

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2012

Public Authority: Department for Work and Pensions
Address: 4th Floor, Caxton House
6-12 Tothill Street
London, SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information relating to briefings, reports or emails regarding the accuracy of benefit overpayment decisions and unpaid work/mandatory work placements/experience for claimants. The DWP refused to provide this information on the basis that it would exceed the cost limit under section 12 of the FOIA to do so.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) has correctly applied section 12 of the FOIA and therefore requires no steps to be taken.

Request and response

3. On 20 March 2012, the complainant wrote to the DWP and requested information in the following terms:
 - Please supply me copies of any reports, briefings or emails for DWP ministers and/or DWP senior civil service grades from 2009 to date about the accuracy of benefit over payment decisions.
 - Please supply me with copies of any briefings, emails or reports from DWP official during 2011 and 2012 to Ministers about media coverage of unpaid work/mandatory work placements/experience for claimants.
4. The DWP responded on 18 April 2012. It stated that it would exceed the appropriate cost limit of £600.

5. Following an internal review the DWP wrote to the complainant on 10 May 2012. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The complainant believes that records of all documents sent to ministers are kept within the Private Office of ministers. The complainant also believes that relevant policy and press officers will also have copies of the documents requested and considers that these will be in electronic format that can be easily searched for.
8. The Commissioner considers the scope of this case to be to determine if the DWP has correctly applied section 12 of the FOIA.

Reasons for decision

9. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit, which in this case is £600 as laid out in section 3(2) of the Fees Regulations. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours.
10. Section 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from the document containing it.
11. To determine whether the DWP has applied section 12 of the FOIA correctly the Commissioner has considered the submission by the DWP on 15 October 2012 as well as the response and internal review which was sent to the complainant.

12. The DWP stated that in this instance it would entail locating and separating emails, briefing or reports about any media coverage of unpaid work/mandatory work placements/experience for claimants to determine whether the Department holds this information.
13. The DWP explained that the request does not cover a single programme. It covers several programmes including Mandatory Work Activity, work experience and sector base work academies. This would result in contacting numerous policy teams to locate, identify and retrieve the relevant information.
14. The DWP further explained that advice or briefings by departmental official tend to cover a whole manner of subjects, not exclusively the topics that the complainant has asked for. It would be very resource intensive to ascertain what was given and by whom and whether it was relevant to the request.
15. The DWP provided an example: Private Office staff would need to search through the records of each Minister of a 15 month period checking for any relevant information.
16. The DWP explained that each of the Ministerial Private Offices can receive 200 new emails a day, and each have thousands on their archive system. Given briefings or reports could have come from a number of officials not just press officers it would take significant time and resource to search through and identify which documents might contain information which met the terms of the request.
17. The DWP stated that Private Office has looked at the archive of a typical Private Secretary, and in one year of archives there are over 10,000 emails. There are approximately four Private Secretaries per Minister and five Ministers, so this indicates there would be approximately 200,000 emails for each year requested to be checked by Private Office. The figure would still be high, around 80,000, if DWP just focused on the two Ministers most likely to have received material on these issues.
18. The DWP did not carry out a sampling exercise. However, it assumed that it would take 10 seconds to review each email item equalling six emails per minute equalling 360 emails per hour.
19. Based on the above assumption the DWP estimated it would take over 27 hours to review one year of archived emails of one private secretary. This alone would cost £675, which is above the appropriate cost limit.
20. If the DWP were to check the archives and emails all the press officers and officials who may have submitted information on these subjects, as well as Private Officer, the cost would be a lot higher.

21. The DWP explained that when searching through emails colleagues could use a key word search, but it was unclear as to how effective this would be. Colleagues would have to carry out numerous searches to cover all the areas e.g. search for 'mandatory', 'MWA', 'work experience', 'work placements', 'sector based work academies', 'swba' etc. Each result would still involve searching through a large volume of emails and this could not guarantee to capture everything.
22. The DWP acknowledged that these searches may speed up the process but estimated it would not be sufficient to bring it under the cost limit.
23. The DWP also explained that this would also apply to searching through the archived folders but each folder would have to be individually checked, which again would be a very lengthy process.
24. The DWP concluded by explaining that information relating to Mandatory Work Activity, work experience and sector based work academies as with other employment programmes, is not held centrally as different types of communications are managed by separate teams Departmental wide.
25. The DWP stated that there is no central depository of such information that is complete and comprehensive. It was estimated that the cost of identifying, retrieving and extracting the relevant information from a large number of officials, including those in private office alone would breach the appropriate cost limit.
26. Having considered the arguments presented by the DWP the Commissioner considers that due to the number of emails that would need to be accessed and searched it would exceed the cost limit under section 12 to comply with the request.
27. The DWP has explained how it has estimated the cost involved and the Commissioner considers that section 12 was correctly applied to this request.
28. The Commissioner notes that in the DWP's response to him it states that the complainant chose to submit a single request consisting of three elements and chose not to narrow his request when he was informed that section 12 applied. However, it does not appear that the DWP advised the complainant that if he refined his request they may be able to provide some of the information requested.
29. Section 16(1) of the FOIA states:

It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do

so, to persons who propose to make, of have made, requests for information to it"

30. The Commissioner has issued guidance in relation to this matter which explains how a public authority can satisfy the requirements under section 16.
http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx
31. This guidance also advises that there is likely to be a breach of section 16 where a public authority has failed to indicate that it is unable to provide any information within the appropriate limit. This is based on a plain English interpretation of the phrase *"..what, if any, information could be provided.."*
32. The Commissioner acknowledges that in this instance further assistance is unlikely to have helped to reduce the cost. However the DWP should always be mindful of its obligation to provide advice and assistance to requestors.

Right of appeal

33. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. 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

Pamela Clements
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