

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 September 2015

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 information about Winter Fuel Payments to its recipients in Malaga, Spain.
2. The Commissioner's decision is that the Department for Work and Pensions correctly relied on section 12 (cost limit) not to provide requested information to the complainant.
3. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

Background

4. The Department for Work and Pensions (DWP) has responsibility for the calculation and payment of UK State Pensions and Winter Fuel Payments (WFPs) to, amongst others, those eligible and living in Spain.

Request and response

5. On 5 January 2015 the complainant made to the DWP the following request for information;
 1. The total number of UK pensioners registered as permanently resident in Spain.

2. From that total, the total number of UK pensioners living in the Province of Malaga, with postcodes beginning with the two digits 29.
 3. From that total, the total number of claimants for the Winter Fuel Payment ("WFP") in the year 2013/2014 living in the Province of Malaga, with postcodes beginning with the two digits 29.
6. The DWP responded on 16 January 2015. It stated that there are 107,360 recipients of the State Pension living in Spain (May 2014 data) but went on to say;
- "...we estimate that the cost of complying with your request would exceed the appropriate limit of £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 locating, retrieving and extracting the information. Under section 12 of the Freedom of Information Act the Department is not obliged to comply with your request and we will not be processing your request further".
7. Following an internal review the DWP wrote to the complainant on 4 February 2015. It stated that it upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner 9 February 2015 to complain about the way his request for information had been handled. In particular, the complainant accepted the figure the DWP gave for (1) but took issue with its refusal as regards (2) and (3).

Reasons for decision

9. Section 1(1) of 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.
- 10. Section 12 FOIA provides that a public authority need not 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 this public authority. It can charge £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. When a public authority estimates whether 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 Commissioner asked the DWP to provide a detailed estimate of the time/cost needed to provide the information falling within the scope of this request. It replied as laid out in paragraphs 13 to 24 below.

DWP's position

- 13. The readily available information held by the Department for WFPs is held by country and not by region. Information on the WFP paid to claimants in Spain can be found publically here:
<https://www.gov.uk/government/statistics/winter-fuel-payments-by-eea-country>
- 14. The information requested, regarding pensioners living in the Province of Malaga, and the number claiming a WFP, though held by the Department, is recorded in such a way that it would not be a simple task to collate that information, without employing Information Technology experts.
- 15. The cost of complying would exceed the appropriate limit of £600, as specified in regulations and which represents the estimated cost of locating, retrieving and extracting the relevant information.

16. The DWP holds the records of pensioners on the Pension Service Computer System. Each record has a country code from which we can identify the total number of UK pensioners registered as permanently resident in Spain, but there is currently no coding to identify the regions. There are around 142,000 cases which are assigned as European Economic Area (EEA) cases which are deemed to be living permanently overseas.
17. To retrieve the requested information relating to Malaga would require the DWP to commission the writing and testing of new software to interrogate the data held on 11 different benefit payment systems, which we estimate would take 6.25 days, with an additional cost of over £1,600 payable to subcontractors.
18. The breakdown is as follows:
 - investigate and clarify which data sources are required and their exact locations (0.5 day)
 - commission the International Pensions Centre to identify the fields required (0.5 day)
 - commission the required software (0.5 day)
 - search the 4 address variables for "Spain" followed by extraction of "post codes" beginning with 29 (2 days)
 - building a household level data set (1 day)
 - interrogate 90 million records to identify all records above age threshold for WFP with relevant country code (0.5 day)
 - export file from Centric and import to main DWP data store (0.25 day)
 - match Centric CIS data with WFP data (0.5 day)
 - QA and checking cases recently moved to Spain and adjustment and replying (0.5 day)
 - A total of 6.25 days
19. The DWP gave further details regarding the above breakdown estimate. As regards information request (2) it averred that to retrieve the information that identifies foreign post/area codes is not straightforward. Not all countries have the post/area code located in the same place in the address. The "post code" could be in any of the address lines, meaning that more processing and quality assurance is required and would require additional data manipulation to identify the

addresses in Malaga. This would require commissioning the International Pensions Centre to identify the fields required, and apply the search to the 107,360 cases.

