

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2013

Public Authority: Department for Work and Pensions

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

Decision (including any steps ordered)

1. The complainant has requested the Department for Work and Pensions (DWP) to answer 17 questions relating to ongoing issues and complaints he has made concerning claims for job seekers allowance. The DWP refused to comply with the request as it considers it is vexatious under section 14 of the Freedom of Information Act (FOIA).
2. The Commissioner's decision is that the DWP has correctly applied section 14 of the FOIA in this case. It was not therefore obliged to comply with the request.
3. The Commissioner requires no steps to be taken.

Request and response

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

"New FOI questions

- 1) Why was there a visit by DWP fraud staff to [named redacted] job centre on Tuesday October 30 2012?
- 2) What was the purpose of their visit?
- 3) Why were they sitting in on jobcentre appointment with members of the public?
- 4) Why were they allowed to sit in on private appointments?
- 5) If allowed what legislation allows staff from other departments walking in and viewing private data without client consent?
- 6) If not allowed what parts of the data protection or other acts prevents this?
- 7) Why were claimants/public not informed prior to their appointments?
- 8) Why was private client information on display to fraud staff without consent?
- 9) On the following day, Oct 31, some staff and the then manager [named redacted] were not there. Were they sacked or did they leave?
- 10) If they were sacked (or asked to leave) why was this?

Re G4s staff at jobcentres and namely [named redacted] job centre

- 11) What are the roles and responsibilities of G4s staff at jobcentres?
- 12) What are the roles and responsibilities of G4s staff at [named redacted] jobcentre?
- 13) Are G4s staff allowed to access public claimant data i.e. appointments etc?
- 14) If so what legislation allows this?
- 15) If not what legislation prevents this?

- 16) If in part what client data are G4s staff allowed to access and what data not?
 - 17) If a claimant making a rapid reclaim does not have internet access for a period and makes a claim over the phone on a Monday for the previous Saturday, what is the correct procedure for the jobcentre to follow and which forms do they use? Specifically do they make the start date on the computer for the Saturday or by using the Mondays date and filling in a form to request backdating to Saturday?
5. The DWP responded on 29 November 2012. It refused to respond to the complainant's request citing section 14 of the FOIA.
 6. The complainant requested an internal review on 17 December 2012.
 7. The DWP responded on 11 February 2013. The DWP informed the complainant that it remained of the view that section 14 of the FOIA applied in this case.

Scope of the case

8. The complainant wrote to the Commissioner on 28 February 2013 to complain about the way his request for information had been handled. Specifically, the complainant is unhappy with the DWP's application of section 14 of the FOIA in this case and considers that he is being victimised as a result.
9. This notice will focus on the DWP's application of section 14 of the FOIA and whether it applies to this request or not. The Commissioner cannot consider any complaints about victimisation or unfair treatment, as this is not within his remit.

Reasons for decision

10. Section 14 of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.

11. The Commissioner's published guidance¹ on section 14(1) (which was the current guidance at the time of the request) provides that the following five factors should be taken into account when considering whether a request can accurately be characterised as vexatious:
 - whether compliance would create a significant burden in terms of expense and distraction;
 - whether the request is designed to cause disruption or annoyance;
 - whether the request has the effect of harassing the public authority or its staff;
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
 - whether the request has any serious purpose or value.
12. The guidance stated that it is not necessary for all five factors to be engaged, but explained that the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.
13. The Commissioner has recently issued new guidance² on the application of section 14(1) and this adopts a less prescriptive approach. It refers to a recent Upper Tribunal decision³ which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
14. The new guidance therefore suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

²http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

³ *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

15. DWP submitted its arguments to the Commissioner with reference to the five headings outlined in the old guidance. However the Commissioner has considered the arguments put forward by the DWP in light of the Upper Tribunal's view of the importance of 'proportionality' and 'justification' and has balanced this against the purpose and value of the request. Where relevant, he has taken into account wider factors such as the background and history of the request.

Detrimental impact – level of disruption, irritation or distress

16. DWP stated that this request is the complainant's fifth request for information and in total he has asked 120 questions about various issues to do with his claim, experiences at job centre appointments, staff, policies, data protection issues, sanctions, government policies relating to jobseekers allowance and health and safety concerns. It confirmed that his requests are wide ranging, numerous and persistent and it views such behaviour to be obsessive. Often appointments at the job centre are followed by FOI requests, Subject Access Requests under the Data Protection Act (DPA) and complaints. When responses are issued, these often generate further complaints and further questioning which are submitted as FOI requests.
17. DWP confirmed that his current job centre has special arrangements in place for dealing with the complainant due to this behaviour and the amount of additional work he has to date created. At present the job centre manager oversees all his correspondence and he has been given one contact to direct all correspondence and concerns to. It stated that the complainant has the tendency to write to a number of different individuals or departments on the same day about the same issue. This pattern of behaviour has created a lot of additional work for staff and has made issuing responses to his correspondence hard to co-ordinate and unnecessarily difficult.
18. The DWP confirmed that although the complainant's behaviour is always acceptable when he visits the job centre, staff feel intimidated and reluctant to deal with him because they know that any dealings they have with him will generate further correspondence and complaints about his claim and his perceived problems with job centre practices. The complainant has not only made complaints through the official channels he has used the FOIA and the DPA as a means to challenge his concerns further.
19. It confirmed that the complainant has and continues to take up an inordinate amount of staff time which is disproportionate to the amount of time it devotes to other customers or complainants. For these reasons the DWP is satisfied that there is sufficient evidence available to

demonstrate that compliance with this request would continue to cause significant disruption to its usual course of business, place further significant burden upon its resources and would have the effect of distressing its staff.

