

Freedom of Information Act 2000

Decision notice

Date: 7 July 2015

Public Authority: Department for Work and Pensions

Address: Caxton House

Tothill Street

London

SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested information relating to the provision of Disability Living Allowance (DLA) to deaf children. The DWP refused the request under section 12 of the Freedom of Information Act 2000 (the Act) as compliance with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the DWP is entitled to refuse the request under section 12 of the Act. However, it has breached section 16 by failing to provide advice and assistance to the complainant about his request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 8 September 2014, the complainant wrote to the DWP and requested information in the following terms:

"The number of children's (under 16 year olds) DLA claims refused in each of the last three 12 month periods for which figures are available, where the primary disability is recorded as deafness."

5. The DWP responded on 8 October 2014. It stated that to comply with the request would breach section 12 of the Act. It did not explain why the appropriate limit would be breached or explain whether the scope of

the request could be reduced so that the request could be complied with within the appropriate limit.

6. An internal review was carried out by the DWP on 4 November 2014. This upheld the decision to refuse the request under section 12, and also gave a brief explanation about the work that would be required to comply with the request and how this would exceed the appropriate limit. It did not provide any advice and assistance to the complainant about his request.

Scope of the case

7. The complainant contacted the Commissioner on 8 December 2014 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the request to be whether the DWP is entitled to refuse the request under section 12 of the Act. The Commissioner will also consider whether the DWP has provided sufficient advice and assistance to the complainant about his request.

Reasons for decision

Section 12 – where compliance exceeds the appropriate limit

9. Section 12 states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
10. The appropriate limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Under regulation 3 the appropriate limit is set at £600 for a public authority such as the DWP. Under regulation 4 the DWP may apply this by reference to the rate of £25 per hour to determine whether information is held, and then locate, retrieve and extract the information. At this rate, the appropriate limit equates to 24 hours – or 1,440 minutes – of work.
11. The Commissioner has based his decision on the submissions of the DWP. To reach the decision he has relied upon the arguments which can be seen as reasonable and can be backed up by cogent evidence.
12. In its submissions to the Commissioner the DWP stated that the information would be held in two separate areas: an electronic record held on the DLA database, and a hard copy which had been archived. The DWP only held the data from the previous seven months in the DLA

database, whilst the rest of the information in the scope of the request was held in the archive.

13. The complainant argued that the information should be straightforward to obtain with some basic interrogation techniques. However, the DWP stated that the DLA database did hold information about the number of DLA applications that had been refused but this did not provide the primary disability. The DWP argued that in order to obtain this information it would need to commission a scan from its IT suppliers, and this would take approximately two to four days to produce.
14. The Commissioner challenged the DWP on this, as the variance seemed to be fairly substantial, and it also ran completely contrary to the complainant's view that the information could be located through simple measures. The DWP confirmed that its estimate was based on previous requests for scans, so it considered the figures to be reasonable and based on cogent evidence. It also stated that it was sensible to base some contingency into the estimate as a first live run might not obtain the relevant information, in which case further work would be required. The Commissioner accepts this as reasonable and considers it can be added to the DWP's estimate.
15. For the information held in hard copy, the DWP stated that it would need to pay a fee to the company that held its archived information. It had been able to work out that there had been 16,500 refusals in the period concerned from stats held in management information, but these figures did not record primary disability. In order to find this, the DWP stated it would be charged £1.43 per file, which for 16,500 files comes to a total of £23,595. The DWP provided the Commissioner with a copy of the relevant extract from the contract and is satisfied the charge for each file is accurate.
16. Once this information was then located it would need to be checked in order to extract the relevant information that came within the scope of the request. The DWP estimated that this would take approximately six minutes per file and come to 1,650 hours to extract the relevant information.
17. The Commissioner has considered there is a possibility that more than 10 files could be checked per hour, but considering the sheer volume of files involved he does not see how it could be done within the appropriate limit of 24 hours. Further, the cost of retrieval for the manual records would far outreach the limit set for section 12. These two factors combined with the time needed to search for the electronic records show that the request greatly exceeds the appropriate limit. The DWP is therefore entitled to refuse the request under section 12 of the Act.

Section 16 – advice and assistance

18. Section 16 of the Act states that a public authority has a duty to provide advice and assistance to requesters “so far as it would be reasonable to expect the authority to do so”.
19. In relation to section 12 of the Act, the Commissioner considers that section 16 confers an obligation upon the public authority to explain to the requester how the scope of their request can be reduced so that it comes within the appropriate limit. However, in some instances it might not be able to provide advice on how to reduce the scope of the request so that it comes within the appropriate limit. In instances such as these the Commissioner would expect the public authority to inform the requester of this, so as to remove the need for further correspondence from both parties.¹
20. The DWP’s estimate strongly indicates that it would be unable to provide anything but the most minimal amount of information within the appropriate limit. The DWP should have made this clear to the complainant and informed him that reducing the scope of the request would not have the desired effect of providing him with relevant information. As the DWP did not do this, it has breached section 16 of the Act.

¹ For more information please refer to the Commissioner’s guidance – https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf#page=18 (see section 65)

Right of appeal

21. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

22. 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.
23. 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

Gerrard Tracey
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