

Freedom of Information Act 2000

Decision notice

Date: 11 March 2013

Public Authority: Department for Energy and Climate Change
Address: 3 Whitehall Place
London
SW1A 2AW

Decision (including any steps ordered)

1. The complainant has requested information about the Mineworker's Pension Scheme, specifically the minutes of meetings in the period 1990-1992 during which the division of scheme surpluses was discussed.
2. The Commissioner's decision is that the Department for Energy and Climate Change ("DECC") has correctly applied section 12 of the Freedom of Information Act (the "FOIA") to this request. Therefore he does not require any steps to be taken.

Request and response

3. On 7 January 2010, the complainant wrote to DECC and requested information about the Mineworker's Pension Scheme ("MPS"), specifically the minutes of meetings in the period 1990-1992 during which the division of MPS surpluses was discussed.
4. DECC responded on 10 February 2010 acknowledging the request and asking for extra time to consider the request. On 28 May 2010 DECC provided two meeting notes to the complainant.
5. The complainant was dissatisfied with the response and on 14 June 2010 clarified that his request was for:

"All documentation with regards to the distribution of the Mineworker's Pension Scheme (MPS) surpluses to include minutes of meetings, letters between interested parties and records of telephone conversations."

The complainant also requested copies of meetings of the Rules Amendment Committee.

6. DECC responded on 13 August 2010 and stated that:

"Your request relates to the distribution of surpluses prior to there being a direct Departmental relationship with the MPS. It is likely that most, if not all, of the information you have requested was never held by DECC or its predecessor Departments having been transferred to the ownership of the Scheme when British Coal Corporation was privatised in 1994. The Department might inadvertently hold some papers within the scope of your request, however in order to locate what is, in effect, unlikely to be there would require an extremely time consuming search. To put this into context, the Department is custodian of some 20 linear miles of British Coal files."

7. DECC estimated that it would take in excess of 3.5 working days to determine appropriate material and to locate, retrieve and extract the information in reference to the request. Accordingly, DECC applied section 12 of the FOIA and refused the request for information as the cost of dealing with it would exceed the appropriate amount, which for central government is set at £600.
8. In accordance with its duty under section 16 of the FOIA to advise and assist an applicant, DECC suggested to the complainant that he may wish to refine his request by narrowing its scope and being more specific about the information he wished to obtain.
9. Following further correspondence in which the complainant repeated his request and chased a substantive response, DECC wrote to the complainant on 20 April 2011. DECC suggested that the complainant re-frame his request by reference to particular key words.
10. On 28 April 2011 the complainant indicated that he was content to re-frame his request using the suggested key words. On the same date the complainant also referred the matter to the Information Commissioner as he was unhappy with the length of time taken to comply with his request.
11. On 27 July 2011 DECC wrote to the complainant and enclosed a copy of the results of a search done using the agreed refined key words, as agreed with the complainant on 28 April 2011, which had yielded 1,700 titles.
12. On 19 September 2011 DECC wrote to the complainant and said it had retrieved the material and would review it.

13. On 9 March 2012 DECC wrote to the complainant enclosing a number of documents recovered from the files.
14. It would appear from the correspondence in the Commissioner's possession that a formal internal review was not carried out by DECC. However, the request has been reviewed a number of times during the course of the correspondence.

Scope of the case

15. The complainant contacted the Commissioner on 25 June 2012 as he remained of the opinion that he had not received all of the information he had requested. He was also unhappy with the length of time taken to deal with his request.
16. In submissions to the Commissioner DECC has explained that to carry out further searches for information would exceed the costs limits set out in section 12 of the FOIA.
17. Therefore the Commissioner considers the scope of the investigation to be the application of section 12 to the complainant's request, as refined on 28 April 2011.

Reasons for decision

Section 12 – cost limits

18. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

19. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at £600 for this public authority. A public authority can charge a maximum of £25 per hour for work undertaken to comply with a request, which amounts to 24 hours work in accordance with the appropriate limit of £600. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:
 - a. determining whether it holds the information;
 - b. locating the information, or a document which may contain the information;

- c. retrieving the information, or a document which may contain the information; and
 - d. extracting the information from a document containing it.
20. DECC has estimated that a total of around 20 hours has been expended on the complainant's request to date. This time has been spent in locating documents, searching through them to determine relevant information, extracting this information and refining searches to determine whether any further information is held.
21. The current position is that DECC cannot be certain if they hold any further information relevant to the request without carrying out further searches of archived information. The volume of records held is great and the refined searches carried out to date have identified 1,700 files which could potentially be of relevance. Five of these have already been retrieved and searched and the information contained therein forwarded to the complainant. DECC has estimated that it would take 10 minutes to review each of the remaining 1,655 files and therefore the time estimate to do so is 277 hours.
22. The Commissioner is satisfied that the time spent to date of 20 hours and the considerable time that would be taken to carry out the necessary further searches of 277 hours exceeds the appropriate limit of £600 as set out in the Regulations.
23. The Commissioner's decision therefore is that DECC can rely on section 12 of the FOIA as the costs estimates provided confirm that to ascertain if the information exists would exceed the appropriate limit.

Other matters

24. Under FOIA there is no obligation for an authority to provide a complaints process. However, the section 45 code of practice considers it is good practice to have one.
25. The Commissioner recommends that in most cases an internal review should be carried out within 20 working days. He notes, however, that this timeframe was not adhered to on this occasion. The Commissioner therefore expects DECC to take steps to ensure that it is able to meet the timeframe in the future
26. The Commissioner also notes that there were also significant delays in DECC responding to the complainants initial request and subsequent correspondence. The Commissioner would therefore also expect DECC to

respond to correspondence and provide advice and assistance to those making requests in a more timely fashion in the future.

Right of appeal

27. 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

28. 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.
29. 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

Rachael Cragg
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