prejudice based exemption or exclusion such as section 31, there must be the likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption or exclusion protects. In the Commissioner's view, three criteria must be met:
- first, 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.
13. The Department has explained that a condition for entitlement to Universal Credit is that the claimant is resident in the UK. Information published on "nidirect", the Northern Ireland government information website advises that claimants may keep receiving Universal Credit for up to one month during temporary trips abroad, such as holidays. However, entitlement may be affected if the claimant lives abroad, and claimants are required to contact their case manager or work coach if they plan to go abroad.<sup>1</sup>
14. The Department's position is that confirming or denying whether it holds the requested information in this particular case would prejudice the Department's ability to detect and investigate cases where individuals are claiming benefit fraudulently by spending significant time outside the UK.

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<sup>1</sup> <https://www.nidirect.gov.uk/articles/going-abroad>

15. The Department explained that confirming that the requested information is held would enable fraudulent claimants to use technical or other measures to prevent detection.
16. It further explained that denying that the requested information is held would assure fraudulent claimants that they could claim Universal Credit while living outside the UK for significant periods, and may encourage fraudulent claims.
17. The Department set out that either response would harm its ability to effectively deliver its investigative functions which are aimed at protecting the public purse from fraudulent claims. This includes deterring those who may be considering submitting fraudulent claims.
18. The complainant did not accept that the Department's ability to deliver its investigative functions would be compromised by confirming or denying that it held the requested information. They argued that if the Department is able to identify the location of a claimant from its Universal Credit login, then claimants, "by reason of protecting their privacy and right to freedom of movement in the course of their lawful business, are entitled to know if their location, at the time of login, is being monitored".
19. The complainant further argued that, if a claimant is not made aware whether their location can be determined from login, then a question arises as to whether the Department is complying with sections 44 and 67 of the Data Protection Act 2018 (the DPA). Section 44 of the DPA sets out the general duties of a person (in this case the Department) processing personal data. Section 67 sets out the duty to notify the Commissioner (as the data protection regulator) of personal data breaches in certain circumstances.
20. The Commissioner acknowledges the complainant's arguments, but is of the opinion that they fall to be considered as part of the public interest consideration, rather than as part of the prejudice test.
21. The Commissioner accepts the Department's argument that confirming or denying that the requested information is held would provide fraudulent claimants with valuable insight into the Department's ability to identify where they were logging in from. Knowing whether or not the Department was able to detect a claimant's geographical location when logging into their Universal Credit account would clearly assist fraudulent claimants in taking action to evade detection in this regard.

22. The Commissioner further accepts that this insight would clearly assist individuals in circumventing the residence requirement for Universal Credit, and would make it more difficult for the Department to prevent and detect fraudulent claims.
23. The Department referred the Commissioner to sections 105A and 106 of the Social Security Administration (Northern Ireland) Act 1992.<sup>2</sup> These provisions set out criminal offences relating to dishonest or false representations for obtaining benefits, including Universal Credit. Consequently the Commissioner accepts that the Department's arguments regarding fraudulent claims relate to the prevention and detection of crime.
24. In light of the above, the Commissioner is satisfied that the prejudice identified by the Department is relevant to the particular interests that section 31(1)(a) is designed to protect, ie the prevention or detection of crime. He is also satisfied that the Department has demonstrated a causal relationship between confirming or denying that the requested information is held, and the prejudice that section 31(1)(a) is designed to protect.
25. The Department confirmed to the Commissioner that it was relying on the higher level of prejudice, ie disclosure would have the prejudicial effect identified. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge than that relating to the lower threshold (would be likely). In either case the likelihood of prejudice occurring must be more than a hypothetical possibility, ie there must be a real and significant risk.
26. Again, the Commissioner is mindful of the subject matter of the request, and the nature of the prejudice identified. He accepts that prejudice would be more likely than not on the basis that there is a clear link between the requirement to reside within the UK, and the Department's ability (or otherwise) to establish the location of the login. Accordingly he is satisfied that the Department was entitled to rely on the higher threshold of would prejudice.

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1992/8/section/105A>

### **Public interest in maintaining the refusal to confirm or deny that the requested information is held**

27. The Department argued that there was a strong public interest in maintaining the refusal to confirm or deny that the requested information is held. It set out that it has an obligation to protect the public purse, including protecting it from fraudulent claims. The Department had already established that confirming or denying would have a prejudicial effect on the prevention or detection of crime, and allowing such prejudice to occur would not be in the public interest.

