

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2013

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information on the DWP Work Programme in a specific local authority area. The request consisted of 5 parts and the Commissioner considered the refusal of DWP to provide some information under section 44 of the FOIA by virtue of the Social Security Administration Act 1992 and the refusal to provide other information as it would exceed the appropriate cost limit to do so (section 12).
2. The Commissioner's decision is that the DWP has correctly applied section 44 to refuse to provide the information requested in Q2 of the request. He also accepts that complying with Q3 and Q5 of the request would exceed the appropriate cost limit and therefore section 12 has been correctly applied.

Request and response

3. On 29 January 2013, the complainant wrote to the Department for Work and Pensions (DWP) and requested information in the following terms:

Your website provides information about the Work Programme and specific Local Authority Areas (LAAs). I have data which indicates that "0.07 thousand" obtained a "Job Outcome" in the Dartford LAA.

1) Can you give me the exact dates from when and to the data was compiled – that is, the start of the Work Programme and, as quoted on your website, "July 2012"? Failing this, the month in which the Work Programme started in the Dartford LAA?

2) Precisely how many people obtained "Job Outcomes" between the start of the Work Programme and "July 2012" in the Dartford LAA?

3) In the Dartford LAA how much the DWP/Work Programme paid to the first line contracted providers to obtain the 70 (or more accurate figure) Job Outcomes?

4) In the Dartford LAA how many people were registered on the Work Programme from its start until July 2012?

5) In the Dartford LAA how much was paid to the DWP/Work Programme contracted providers in "registration fees" for these people?

4. The DWP responded on 7 February 2013. It provided the dates requested in Q1 and considered the information requested in Q2 and Q4 to be exempt on the basis of section 21 (reasonably accessible by other means) and directed the complainant to the DWP's Tabulation Tool¹. More specifically for Q2 the DWP explained it was unable to provide an exact figure as figures in the tables had been rounded to the nearest ten using the DWP's standard method of disclosure control.
5. For Q3 and Q5 the DWP also considered section 21 applied and provided a link to its website² where information on the fee structure for the Work Programme could be accessed.
6. The complainant requested an internal review on 9 February. In this the complainant accepted the responses to Q1 and Q4 but was dissatisfied with the other responses. In particular with regards to Q2 and Q4 the complainant asked the DWP to clarify whether it held exact figures and if so to provide them. The complainant also requested an explanation of some of the terms used in the Tabulation Tool in order to understand the information in relation to Q5.
7. Following an internal review the DWP wrote to the complainant on 11 March 2013. It stated that it had looked again at the answers to Q2, Q3 and Q5 of the request in light of the complainant's comments. For Q2 the DWP upheld its decision to only provide a figure to the nearest ten rather than the exact figure requested. In respect of Q3 and Q5 the

¹ <http://research.dwp.gov.uk/asd/index.php?page=wp>

<http://tabulation-tool.dwp.gov.uk/WorkProg/tabtool.html>

² <http://www.dwp.gov.uk/docs/the-work-programme.pdf>

DWP explained that a start fee is paid to a provider following a claimant's attachment to the Work Programme. After referral, providers conduct specified attachment activity with the claimant and record details on the payment system before a start fee is payable. The DWP considered this to be the clarification required for Q5. The DWP acknowledged that the links provided previously would not be sufficient to provide a complete answer to Q3 or Q5 of the request but still considered section 12 to be applicable and provide an additional link to the DWP's Invitation to Tender Specification and Supporting Information³ containing a table of fees for attachments and outcomes.

Scope of the case

8. The complainant contacted the Commissioner on 1 March 2013 to complain about the way his request for information had been handled. The complainant specifically referenced the responses received to Q2, Q3 and Q5 of his request.
9. The Commissioner initially considered the scope of his request to be to establish what information was held by the DWP in respect of Q2, Q3 and Q5 and to determine if the section 21 exemption had been correctly applied.
10. The Commissioner wrote to the DWP on this basis and the DWP responded confirming that it did hold an exact figure for Q2 but considered this to be exempt from disclosure on the basis of section 44(1)(a) of the FOIA by virtue of section 123 of the Social Security Administration Act 1992 (SSAA92) and section 40(2). The DWP then acknowledged that the links it provided to the complainant to obtain the information requested in Q3 and Q5 would not provide accurate answers. Having looked at this again, the DWP informed the Commissioner it now considered the information requested in Q3 and Q5 would exceed the appropriate cost limit of £600 to retrieve.
11. The Commissioner therefore considers the scope of his investigation to be to determine if the information requested in Q2 is exempt on the basis of section 44 or section 40(2) and if section 12 has correctly been applied to refuse to provide the information requested in Q3 and Q5.

