

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 September 2013

**Public Authority:** Department for Work & Pensions

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

#### **Decision**

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1. The complainant made 52 requests relating to Jobcentre Plus. The Department for Work & Pensions (DWP) refused the requests under s14 FOIA as they were considered vexatious.
2. The Commissioner's decision is that the requests are vexatious and so s14 was applied correctly. The DWP is therefore not obliged to comply with these requests.

#### **Request and response**

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3. On 1 October 2012 the complainant made 52 requests relating to Jobcentre Plus. The requests are set out in the annex to this notice.
4. On 7 December 2012 the DWP informed the complainant that the exemption at s14 FOIA applied to the requests on grounds that they were vexatious.
5. The complainant appealed on 17 December 2012. On 11 February 2013 he was informed that the DWP's internal review had upheld the exemption.

## Scope of the case

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6. The complainant contacted the Commissioner on 27 March 2013 to complain about the way his request for information had been handled.
7. This decision notice addresses the DWP's consideration of the complainant's requests as vexatious under s14(1) FOIA.

## Reasons for decision

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8. Section 14 FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
9. The Commissioner's published guidance on s14 FOIA<sup>1</sup> at the time of the request cited five factors for public authorities to take into account when considering refusing a request as vexatious:
  - (i) Whether compliance would create a significant burden in terms of expense and distraction.
  - (ii) Whether the request is designed to cause disruption or annoyance.
  - (iii) Whether the request has the effect of harassing the public authority or its staff.
  - (iv) Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
  - (v) Whether the request has any serious purpose or value.
10. Guidance on vexatious requests provided by the Upper Tribunal in *Information Commissioner and Devon County Council vs Mr Alan Dransfield* (GIA/3037/2011)<sup>2</sup> placed emphasis on the importance of adopting a holistic and broad approach to the determination of whether or not a request is vexatious.

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<sup>1</sup>

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/vexatious\\_and\\_repeated\\_requests.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx)

<sup>2</sup> <http://www.osscc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

11. The Upper Tribunal's judgment proposed four broad issues that public bodies should keep in mind when considering whether FOI requests are vexatious: (i) the burden of meeting the request; (ii) the motive of the requester; (iii) the value or serious purpose of requests; and (iv) any harassment or distress caused. It concurred with the earlier First-tier Tribunal decision in *Lee vs Information Commissioner and King's College Cambridge* (EA/2012/0015, 0049 and 0085) that vexation implies an unjustified, inappropriate or improper use of a formal procedure.
12. The judgment noted that the four broad issues are "*not intended to be exhaustive, nor are they meant to create an alternative formulaic checklist*". It stated the importance of remembering that Parliament has expressly declined to define the term 'vexatious'. Consequently, the four broad issues, "*should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms.*"
13. The Commissioner's current guidance<sup>3</sup> on the application of section 14(1) indicates that the key question for the public authority is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The public authority should take into account the background and history of the request where this is relevant.

### **Burden of requests and level of disruption, irritation or distress**

14. The Commissioner understands that the complainant has been unemployed since August 2009. Over the years he has had a history of complaint against the DWP. Serco was contracted by the DWP to provide the complainant with training and employment experience between 2010 and 2011. However, after eleven attendances he made a complaint against Serco and refused to engage any further.
15. The complainant received five Chief Executive responses from the DWP to complaints made between August 2011 and August 2012 under its three tier complaint process. The complainant escalated one of these to the Independent Case Examiner. The examiner initially accepted the case for investigation but refused further involvement because the complainant was trying to dictate how the complaint should be investigated.

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<sup>3</sup>[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~//media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~//media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

