

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

### **Decision notice**

**Date:** 26 March 2014

**Public Authority:** Department for Work and Pensions (DWP)  
**Address:** Caxton House  
Tothill St  
London  
SW1H 9NA

### **Decision (including any steps ordered)**

---

1. The complainant has requested the ethnic breakdown of everyone selected in the Performance Measurement Exercise for 2012/13. The Department for Work and Pensions (DWP) refused to comply with the request under section 12 of the Freedom of Information Act 2000 (FOIA) as it said it would exceed the cost limit to do so.
2. The Commissioner's decision is that the DWP has correctly applied section 12 FOIA in this case.
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 24 October 2013, the complainant wrote to the DWP and requested information in the following terms:

"The percentage of ethnic minorities (and to quote your words verbatim)...the cases are randomly selected by our computer systems based on National Insurance Numbers, and cases selected."

6. On 18 November 2013 the DWP responded. It refused to comply with the request as it said it would exceed the cost limit under section 12 FOIA to do so.
7. The complainant requested an internal review on 19 November 2013. The DWP sent the outcome of its internal review on 17 December 2013. It upheld its original position.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 23 December 2013 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the DWP was correct not to comply with this request under section 12 FOIA.

### **Reasons for decision**

---

10. Section 12(1) 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."
11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at £600 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 24 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.

12. The DWP explained that for the purposes of Fraud and Error measurement it conducts continuous survey exercises and in this case the requestor wanted to know the ethnic breakdown of everyone selected in the Performance Measurement Exercise for 2012/13. It said that the sample is drawn from a variety of benefits and ethnicity is not one of the variables available on the sample data as it is irrelevant for the purposes of the sampling. It explained that further information on the methodology can be found at the following link:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/271654/fraud-and-error-in-the-benefit-system-2012-13\\_estimates-160114.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271654/fraud-and-error-in-the-benefit-system-2012-13_estimates-160114.pdf)

13. It explained that the readily available information held by the DWP for each of these benefits varies dependent on the source system. Not all of these source systems hold ethnicity and would require varying degrees of input in order to add the ethnicity. It said that it operates a Customer Information System which is a centralised record for each claimant and some records on this have ethnicity recorded but investigations have shown it is only populated in around 3-4% of records. It went on to explain that it also holds ethnicity data for some working age benefits which is collected on the Labour Market System (LMS) and this is fed through to the Work and Pensions Longitudinal Study (WPLS) database.

14. The DWP explained that before any data matching could take place across systems it would have to submit requests for data sharing using the agreed protocols and it estimates that this would take around 2 and a half days and would involve the following tasks:

- Investigate and clarify which data sources are required for the data merge and their exact locations (0.5 day)
- Complete the required form DHP001 (0.5 day)
- Send out the required approval requests generated on the form (0.1 day)
- Those people then considering and replying (0.5 day)
- The requestor updating the form with the approvals and sending through to the Data and Records Team (0.1 day)
- Data Records Team check form is complete and correct then consider and approve it (0.25 day)
- DRT update the business case system (0.25 day)
- IT team do the technical work to add the permissions to the IT system (0.25 day)

15. The DWP went to explain that the information below details for each benefit the number of cases sampled for that benefit and the costs

required in determining ethnicity, which are in addition to the time estimated for the data sharing approval.

**Jobseeker's Allowance – sample size 4,700** – ethnicity is held on the WPLS and could be merged on to the sample – to write and test code to merge with WPLS - estimate 1 hour of work.

**Employment and Support Allowance – sample size 3,100** – ethnicity is held on the WPLS and could be merged on to the sample - to write and test code to merge with WPLS - estimate 1 hour of work.

**Income Support – sample size 4,400-** ethnicity is held on the WPLS and could be merged on to the sample – to write and test code to merge with WPLS - estimate 1 hour of work.

**Housing Benefit – sample size 12,100** – The raw Housing Benefit data extract does include ethnicity but only 20% of the records are meaningfully populated. Some of these claimants will be on the WPLS as they may claim other benefits.

- Write and test code to merge on the raw data - estimate 1 hour of work.
- Write and test code to merge on CIS - estimate 1 hour of work.
- Write and test code to merge with WPLS - estimate 1 hour of work
- If there are any missing cases following these steps then we would need to contact each Local Authority and ask them to search through their paper records to obtain the information (if it is held), there are over 400 LAs so the time taken to contact them and then compile the information received would take in excess of 10 days.

**Pension Credit – sample size 5,000** - ethnicity is not held on the source system.

- Write and test code to merge on CIS - estimate 1 hour of work.
- Perform manual search of paper records for remaining cases, we estimate it would take in excess of 10 days.

**State Pension – sample size 2,000** - ethnicity is not held on the source system.

- Write and test code to merge on CIS - estimate 1 hour of work.
- Perform manual search of paper records for remaining cases, we estimate it would take in excess of 10 days.

16. It summarised that even after the data sharing approval was gained the DWP would still only be able to add the ethnicity for certain benefits through data matching and there would still be cases which would require searching paper records or contacting others.
17. Due to the DWP's requirement to obtain data sharing approval, given the sampling exercise was conducted over a range of different benefits, furthermore ethnicity was not collected as part of the sample data, a significant amount of work is required to collate the requested information. In addition, because not all systems hold ethnicity this would require a significant search of manual records for some benefits. This is particularly relevant in relation to Pension Credit and State Pension. The sample size of these two benefits combined is 7,000 which would therefore involve a significant manual search. The Commissioner does therefore consider that the cost limit in this case would be exceeded to comply with this request in full. Section 12 was therefore correctly engaged in this case.

## **Section 16**

18. Under section 16 FOIA, public authorities are obliged to provide complainants with advice and assistance if a request would exceed the cost limit to comply with a request.
19. The DWP explained to the Commissioner that it is possible that the requestor may have only been interested in the benefit that they are in receipt of, however, as they also included a copy of a newspaper article about "Customs Staff sacked in race probe" it seems the requestor may have felt that the DWP is deliberately selecting more ethnic minorities than it should for such an exercise.
20. However it argued that to be able to assess if a sample is not representative of the population in question technically you would need to know the ethnicity of both the population and the sample. It was unable to provide such information within the cost limit therefore under section 16 there was nothing it could offer to help narrow the request. However it said that it did point to what was available within cost, the DWP equality report which brings together all of the major ethnicity information that DWP has.
21. The Commissioner does not consider that the DWP has provided the complainant with appropriate advice and assistance in this case. It appears to have considered whether the complainant may require the information solely in relation to one particular benefit which implies that it may be possible to comply with the request in relation to one particular benefit within the cost limit. If this is the case this has not

been communicated to the complainant. The Commissioner does not consider that the DWP has sufficiently complied with its obligations under section 16 FOIA in this case.

## Right of appeal

---

22. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**