

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2015

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 regarding emails at a Job Centre. The Department for Work and Pensions (DWP) relied on section 12 of the FOIA not to meet the request.
2. The Commissioner's decision is that DWP is entitled to refuse the request under section 12. However, it has breached section 16 of the Act by not providing assistance on how the complainant could reduce the scope of his request so that it comes within the appropriate limit.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Provide the complainant with reasonable assistance on how to limit the scope of his request so that it can be complied with within the appropriate limit.
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.

Background

5. In 2013 the complainant made the following FOI request to DWP:

"Please provide copies of any communication (including emails or paper documents) sent by or to staff in Jobcentres in Newport and Ryde, Isle of Wight, that makes reference to any one (or more) of the following:-

- 1) "League table"
- 2) "5% target"
- 3) "Stricter benefit regime referral rate"
- 4) "SBR referral rate"
- 5) "referral rate", where this is used in the context of sanctions.

If this request cannot be fulfilled within the appropriate cost limit, please fulfil as much of it as can be done within the limit starting with the most recent documents and working back. If any exemptions are relied upon for individual documents, please fulfil the remainder of the request."

6. DWP responded as follows:

- "I can confirm that the Department does hold information falling within the description specified in your request. However, we estimate that the cost of complying with your request would exceed the appropriate limit of £600.
- To comply with Section 16 I now invite you to make a new request for the information. To increase the possibility of DWP being able to release this information within the cost limit you could consider restricting your request to a specific time frame; geography; DWP team; topic or combination thereof. This list is not exhaustive and you are free to define your own limiting criteria. However, I cannot guarantee that defining your request in this way will result in DWP being able to release the information you seek."

Request and response

7. On 2 December 2014, the complainant requested the following information from DWP:

"A copy of emails held at (or remotely on behalf of) Ryde Jobcentre, Isle of Wight, dated within the previous three months, where an electronic

search of their content matches any of the following individual phrases as a complete phrase:

- a. League table
 - b. Stricter benefit regime
 - c. SBR
 - d. Referral rate
 - e. Sandra's 14 asks
2. If doing so does not breach the cost limit, please provide the same content dated within the previous six months.
 3. If doing so does not breach the cost limit, please provide the same content dated within the previous twelve months."
8. DWP responded on 17 December 2014 and stated as follows -
- "The Department will not be able to retrieve the information you have requested. We have checked with our IT specialists and the information is not readily available. The work needed would incur excessive costs which would exceed £600. The appropriate limit has been specified in regulations and for central government it is set at £600. This represents the estimated cost of one person spending 3½ working days in determining whether the department holds the information and then locating, retrieving and extracting the information."
9. Following an internal review DWP wrote to the complainant on 13 January 2015 and stated that it upheld its original position.

Scope of the case

10. The complainant contacted the Commissioner, on 13 January 2015, to complain about the way his request for information had been handled.
11. The Commissioner considers the scope of the case to be whether DWP is entitled to refuse the request under section 12 of the FOIA. On the condition that DWP is entitled to refuse the request under section 12, the Commissioner will determine whether it has met its obligations under section 16 of the FOIA to provide advice and assistance to the complainant.

Reasons for decision

12. Section 1(1) of the FOIA provides that:

"Any person making a request for information to a public authority is entitled:

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

13. The DWP relies on section 12(1) FOIA not to provide the requested information.

Section 12 – Cost limit

14. Section 12(1) of the 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."

15. 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. Under the Regulations, a public authority may charge a maximum of £25 per hour for work. Accordingly the appropriate limit is equivalent to 24 hours' work.

16. A public authority is only required to provide a reasonable estimate or breakdown of costs, and in putting together its estimate it can take the following processes into consideration:

- determining whether it holds the information;
- locating the information, or a document which may contain the information;
- retrieving the information, or a document which may contain the information; and
- extracting the information from a document containing it.