16. The DWP now operates a two tier complaint process and under this system the complainant has received three responses to complaints made - two responses from the Complaints Resolution Team and one from the Director General.
17. Prior to the 52 requests that are the subject of this notice the complainant made 69 FOI requests in four submissions to the DWP. He also made 14 Subject Access Requests under the Data Protection Act during the same period. Between the submission of the 52 requests addressed by this notice and receipt of the DWP's response the complainant submitted a further seventeen FOI requests.
18. The DWP informed the Commissioner that as a result of his excessive questioning and generation of complaints the Job Centre is running out of advisors to deal with the complainant. Consequently he has never been made to amend his Jobseeker's Agreement as when challenged about this he has lodged another complaint and then refused to deal with the same advisor on his next attendance.
19. The DWP states that the complainant takes up inordinate amounts of staff time. The time expended on the complainant is disproportionate to that accorded to other customers or complainants. He will write to a number of different individuals and sections within the DWP on the same day about the same issue. This behaviour has created additional work for staff and made coordination of response difficult. Consequently the DWP has needed to set up a single point of contact to coordinate responses to the complainant's correspondence.
20. The DWP considers that compliance with the 52 requests would place an unwarranted burden on its resources. It would encourage the complainant's continuing disruption to the DWP's normal course of business and it would add to the distress already caused to its staff.
21. The Commissioner has reviewed a detailed chronology of the complainant's contacts, complaints and correspondence with the DWP. He notes that when responses are issued by the DWP this invariably results in more questioning by the complainant and more complaints. The Commissioner accepts that this behaviour and the continual stream of correspondence and requests cause a significant and disproportionate burden on DWP staff.
22. The Commissioner has been unable to see any serious purpose or value in the complainant's 52 requests. He understands from the background history provided by the DWP why it has concluded that the complainant's only purpose is to avoid compliance with its requirements concerning the drawing of jobseekers allowance. The Commissioner recognises that the unnecessary burden generated by the complainant's requests will distress and irritate staff.

23. In light of his investigation the Commissioner has concluded that the complainant's requests are vexatious. The DWP is not therefore obliged to comply with these requests.

**Other matters**

24. The FOIA requires public authorities to respond to requests for information within twenty working days of receipt. The DWP exceeded the time limit in this instance and in so doing breached s10(1) FOIA.

## **Right of appeal**

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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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://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 .....**

**Rachael Cragg**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex

### Requests for information of 1 October 2012:

#### *Regarding your policy on signing off of jobseekers allowance.*

Re the ES40JP declaration form, I understand a client only has to fill in the part 4 declaration, therefore just to confirm this

1. Q On signing off JSA, which parts of the ES40JP does the client have to fill in and which parts are voluntary?
2. Q Part 4 asks what day is the last day of your claim, can you confirm if the last day of the claim is included in a clients' claim, i.e. does the claimant get JSA for this day as well.
3. Q what is the national Jobcentre policy regarding the last day of a JSA claim?
4. Q Are there area differences, if so please provide details of differences, e.g. district or local?
5. Q Is there a policy to sign JSA claimants off the day before the last stated day of claim?
6. Q If so please provide details of what this policy is.
7. Q If a jobcentre (e.g. Pontypool) consistently signs a claimant or claimants off the day before their stated last day of claim, what reasons would there be for this?
8. Q If a claimant took in their ES40JP declaration to the jobcentre on their last day of claim and were subsequently signed off on the system, and paid JSA up and until the day before, would that constitute fraud under the Fraud Act 2006 as obviously those actions would be deliberate and premeditated. What policy is there to prevent fraud of this nature?

#### *Regarding your policy formal complaints.*

I understand from the published policy on your service standards pdf available online, that stage 1 & 2 say to get in touch with the jobcentre manager,

9. Q – If a jobcentre manager refuses to respond to a series of formal complaints, what disciplinary action would normally be taken? What policy covers this and what does it state regarding this?

10. Q - What is the policy, which states that a jobcentre manager can just send a clients' formal complaints to the DWP work services director (without permission or consent of the client)?
11. Q is this outside of you stated complaint policy?
12. Q and what complaint policy is this part of?
13. Q can the DWP work services director address formal complaints (that were marked 'private & confidential') that were not addressed to him?
14. Q is this a breach of data protection, in this case? If not why not?
15. Q what disciplinary action would this normally entail as per you policy regarding confidentiality?
16. Q what is your policy regarding confidentiality and letters/envelopes marked 'private & confidential'?
  
