

Information Commissioner's Office response to the Department for Work and Pensions informal consultation on new arrangements extending data sharing powers between DWP and local authorities:

'Social Security information – sharing: draft regulations'

The Information Commissioner has responsibility in the UK for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA). The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. 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'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.

The Information Commissioner welcomes the opportunity to respond to this DWP informal consultation document. We shall focus in our response on issues that have data protection and privacy implications.

The Information Commissioner also responded in April 2011 to the Department's call for evidence on 'Sharing customer data between DWP and local authorities'.

Obtaining consent

In our response to the call for evidence we commented on the Department's concerns in relation to seeking informed consent and the limitations it presents. The Information Commissioner has stated that it is poor practice to offer individuals a 'choice' if the data sharing is to take place regardless of their wishes; also that consent is not appropriate where it cannot be freely given.

We therefore recognise the creation of a legal gateway that has been subjected to proper parliamentary scrutiny, to allow data sharing to take place between the Department and local authorities, is an appropriate way forward. It will facilitate a streamlined system to benefit both for the individuals receiving, and the organisations responsible for, the service.

We also acknowledge that the creation of a legal gateway will enable a consistent approach to be taken to these matters where all those involved should be clear about the circumstances where data sharing can take place.

We are pleased to note the Department's statement that guidance and training will be necessary to support the new rules to provide extra reassurance that personal data is being handled legally and securely. We will comment in more detail below in relation to the provision of guidance.

Clause 127

The Information Commissioner welcomes the inclusion of Clause 127 which establishes criminal sanctions for the unlawful disclosure of personal information.

Re-using information

Paragraph 2.32 states that the Department could set out in guidance advice on how long data can be kept for and reused in the manner envisaged by DWP. You ask specifically whether this should be set out in guidance provided by the Department, or that local authorities should be allowed to determine for themselves whether information is out of date.

The Information Commissioner's Office strongly recommends that the Department should provide this guidance to local authorities in order to establish a consistent policy regime across all authorities; to do otherwise is likely to lead to inconsistencies in approach and the likely development of poor practice.

Implementation and next steps

The Information Commissioner welcomes the Department's intention to review the existing processes for sharing data between DWP and local authorities.

The provision of appropriate guidance to local authorities will be critical in order to ensure that local authorities fully understand the new data sharing arrangements and the requirements it places on them.

One of the Information Commissioner's main concerns in any data sharing initiative is that the arrangements are as transparent as possible and that individuals affected are aware that the processing will be taking place.

You ask specifically whether the guidance should be a general framework which allows local authorities to develop their own practices locally. Again, the Information Commissioner advises most strongly that guidance provided by the Department should be detailed, complete and sufficient that local authorities need not formulate their own policy and practices. Again this is for reasons of consistency, transparency and to ensure that best practice, as required by the Department, is adopted.

The Information Commissioner would expect that the guidance take account of the provisions of both the Data Protection Act and also the Freedom of Information Act and establish clear standards of operation and application. In particular, we would expect that the guidance establishes appropriate security and information governance standards. Additionally, the Department may also wish to refer to our Data Sharing Code of Practice 2011 in considering the content of guidance to local authorities.

In our response to the call for evidence we stated that we had received enquiries from local authority officers about other DWP data sharing initiatives regarding what the authority was signing up for and also queries about the wording of the paperwork that was involved. Such enquiries will likely be minimised if detailed guidance on the policy and practice of this data sharing arrangement is produced centrally by the Department.

The Information Commissioner's Office would be pleased to assist in any way to contribute to the production of the guidance if requested by the Department.

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