³ <http://www.dwp.gov.uk/docs/work-prog-itt.pdf>

Background

12. The Work Programme is a payment-for-results welfare-to-work programme that launched throughout Great Britain in June 2011 and is part of the Government's programme of welfare reform. The programme is being delivered by a range of private, public and voluntary organisations to support people who are at risk of becoming long-term unemployed to find work.

Reasons for decision

Section 44 – prohibitions on disclosure

13. Section 44(1)(a) states that information is exempt information if its disclosure by the public authority holding it is prohibited by or under any enactment. In this case, the DWP considers section 123 of the SSAA92 to prohibit disclosure of the information requested in Q2 – the exact number of people who obtained Job Outcomes from the start of the Work Programme to July 2012 in the Dartford LAA.

14. Section 123 of the SSAA92 states that:

"Unauthorised disclosure of information relating to particular persons

(1) A person who is or has been employed in social security administration or adjudication is guilty of an offence if he discloses without lawful authority any information which he acquired in the course of his employment and which relates to a particular person.

(2) A person who is or has been employed in the audit of expenditure or the investigation of complaints is guilty of an offence if he discloses without lawful authority any information—

(a) which he acquired in the course of his employment;

(b) which is, or is derived from, information acquired or held by or for the purposes of any of the government departments or other bodies or persons referred to in Part I of Schedule 4 to this Act or Part I of Schedule 3 to the Northern Ireland Administration Act; and

(c) which relates to a particular person.

(3) *It is not an offence under this section—*

(a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it; or

(b) to disclose information which has previously been disclosed to the public with lawful authority.”

15. The Commissioner is satisfied that the disclosure of the withheld information, as it is held by the DWP, would be a disclosure of information that relates to particular people. He is also content that the members of staff at the DWP are "*employed in social security administration or adjudication*". As section 44(1) expressly provides that the FOIA should be discounted when considering whether disclosure is prohibited, the Commissioner cannot consider that the FOIA provides lawful authority for disclosure. Therefore he is also satisfied that the DWP does not have lawful authority to disclose the withheld information to the world at large under the FOIA.
16. Section 123(3) of the SSAA92 provides two conditions in which the disclosure of this kind of information by the DWP will not constitute an offence. These are:
 - The information has previously been disclosed to the public with lawful authority; or
 - If the information in question is disclosed in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
17. In relation to the first of these, the Commissioner has not been provided with any evidence that the withheld information has been previously disclosed to the public with lawful authority – therefore he does not consider that this condition applies.
18. In relation to the second of these, the Commissioner considers that if the withheld information is truly anonymous this condition will apply and, consequently, section 123 of the SSAA92 will not prohibit the disclosure of this information. Therefore he has gone on to consider whether it was reasonable for the DWP to not apply this condition in relation this part of the request.
19. The information in this case is a single figure which in itself does not identify any individuals. DWP maintains that if this exact figure was provided then information from multiple linked tables from the same

data source or other sources could be used together with this figure to allow the identification of individuals.

20. The Commissioner considers that releasing the exact figure without any rounding could reveal enough to be able to link the number to certain individuals, particularly as the number in this case is relatively low. Figures for the Dartford area and job outcomes can be broken down by age, gender, disability, provider, ethnicity, primary health condition and lone parent status amongst other things. In some case breaking down figures in some of these ways results in very low numbers for some categories. The DWP has argued, and the Commissioner agrees, that rounding disguises small numbers in some categories. If exact figures were provided then if a person knew an individual's sex and their rough age it could be deduced whether, without any rounding, they gained sustained employment i.e. a job outcome.
21. The DWP also considered the potential identification of individuals to be such a real possibility that it was considering performing an intruder test.
22. Taking these factors into account, the Commissioner considers that the withheld information is not sufficiently anonymous for the condition listed at the second bullet point above to apply.
23. Therefore the Commissioner considers that the disclosure of the withheld information requested in Q2 is prohibited by section 123 of the SSAA92. As such it is exempt under section 44(1)(a).

