

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2016

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 the costs of "appeals" to the Department for Work and Pensions. It declined to provide the requested information by relying on section 12(1) (costs).
2. The Commissioner's decision is that the Department for Work and Pensions' reliance on 12(1), not to provide the requested information, was correct.

Request and response

3. On 1 August 2015, the complainant wrote to the Department for Work and Pensions (DWP) and requested information in the following terms:
 - How many appeals have the DWP launched when unhappy with the result?
 - How much have these appeals cost?
4. The DWP responded on 7 August 2015. It stated that he had to clarify his request before it could supply him with a more substantive reply.
5. The complainant replied to DWP on 18 August 2015. In summary he said as follows;

- My request seemed quite simple, I asked for appeals the DWP have launched. For example my understanding is the DWP was ruled against by ICO/Disability News Service and forced to publish benefit related deaths. The DWP launched an appeal to overturn this ruling.
 - I was not after a specified time frame, however the last six financial years?
 - I've asked for appeals. If payment is made at any point I'm interested.
 - I'm interested in the cost of appeals not the process or the legal outcome just the amount of public money that has been used.
6. The DWP subsequently informed the complainant, on 8 September 2015, as follows;
- Unfortunately your reply is still too broad to be met within the cost threshold. We estimate that the cost of complying with your request would exceed the appropriate limit for central government set by regulations 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 it.
 - Under section 12 of the Freedom of Information Act the Department is not therefore obliged to comply with your request and we will not be processing it further.
7. Following an internal review the DWP wrote to the complainant on 4 November 2015. It stated that it upheld its decision. It further explained as follows;
- DWP litigation cases can emanate from a wide range of sources. Claimants (and DWP) can appeal to the Upper Tribunal (and subsequently to higher courts) if they are unhappy with the final decision from a First-tier Tribunal on a benefit claim or application. These can involve for example appeals relating to Jobseekers Allowance, Employment and Support Allowance, Disability Living Allowance and its successor Personal Independent Payments, as well as income support and pensions. In addition, parents can pursue child maintenance complaints through the Child Support Tribunal and Freedom of Information applicants can pursue complaints about freedom of information matters via the Information Commissioner and the Information Tribunal.

- Legal services are provided to DWP by the Government Legal Department who provide a range of employment, commercial and advisory legal services, in addition to litigation services.
- In addition, external barristers may be instructed to provide advice and/or litigation assistance in individual cases.
- There is no central register of all litigation in which the Department is engaged and also no central register of appeals brought by the Department against decisions by bodies such as the Information Commissioner or the courts.
- In any event, invoices received for the provision of legal services are not coded in a way that would enable the Department to extract a breakdown of costs dedicated solely to appeals brought by the Department. The information you seek is held but given this backdrop we would need to trawl through each individual legal services invoice to meet the terms of your request

Scope of the case

8. The complainant contacted the Commissioner on 8 September 2015 to complain about the way his request for information had been handled. The Commissioner proceeded to investigate the application of section 12 following the outcome of the internal review.

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. Having regard to the explanations given to the complainant, as contained in paragraph seven above, the Commissioner is satisfied that the complexity of extracting the requested information would cost the DWP well in excess of the £600 limit as proscribed in the 2004 Regulations. It is readily apparent that the complainant underestimated the volume, complexity and type of appeals that a government department of this size is involved in. The DWP therefore reasonably relied on section 12(1) not to provide the information requested by the complainant.

Section 16 – advice and assistance

13. Section 16 of FOIA sets out the duty on public authorities to provide advice and assistance, as far as it is reasonable to expect the public authority to do so, to anyone who is considering, or has made, a request for information to it. It also states that any public authority which complies with the section 45 Code of Practice in relation to the provision of advice or assistance is considered to have carried out its duty under section 16.
14. A public authority's duty to provide advice and assistance is extensive and will apply to both prospective and actual applicants for information. This duty potentially applies to most, if not all, stages of the request process under the FOIA. The provision of advice and assistance is how a public authority interacts with an applicant in order to discover what it is that the applicant wants and, where possible, assist them in obtaining this.
15. The Commissioner notes that in its letter dated 7 August 2015 the DWP did attempt to assist the complainant to clarify his request by saying;

"Under section 16 of the Act we should assist you in helping you focus your request. To help me do so, I would like to know.

- 1) Do you mean appeals against decisions on all benefits/schemes administered by DWP or just some? If some – which benefits/schemes?
 - 2) What period of time do you want this information for? A start and end date would be useful.
 - 3) DWP can appeal against a decision of the First-tier Tribunal (FtT) to the Upper Tribunal. Is this the type of appeal you are seeking? Information on subsequent appeals can be made to the Court of Appeal and Supreme Court. Please let me know what type of appeals you are seeking information on.
 - 4) Appealing against a FtT decision is a two (sometimes three) stage process. To appeal to FtT you have to apply for leave first (to FtT and if unsuccessful there, to UT). Then actually launch your appeal. Can you clarify which parts of the process you want information about."
16. Having regard to the above the Commissioner is satisfied that the DWP provided assistance, to a reasonable degree, to the complainant as required by section 16. That is, it did seek to assist the complainant to modify his request so that it was less likely to fall foul of section 12.

Right of appeal

17. 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

18. 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.
19. 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
Group Manager
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