### **Public interest in confirming or denying that the requested information is held**

28. The Department argued that there were no specific public interest factors in favour of confirming or denying that it held the requested information, given that to do so would harm its ability to prevent and detect benefit fraud.
29. The Department acknowledged the general public interest in transparency and openness, especially where this would inform the public as to how the Department makes decisions and delivers services. However the Department considered that general public interest argument did not carry significant weight in this case.
30. The complainant argued that the Department had overstated the risk of benefit fraud in the context of errors made by the Department. They also set out that there was very little evidence of benefit fraud committed by fraudulent claimants logging into Universal Credit accounts from outside the UK. The complainant did not accept the Department's concerns about fraud and argued that it ought instead to prioritise reducing errors.

### **Balance of the public interest**

31. In carrying out the balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in section 31(1)(a) - that is, the public interest in avoiding prejudice to the prevention or detection of crime. The Commissioner considers that this will attract significant weight in most cases, including this one, since it is obviously a matter of great public interest to protect the ability to prevent and detect crime.
32. In finding that section 31(1) was engaged the Commissioner has accepted that confirming that the information is held, and denying that it is held, would both have detrimental consequences, either in terms of encouraging fraudulent claimants to explore measures to prevent

detection; or encouraging fraudulent claims on the basis such measures are not required.

33. The Commissioner is mindful of the presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest. He recognises that confirming or denying that the requested information is held would demonstrate transparency and accountability on the part of the Department.
34. The Commissioner has considered the complainant's argument that claimants have a right to know if they are being monitored. However this is not an absolute right. The Commissioner recognises that the effective prevention and detection of crime often involves proportionate interference with individuals' expectations and rights. Therefore he does not consider that this argument can be afforded significant weight.
35. The Commissioner has also considered the complainant's arguments regarding compliance with the DPA as set out at paragraphs 18 and 19 above. Section 44 of the DPA generally requires organisations to make information available regarding how it processes personal data for law enforcement purposes. The Commissioner also observes that the Department's privacy notice<sup>3</sup> contains information about the way it processes personal data. The Commissioner considers that this addresses the complainant's legitimate argument that claimants have a general right to know how their personal data is being collected and used.
36. However the Commissioner notes that section 44(4) of the DPA provides a restriction on the duty to make information available, where this is necessary in order to avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences.<sup>4</sup> This could include obtaining information such as the location of a claimant logging into their Universal Credit account in order to prevent and detect fraud.
37. The Commissioner is mindful that his role in this case is to determine the Department's compliance with FOIA and not its compliance with the DPA. In any event the Commissioner is not persuaded that section 44 of the DPA provides a compelling public interest argument in favour of confirming or denying that the requested information is held. Rather it

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<sup>3</sup> <https://www.communities-ni.gov.uk/dfc-privacy-notice>

<sup>4</sup> <https://ico.org.uk/for-organisations/law-enforcement/guide-to-le-processing/individual-rights/the-right-to-be-informed/>

provides the Department with a basis for restricting the information to be made available under the DPA.

38. The Commissioner has also considered the complainant's reference to section 67 of the DPA, ie the requirement to report certain personal data breaches to the Commissioner. The Commissioner does not see this as a public interest argument in favour of confirming or denying that the requested information is held, nor is he persuaded that there is a conflict between compliance with section 67 of the DPA and refusing to confirm or deny under FOIA that the requested information is held. If, in hypothetical terms, the Department did hold the requested information and it was the subject of a personal data breach, the Department would need to consider whether to report the breach to the Commissioner within the parameters set out in that section. Responding under FOIA is responding to the world at large, and can in the Commissioner's view be very clearly distinguished from providing relevant information to the Commissioner as the data protection regulator.
39. For the reasons set out above the Commissioner accepts that there is a significant public interest in maintaining the refusal to confirm or deny that the requested information is held. He is not persuaded that there is an equally weighty public interest in confirming or denying that the requested information is held in this particular case. Therefore he finds that the public interest in maintaining the refusal to confirm or deny clearly outweighs the public interest in confirming or denying that the requested information is held.



## Right of appeal

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40. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**