Section 12 – appropriate cost limits

24. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
25. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") sets the appropriate limit at £600 for the public authority in question. A public authority can charge a maximum of £25 per hour of staff time for work undertaken to comply with a request which amounts to 18 hours work in accordance with the appropriate limit set out above. If a public 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.
26. To determine whether the DWP applied section 12 of the FOIA correctly to refuse to provide the information requested in Q3 and Q5 the Commissioner has considered the most recent response provided to the complainant in which it was explained by the DWP that it was now seeking to rely on section 12 and the submissions provided to the Commissioner during his investigation.
 27. The DWP did not provide any explanations for its reliance on section 12 in either its refusal notice or internal review response. As a result the Commissioner asked the DWP to provide detailed explanations and estimates to support its decision that complying with the request would exceed the appropriate cost limit of £600.
 28. In explaining its reliance on section 12 the DWP firstly clarified that for the purposes of Work Programme contracts it divided the country into 19 contract package areas (CPAs). The CPA covering Dartford is Surrey, Sussex and Kent which has two main providers. Whilst the DWP acknowledges that information on how much is being paid to providers in each area is routinely collected it should be noted that Surrey, Sussex and Kent CPA covers a number of local authorities. For this reason the DWP considers that breaking the information down would require additional analysis and it is this that would exceed the appropriate cost limit of £600.
 29. The Commissioner asked the DWP to provide further detail on how it had calculated the cost limit would be exceeded in order to establish if the information requested in Q3 and Q5 had been correctly refused.
 30. In response the DWP explained that it had based its estimate on previous data analysis and programming of information similar to that requested in this case. Based on this the DWP calculated that it would firstly need to extract all referrals from the Work Programme database to include personal identifiers and postcode information which it estimates based on past experience would require 1 full day to write and then run the code needed to do this.
 31. Following this the DWP would need to clean the postcodes and match them via the local authorities 'lookup' files to identify all those resident in Dartford. The DWP has estimated this as requiring half a day to adapt the standard code and to run it. After this the DWP would need to match this information to the Work Programme payment data to find those customers who have had an attachment or job outcome payment. For

this stage of the process the DWP has explained it is reasonable that it may take 1 full day to research the methodology by reading documentation and talking to data experts and then a further 1 day to write the code and run the code.

32. Once this process has been completed the DWP considers it would next be necessary to account for any cases where a payment has been made and then recovered by the DWP, for example if validation checks are failed. This has again been estimated as requiring 1 day to research methodology and 1 day to write and run the code.
33. Finally the DWP would need to sum all the valid payments to find the total amount paid to people in the Dartford area in relation to the Work Programme which has been estimated as taking 0.5 days to write and run the code needed to perform this function.
34. Having considered the estimate provided by the DWP the Commissioner looked at this in conjunction with reviewing his guidance on section 12⁴. In particular when the Commissioner is considering the application of section 12 he is mindful of the fact that a public authority can only take account of costs it reasonably expects to incur and the £25 per hour rate is only applicable to costs that are attributable to staff time.
35. The Commissioner therefore asked the DWP some further questions about the estimate provided in particular about the number of hours the DWP considered a day to consist of, why researching methodology had been estimated as taking a full day and the process of running codes.
36. Following further enquiries from the Commissioner, the DWP confirmed that it considered one day to be comprised of the standard working day of 7 hours and 24 minutes for the purposes of the estimate.
37. The Commissioner asked the DWP to provide more detail to explain its estimate of 1 day for various activities it deemed necessary to locate and extract relevant information. The DWP provided the Commissioner with further background to explain its position; it explained there are two comprehensive data sources relevant to the request: the Work Programme Analytical Database (WPAD) and the Provider Referrals and Payments system data (PRaP).