20. As regards information request (3) it averred that it holds a database which records payment details made and the personal contact details of the claimant, which includes their address and most payments are made by BAC data. The records for WFPs are held across 11 different and separate computer systems, which include PSCS. Entitlement to WFP is generally identified automatically from information already held on entitlement to other benefits. Where payment of another benefit is not due, as not all recipients of WFP receive a UK State Pension, a clerical claim must be made. 90% of WFP cases are identified and paid automatically, so an electronic record is the only record.
21. A sampling exercise has not taken place, but initial enquiries have been made with Hewlett-Packard to ascertain the potential process, time and costs that would be involved to retrieve the requested information, electronically. The only way to retrieve the information requested in a useable format would require the DWP employing the expertise of its subcontractor, Hewlett-Packard, and commissioning them to write a special software programme to interrogate the data, in the following way. To identify that:
 - Address lines 2, 3 or 4 contain a text string which commences with the two digits 29, and the following three characters are all numeric (e.g. 29600)
 - Address lines 3 or 4 contain one or more of the following values within the text (these are the largest towns/cities in the Province according to Wikipedia + Google maps):
 - o ANTEQUERA
 - o BENALMADENA
 - o ESTEPONA
 - o FUENGIROLA
 - o MALAGA
 - o MARBELLA
 - o MIJAS
 - o RONDA
 - o TORMOLINOS
22. There is a risk that if address lines 1 or 2 are included within the keyword search, it is likely that the records selected may not actually be in Malaga, but may be apartment names, so the information cannot be guaranteed to be 100% accurate. Also, not all claimants have provided a full address and/or postcode in Spain. Any response could be

expressed as either the total number of customers or a total value of the WFP awards. This would take two days to action at a charge for the subcontractor's time and resources at a cost of £819.11 per day, totalling £1,638.22. This is a billable service from Hewlett Packard, above and beyond their current contract with DWP, and work that cannot be carried out by government officials. This represents the sum payable to sub-contractors mentioned previously in the breakdown.

23. This is the only way that the information could be gathered due to the small number of clerical applications and the majority of records being held electronically.

Complainant's position

24. The complaint has stated to the Commissioner that he cannot accept that it will take any computer operation 3.5 working days to interrogate a file of 50,369¹ addresses. The complainant further explained that more than 20 years ago, using software purchased over the counter, and using a desk top computer, he was able to interrogate a six-figure database, and extract a pre-sorted file using the first two digits of every postcode in 3 to 4 hours. Therefore with the advances in software and hardware using the kind of super computers available to the DWP, either in-house or via the sub-contractor, would take only minutes to generate the required information today.

Commissioner's consideration

25. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. In the Commissioner's view, an estimate for the purposes of section 12 has to be 'reasonable': he expects it to be sensible, realistic and supported by cogent evidence.
26. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:
 - made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;

¹ The claimant's estimate as to the number of WFP claimants in November 2014

- made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.
27. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.
28. The Commissioner notes that requests must be considered on their own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.
29. The Commissioner is satisfied that there is sufficient linkage between requests 2 and 3 for them to be aggregated for the purposes of section 12. Indeed the complainant has himself linked the information requests.
30. The Commissioner accepts that sometimes, a public authority may reasonably need to incur costs other than those relating to its own staff time when carrying out the permitted activities. The key to deciding whether or not these costs can be included in the estimate is whether it would be reasonable to include those charges in terms of the activities required.
31. Having regard to paragraph 22, and the explanations therein, the Commissioner is satisfied that the complexity of extracting requested information reasonably warrants the DWP engaging external contractors. The fees likely to be charged do not seem extravagant or otherwise unreasonable. Nor do the activities which the DWP state would be required – and the time required to carry them out – seem unreasonable in the circumstances. Accordingly the Commissioner is satisfied, on the balance of probabilities, that to comply with the outstanding information request would cost the DWP in excess of the £600 limit as proscribed in the 2004 Regulations. It therefore correctly relied on section 12 not to provide the information requested by the complainant at requests (2) and (3).
32. The Commissioner takes cognisance of the complainant's own submissions about the likely true cost of meeting his information request. Whilst the Commissioner does not doubt the sincerity of his beliefs on this point, the Commissioner recognises that he is not comparing like for like. He would also point out that Spanish and British postcode and address protocols differ.

Right of appeal

33. 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

34. 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.
35. 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

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