17. The Commissioner asked the DWP to provide a detailed estimate of the time/cost to provide the information falling within the scope of this request. It replied as follows;

- When DWP received the request we approached DWP IT for guidance on the feasibility of the search requested and how or if DWP could meet the request within £600. Each member of staff in Ryde Jobcentre has their own email account and some or all have access to shared email accounts, individual members of staff are able to manage their email accounts to suit their job role. They can delete, double delete or save to personal folders.
 - For the period of the request there was 34 staff in Ryde Jobcentre, with a variety of work patterns and job roles, to get all staff at the same time to search folders within their own email accounts in a minimum of four folders for each of the phrases would conservatively take an hour each: $34 \times £25.00 = £850$
 - From a purely technical/functional perspective it is not possible for a single DWP individual to be provided with access to multiple personal e-mail accounts. The only option here would be for our IT provider HP to carry out a single search on multiple accounts at a cost of £816.00. This is also not taking into account the cost of searching the 107 remote mailboxes.
18. The Commissioner then wrote to DWP asking it to provide further details on its cost submissions. It replied as follows;
- The DWP runs a Cloud IT System, which services around a 100,000 staff. As a result, IT performance can be slow with the large amount of staff accessing the systems on a day to day basis. However, to demonstrate the issue a member of the FoI Team carried out the example given on their own Outlook account for the word Google; this included all items in the holders email inbox, sent items and folders within the account. Archived files would need to be checked separately.
 - The search took the officer 3 minutes 10 seconds to find 155 emails which contained the word "Google". In this example allowing 30 seconds to review each one to confirm it was in scope of the request – personal emails for example fall outside the Act, see more on this aspect below - would, we estimate, take 1 hour 20 minutes. To do this a further four times, as Mr Evans has requested five key words/phrases, could be extrapolated to take more than 6 hours for just one person's Outlook account alone.
 - We consider that the Department's estimate of 1 hour per member of staff in Ryde local office is reasonable when compared to this practical test by a member of the Central FoI team.

- The above process would have to be replicated across 34 individual staff Outlook accounts. This is before they go on to scrutinise the 10 shared in boxes in the office and potentially 107 shared in boxes across the district that staff at the office may have access to.

Private emails held on DWP equipment

- The ICO's guidance accepts that private emails sent or received by staff in the workplace are not held by the authority as it has no interest in them. It should be noted that the Department's electronic media policy provides for staff to use Departmental equipment for personal use in their own time.
 - Given that staff can use their work email account for personal use not all emails in work email accounts will be held by the Department for FoI purposes. This is why it is necessary for this type of email trawl to be reviewed to ensure that any emails identified fall within the scope of the Act.
 - We apologise for omitting this cost element from the estimate previously provided to the ICO.
19. From the submissions he has considered during the course of his investigation, the Commissioner is satisfied that DWP has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and DWP is not required to comply with the request.

Section 16 – Advice and assistance

20. However, under section 16 of the FOIA a public authority has an obligation to provide advice and assistance where reasonable to a requester. The Commissioner's view is that where a request is refused under section 12 a public authority should inform the requestor of what information can be provided within the appropriate limit in order to comply with section 16.
21. DWP conceded to the Commissioner that it had not made specific reference to section 16 when corresponding with the complainant. It said that had explained to the complainant the difficulties it faced in meeting the request within the cost limits. However, the Commissioner cannot conclude that this constituted the provision of sufficient or appropriate advice and assistance for the purposes of section 16, relevant to the scope of the 2 December 2014 request.

22. On DWP's admission the Commissioner is not satisfied that it has discharged its obligations, under section 16, to the complainant. The Commissioner therefore requires the Council to provide the complainant with meaningful assistance on ways in which to reduce the scope of his request so that it can be met within the appropriate limit. He asks that DWP ensures that the complainant is offered the opportunity to seek as much information of interest as is reasonable.

Right of appeal

23. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

24. 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.
25. 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

Alexander Ganotis
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