4

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx

38. The DWP informed the Commissioner it had slightly revised its estimate following further discussions with its data experts to reflect work already done to add Local Authorities to the WPAD and also as experts now considered the original response underestimated the time and work involved in writing the code relating the PRaP data due to the complexities of the source.
39. To help understand why this payment system data was required for this request, the DWP explained that it was required to identify where individual payments had been made and then recovered by the DWP and to sum all valid payments to find the total amount paid in relation to the Work Programme accounting for anomalies such as amounts which do not include VAT. As PRaP system data does not contain Local Authorities it would need to be matched to WPAD data to identify individuals in particular Local Authorities.
40. In response to the Commissioner's further questions about how it had been calculated that one full day would be required to research methodology and discuss with data experts; the DWP explained that this methodology research and discussion would centre around the PRaP data which is mostly unfamiliar. Time would therefore be required to read and understand the PRaP guidance and documentation, identify the correct variables required to meet the request, and understand standard data requirements and disclosure policies. DWP has further explained this will involve reading documents including record descriptions, data guides and official statistics guidance which has been calculated as taking one day (7 hours 24 minutes).
41. The Commissioner accepts that it is difficult for the DWP to provide a precise estimate for this type of activity as it will be dependent on the amount of reading required and how long discussions with data experts would take. He was initially concerned that estimating one full day for this activity seemed excessive but following the further assurances from the DWP on what the research would entail and DWP's assurances that its estimate is based on previous experience of similar tasks; he accepts the one day estimated for this activity as reasonable.
42. The DWP still maintains a further day would be required to ensure that the correct logic and methodology has been used and that the most appropriate information has been selected. This would involve highlighting any anomalies or issues that may arise which would affect the results and discussing requirements with the data experts. Again the Commissioner accepts that it is reasonable for the DWP to require additional time to ensure the relevance and accuracy of the information so that it meets the requirements of the request and therefore considers it reasonable that this is included in the estimate.

43. The Commissioner asked the DWP for further clarification about the estimate provided for the time required to write and run the code. In particular the Commissioner queried whether once the code was running it could be left to run and if so whether this time should be included in any cost estimate.
44. The DWP has clarified that the majority of the estimated one day needed to write and run the code would be spend writing the code as this is an iterative process which involves several test runs to ensure the validity and accuracy of the code at each stage. DWP has acknowledged that once the code has been finalised it can be ran in the background with periodic checks to ensure it is running correctly but as the majority of the one day estimated would be taken up with writing the code it considers the estimate to still be reasonable.
45. To provide some further clarification on the coding process the DWP explained there are two areas which would need to be coded to identify where individual payments have been made and then recovered by the DWP and to sum all valid payments to find the total amount paid in relation to the Work Programme and account for anomalies. As a result the DWP considers that this would take one person one working day for the first part of this process and one person two working days for the second part. Following this the code would then need to be written and run to match the results to the WPAD data to obtain local authority information. This has been estimated as taking one further working day which means the total number of days required to write and run the code needed to provide the information would be four working days.
46. Therefore the revised estimate provided by the DWP is:
 - Research guidance and required methodologies for PRaP data = 2 days
 - Code and run to account for cases where a payment has been made and recovered = 1 day
 - Code and run to sum all valid payments and account for anomalies = 2 days
 - Code and run to match the results to the Work Programme database to pick up the local authority code = 1 day.
47. If the Commissioner were to accept this estimate of six working days based on a working day comprising of 7 hours and 24 minutes and a public authority being able to estimate a cost of £25 per hour of staff time then this estimate provided by the DWP would significantly exceed the £600 cost limit.

48. The Commissioner has accepted that it is reasonable for the DWP to estimate two working days would be required to research and analyse the information to ensure accuracy and this alone would take the estimate to approximately £350 based on the £25 per hour rate for staff time.
49. With regard to the time estimated to write and run the code; the Commissioner understands the reasons why the DWP would need to write and run several different codes to obtain the information requested as there are different areas which need to be analysed from the PRaP data. However, the Commissioner is wary of accepting that this would take four full working days to achieve, particularly as the DWP has acknowledged once the code has been written it can be left to run with just periodic checks. That being said, he acknowledges that even if the time required for the coding parts of the retrieval of the information was halved i.e. amounted to two working days of staff time, this combined with the earlier two working days estimated would exceed the cost limit.
50. In light of the above, the Commissioner is minded to accept that even without including the full costs associated with writing and running the code the estimate provided by the DWP would exceed the cost limit and therefore Q3 and Q5 of the request was correctly refused under section 12 of the FOIA.

Right of appeal

51. 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

52. 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.
53. 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
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF