

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2013

Public Authority: Department for Work & Pensions (DWP)

Address: Caxton House
6-12, Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested copies of emails sent and received by Higher Executive Officer at the Department for Work and Pensions (DWP) [named individual] on subject matter Universal Jobmatch and Monster Worldwide for past 2 months. The DWP has applied section 12 of the Freedom of Information Act (FOIA) in this case as it would exceed the £600 cost limit to comply with this request.
2. The Commissioner's decision is that the DWP has correctly applied section 12 FOIA in this case. It was not therefore obliged to comply with this request. However as section 12 FOIA was only applied during the course of the Commissioner's investigation, the DWP did not comply with section 16 FOIA, which requires it to provide the complainant with advice and assistance as to whether the request could be refined so that some information could be provided within the cost limit.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance under section 16 FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 4 October 2012, the complainant wrote to the DWP and requested information in the following terms:

"copies of emails sent and received by Higher Executive Officer at DWP Phil Crowley on subject matter Universal Jobmatch and Monster Worldwide for past 2 months".
6. The DWP responded on 19 October 2012. It refused to provide the requested information under section 40(2) FOIA.
7. Following an internal review the DWP wrote to the complainant on 1 November 2012. It upheld its original response.
8. During the course of the Commissioner's investigation, the DWP was asked to provide a copy of the withheld information to enable the Commissioner to determine whether or not section 40(2) FOIA had been correctly engaged in this case. Prior to the Commissioner's request for a copy of this information, the DWP had not collated the requested information either at the time it provided its original response or at the time it conducted the internal review. When the DWP considered how to collate the withheld information to provide it to the Commissioner, it became apparent that it would exceed the £600 cost threshold under section 12 FOIA. The DWP therefore applied section 12 FOIA at this stage.

Scope of the case

9. The complainant contacted the Commissioner on 6 November 2012 to complain about the way his request for information had been handled.
10. The Commissioner has considered whether it would exceed the £600 cost threshold under section 12 FOIA to comply with this request. The Commissioner decided it was appropriate to consider the DWP's late application of section 12 FOIA in this case as the DWP originally applied section 40(2) FOIA largely based on existing knowledge and without sight of the requested information. Although this is not a practice the Commissioner would recommend, if none of the requested information has been collated or if the costs still to be incurred in collating the information are significant, then the Commissioner is more likely to accept the late claim of section 12 in order to give effect to the purpose behind section 12 in avoiding unnecessary and burdensome work.

Reasons for decision

11. Section 12 of 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."

12. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at £450 for the public authority in question. A public authority can charge a maximum of £25 per hour for work undertaken to comply with a request which amounts to 18 hours work in accordance with the appropriate limit set out above. 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.

13. The DWP explained that the request was received on 4 October 2012 so the scope of the request covers the period 4 August 2012 to 3 October 2012 (49 working days). It explained that the [named individual's] role as 'Strand Leader – Business Design' on the Universal Jobmatch (UJ) project involved him being in daily email contact with Monster Worldwide colleagues throughout the design and implementation phases of the UJ service. This involved potentially up to 50 emails per day.

14. The DWP confirmed that it was aware that the FOIA cost limit is £600 for central government departments and the hourly rate is set at £25 per hour. This equates to 24 hours of activity relating to:

- Determining whether DWP hold the information requested
- Locating the information or documents containing the information
- Retrieving such information or documents
- Extracting the information from the document containing it

15. The DWP said that to locate all of the emails falling with the scope of the request [named individual] would be required to search:

- Microsoft Outlook Inbox
 - Microsoft Outlook sent items
 - Microsoft Outlook Data Files (.pst folders) of which there are 37
 - Folders and sub-folders with the 'My Documents' space on his PC – of which there are 6
 - Shared folders and sub-folders within the UJ Project (Transforming Labour Market Services) server space – of which there are in excess of 4,000
16. The DWP explained that to complete a search of the Outlook folders would require [named individual] to filter the emails within each folder by the date parameters and then do an individual search on each of the names of the contacts at Monster to identify any emails. It confirmed that there are 10 individual contacts that [named individual] is in contact with on a regular basis.
17. The DWP said that [named individual] randomly selected the date of 10 September 2012 within the date parameters of the request and searched email folders for all mails falling within the scope of the request relating to that specific date using the method specified above. It confirmed that there were 21 emails falling within the scope of the request and the search and collation took 40 minutes (0.67 hours).

49 working days x 0.67 hours = 32.67 hours

18. It went on to explain that to complete a search of 'My Documents' and Shared folders, [named individual] would need to complete a keyword search using the keyword 'Monster'. Once all of the emails are located each email file would need to be reviewed to establish that it fell within the scope of the request by determining that;
- the email falls within the date parameters of 4 August to 3 October 2012. To do this would require a review of each individual email, including each email within a chain covering dates potentially outside of the scope of the request
 - the email is between [named individual] and Monster.
 - the email is work related and not of a personal nature.
19. The DWP explained that a search was run of the Shared Folders for files in email message format using the keyword 'Monster'. This took 42 minutes (0.7 hours) and identified 2378 emails. It said that to review 10 of these emails to identify if it falls within the scope of the request took approximately 5 minutes (0.08 hours). Therefore to review all of the emails would take approximately 19.8 hours. It confirmed that to review every email to identify if it falls within the scope of the request would

therefore take an estimated 20.5 (0.7 + 19.8) working hours. It said that this does not however include the time it would take to extract any of the relevant information which would be in addition to this.

20. The DWP explained that a similar exercise would need to be undertaken to identify, retrieve and extract the relevant content from [named individual's] 'My Documents'.
21. The DWP concluded that the total time to locate, identify, retrieve and extract the relevant content to meet this request is in excess of 52.47 x £25 per hour = £1311.75. This exceeds the cost limit for dealing with a request and the DWP is therefore not obliged to process it further.
22. Upon considering the arguments put forward by the DWP, the Commissioner considers that due to the significant number of emails that would fall within the scope of the request, it would exceed the cost limit of £600 under section 12 FOIA. The Commissioner therefore considers that section 12 FOIA was correctly applied in this case and the DWP would not be obliged to comply with this request.
23. Section 16 FOIA states that "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, or have made, requests for information to it."
24. In this case, as the DWP did not apply section 12 FOIA until during the course of the Commissioner's investigation, it did not provide the complainant with advice and assistance in accordance with section 16 FOIA as to whether the request could be refined so that some information could be provided within the cost limit. The Commissioner therefore considers that the DWP failed to comply with section 16 FOIA in this case.

Right of appeal

25. 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

26. 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.
27. 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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