20. In its submissions to the Commissioner, the DWP provided a detailed chronology of all contact and correspondence it has had with the complainant – details of the complaints and requests he has made and when and who these were submitted to. The Commissioner has reviewed this information in detail and considered the information the complainant has also supplied in his correspondence.
21. He notes that the complainant has been corresponding with two local job centres and the DWP since September 2009. It appears that the bulk of this correspondence, including his five FOI requests, has been made from December 2010 when it seems the complainant first started to complain about the Flexible New Deal scheme and its requirements, his dealings with staff and what he has perceived to be data protection issues. From the chronology the DWP provided it is clear that the complainant has had a tendency to try and engage a number of different individuals at any one time into his concerns. He has often emailed different people about the same matter and copied numerous people into the same correspondence.
22. The complainant's FOI requests started in September 2011. Each request has contained a list of questions the complainant requires answering under the FOIA, ranging from 8 questions to 52. Overall, the complainant has asked 120 questions over 5 separate requests which have been made over a 13 month period. At the same time the complainant has submitted complaints about the same issues raised in his requests through the DWP's internal complaints process and made various Subject Access Requests under the DPA. Some of the complainant's correspondence has been extremely lengthy. Two particular pieces of correspondence contained 130 pages and 122 pages.
23. It is quite clear that when responses are issued or action is taken this often results in more questioning via the FOIA and complaints. One example of this is the complainant's request of 22 June 2012. On receipt of DWP's initial response and before it had a chance to review the handling of this request the complainant submitted a further list of questions under the FOIA. The Commissioner considers it is fair to assume in this case considering the past history that such behaviour will continue.

24. The Commissioner accepts that such behaviour and continual stream of correspondence and requests has caused significant disruption to the job centre's usual course of business and placed a significant burden on already strained resources. The Commissioner considers the fact that special arrangements have been put into place to co-ordinate the complainant's requests and correspondence highlights the disproportionate disruption his behaviour has caused.
25. He notes that the complainant's behaviour has always been acceptable and it may not have been his intention to cause any distress or irritation to staff. However, the Commissioner accepts that this is the impact the complainant's behaviour has had. He accepts that it is not unreasonable for staff to feel distressed and irritated but having to deal with the complainant, as there is a clear tendency for the complainant to then challenge them and any assistance they may have provided via further complaints and requests. It is understandable that staff may feel distressed by the thought of the additional work this will generate for them, possibly over and above the day to day duties.

Purpose and value

26. The DWP stated that it difficult to gauge exactly what the complainant's intentions are and therefore whether his continual stream of correspondence, complaints and requests has any serious purpose or value. As his questions can be wide ranging and not related to one singular issue, the DWP confirmed that it can only assume his behaviour is a 'fishing expedition' to try and unveil information which he can then use to avoid compliance with the jobseekers allowance requirements.
27. The Commissioner has given this matter careful consideration. He accepts from the complainant's correspondence that he considers his request to have serious value and purpose. It is clear that he is unhappy with the jobseekers allowance requirements and at times the way he has been treated. However, the Commissioner considers his request and past behaviour is more personally motivated rather than a matter of public interest. He has reviewed the requests he has made and other correspondence and whilst the complainant may challenge various aspects of the job centre's practices, he fails to see what actual value is being achieved. As stated previously, it is not possible to say without doubt exactly what the complainant's true intentions are, as he has not volunteered this information or indeed obliged under the FOIA to do so. However, the Commissioner can see how the DWP has reached the view that the complainant's only purpose is to avoid compliance with the jobseekers allowance requirements.

Conclusion

28. The Commissioner is satisfied in this case that compliance with this request would cause an unjustified level of disruption, distress and irritation. Although the Commissioner is of the view that it cannot be said that the request has no value or purpose at all, he does not consider sufficient weight can be placed on any serious purpose the request may have to overcome the disproportionate burden of disruption, irritation and distress that has been evidenced in this case.
29. For the above reasons, the Commissioner has concluded that DWP was correct to refuse to deal with the complainant's request by virtue of section 14 of the FOIA.

Other matters

30. The Commissioner notes that the DWP took over 20 working days to respond to the complainant's request for an internal review. The complainant requested an internal review on 17 December 2012. However, the DWP did not complete this until 11 February 2013. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. Where it is apparent that determination of the complaint will take longer than the target time, the authority should inform the applicant and explain the reason for the delay. The Section 45 Code of Practice contains comprehensive information on how an internal review should be conducted.

Right of appeal

31. 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

32. 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.
33. 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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