

The Information Commissioner's Office response to the Department for Work and pensions call for evidence on 'Sharing customer data between DWP and local authorities'. April 2011

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 and the Freedom of Information Act 2000. He is independent from government and promotes access to official information and the protection of personal information. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to this call for evidence on the new arrangements extending data sharing powers between the Department for Work and Pensions and local authorities in relation to the provision of welfare services and housing benefit.

The Information Commissioner's Office and DWP have a long standing and positive relationship. The ICO considers the Department to be a key stakeholder in our role to develop information rights policy and practice.

In responding to this call for evidence the Information Commissioner's response will relate to the provisions of the Data Protection Act 1998.

We understand that the proposed new powers as set out in the call for evidence will establish a legal gateway and so allow

- DWP and local authority housing benefit teams to share customer social security data with local authorities (and their service providers) for the purpose of deciding liability for charges for a welfare service, and for prescribed purposes such as deciding eligibility.
- Local authorities to share customer information with DWP or local authority housing benefit teams when a person is admitted to or discharged from hospital or a care home, or requires overnight care at home; and for other purposes in relation to the assessment of a social security benefit.

The Information Commissioner's concern in relation to these proposals is that the initiative meets the requirements of the Principles of the Data Protection Act; specifically in relation to the necessity of the data sharing, the relevance of the data to be shared and, most importantly, the quality of that data.

Furthermore, with specific regard to the individuals affected by this initiative, it is most important that the data-sharing arrangements are as transparent as possible so that the customers are aware the processing will be taking place.

Specifically, the Information Commissioner has the following comments:

Removing the need for consent (para 2.10)

We note the Department's concerns with the current practice of seeking informed consent and the limitations it presents. The Information Commissioner's Office has discussed the issue of consent with the Department on several occasions and recognises that this is a difficult area - the issue is often less about being prescriptive and more about when establishing when consent is actually necessary. There is an incorrect assumption that consent should always be sought, or sought in the vast majority of cases.

The Data Protection Act provides alternatives to consent - for example that the processing is required by law; it is the data controller's prerogative to use an alternative 'condition'. Furthermore, consent is not appropriate where it cannot be freely given.

The Information Commissioner has stated that it is bad practice to offer individuals a 'choice' if the data sharing is going to take place regardless of their wishes.¹ Additionally, given the individual circumstances, as described by the Department, of those affected by this initiative, we recognise that it will be likely, in many instances, to be difficult to obtain that consent.

The Information Commissioner recognises therefore that the creation of a legal gateway, that has been subjected to proper Parliamentary scrutiny, to allow such data sharing to take place is an appropriate way forward as it will facilitate a streamlined system to benefit both the individuals receiving, and the organisations responsible for, the service.

It is an important point however that whilst the creation of the legal gateway establishes the 'lawfulness' of the initiative in meeting the requirements of the Data Protection Act; with regard to the disclosure of personal data all other requirements of the Act must be complied with.

¹ Data Sharing Code of Practice 2011

The scale of the data to be shared (para 2.22)

A number of references are made in the call for evidence relating to the scale of the data to be shared. In such circumstances the Information Commissioner would wish to be assured that appropriate security and also information governance measures are put in place. The Department may wish to refer to the ICO's revised Data Sharing Code of Practice (available after May 10 2011) which provides helpful guidance on these matters.

The Commissioner welcomes the inclusion in the Welfare Reform Bill of measures relating to the unlawful disclosure of information.

Implementation Issues

As stated above one of the Information Commissioner's main concerns is that the arrangements should be as transparent as possible and individuals are aware the processing will be taking place

To this end, the Information Commissioner welcomes the measures highlighted in this section of the document illustrating that the creation of the legal gateway is the first stage in fully implementing this initiative.

We are encouraged that the Department has stated its intention to review all appropriate means of enabling the required data sharing and that there will be further consultation with the organisations receiving and sharing the data with DWP. The Information Commissioner would also recommend that, if possible, the data subjects likely to be affected by this initiative are also consulted. (para 3.1)

The Information Commissioner's Office has previously, in relation to other DWP data sharing initiatives, received enquiries from local authority officers about the legitimacy of the sharing in question, requests for further guidance on what the authority was signing up for and queries about the wording of the paperwork that was involved. We note that the Department intends a number of measures to support the initiative prior to its introduction including the development of staff training guidance and materials.

The Information Commissioner is pleased to note that the Department also intends a revision of the leaflets, claim forms and other material available to customers.

We also welcome the Department's intention to ensure that Privacy Notices are amended to make clear where social security data is being shared with local

authorities for use in assessing entitlement to a welfare service. The Information Commissioner advises that where information is being shared it is good practice to have a single point of contact for subject access requests and similar information enquiries. By having such an arrangement in place it will be easier for any inaccurate data to be corrected across all the data sharing organisations.

The ICO has produced comprehensive good practice guidance on the drafting and distribution of privacy notices in our Privacy Notices Code of Practice². We say in the Code that as well as being accurate, privacy notices should be up to date; it would seem a good way forward to ensure this is the case within all the individual local authorities for the Department to suggest a form of words for all to include in their privacy notices.

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http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/~media/documents/library/Data_Protection/Detailed_specialist_guides/PRIVACY_NOTICES_COP_FINAL.ashx