17. Q what authority does the DWP work services director have to answer a formal complaint? And also one NOT made to him by a claimant?
18. Q is the DWP work services director part of the stated Chief Operating officers office? or the Chief Executives board?
19. Q what are the direct contact details for the Chief Operating officers office? Please supply a direct telephone number, with area code. There does not seem to be anywhere published a direct number to call (NB no 0845 number).
20. Q what power or authority does the DWP work services director have to state that no further correspondence will be entered into when referring to a formal complaint addressed to the Chief Executive office (and not addressed to him)?
21. Q Can the DWP work services director block complaints or issues addressed to Chief Executive office & board of jobcentre plus? And what authority or mandate does he have to do so?
22. Q if so, is this not a breach of your stated jobcentre complaint process?
23. Q Can the DWP work services director issue a CE reference number on behalf of the Chief Executive office & board of jobcentre plus?
24. Q what does a CE reference number issued by the DWP work services director mean or refer to exactly?, what is its function?
  
25. Q I understand that the Jobcentre plus Chief Executive office and board is now called the Chief Operating officer, is this a board of people dealing with formal complaint or just one person?
26. Q How many staff , who deal with complaints, work at the Chief Operating officers office?
27. Q Please provide a breakdown of grades for staff at the Chief Operating officers office?
28. Q Please provide a breakdown of grades for staff at the DWP work services directors' office?
  
29. Q Can a complaint response (or in my case non-response) with a CE reference number from the DWP work services director (and not the Chief Operating officers office) be taken further to the ICE or the Ombudsman?
30. Q Jobcentre plus literature and letters signposts to the ICE, Independent Case Examiner as the supposed next stage of the complaint process outside of jobcentre plus, is this true?
31. Q Is this the only option, and what are the other options available?
32. Q Is it not the case that a client is free to take any formal complaint from jobcentre plus to the Ombudsman? And does not have to choose to take it to the ICE?
33. Q Given that there are other options why does jobcentre literature only mention ICE as a next stage of the process?
34. Q who do I complain to correct this?



***Re Work programme***

35. Q what constitutes a referral to the work programme? Is it being referred on the jobcentre system alone or does the process need to be completed at an introductory appointment with a provider? If not just on the jobcentre system please detail the full process?
36. Q what process can correct an incorrect referral to the work programme given the jobcentre manager, district office and CE office refuse to acknowledge complaint on this issue?

***Re contact by Jobcentre***

37. Q What method and apparatus does the jobcentre use to send a text to a claimants mobile phone?
38. Q If a jobcentre has details of a claimants mobile phone number is their and implied consent that they can use these details to sent the claimant texts? What part of the data protection allows this?
39. Q Does the jobcentre need a client's permission to use their details to send them texts? Can consent or any implied consent be withdrawn regarding types of call or texts?
40. Q Given that the jobcentre states it may use letter or electronic means to contact a client what is the policy given that a client might not even receive a text (or receive it after some delay e.g. 1 or 2 days) or even look at or check their mobile phone?

***Re JSA sanctions***

41. Q is jobcentre plus allowed to sanction or consider sanctioning a client if and when they are not in receipt of JSA?
42. Q is jobcentre plus allowed to threaten to sanction a client if they sign on JSA again in the near future? If they are what circumstances would this be for?

***Re Jobcentre Plus staff – SE Wales region***

43. Q please provide a breakdown of the number of staff and what civil service grades they are for Pontypool jobcentre
44. Q please provide a breakdown of the number of staff and what civil service grades they are for all the jobcentres in the SE Wales region.
45. Q please provide a breakdown of the number of staff and what civil service grades they are for the district office.
46. Q please provide a list of how many staff in the SE Wales district have attended any training by or associated with the organisation know as Common Purpose? Include where they work and what grade they are?

***Re Pontypool jobcentre***

47. Q Is Pontypool jobcentre now recording complaints?
48. Q what is the policy on jobcentres recording complains?
49. Q please provide all communications regarding Pontypool jobcentre recording complaints and the policy now in place.
50. Q I have noticed that unfortunately Pontypool jobcentre has had some smashed windows (several it seems) recently but staff and clients were being made to sit directly under them or near them, is/was this a breach of health and safety legislation? Why was this allowed to happen? What policy is there that should prevent this?
51. Q what is the health and safety policy regarding smashed windows and exposed shards of glass in the workplace?
52. Q I have also noticed that Pontypool jobcentre has some new computers for Internet access. Whilst maybe a good facility there is in the corner a wifi connection and

antenna very near a desk (thus near a staff members head!). What is the health and safety policy on wifi RFs, excessive RFs near staff and staff who may have electro sensitivity? (NB this could possible be a cancer risk).