

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 November 2016

Public Authority: Department for Work and Pensions

Address: Caxton House, 4th Floor
6 -12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information regarding the Department for Work and Pensions' Mandatory Reconsiderations process.
2. The Commissioner's decision is that Department for Work and Pensions correctly relied on section 12 (costs) to refuse to provide the sought information.

Background

3. In April 2013, the Department for Work and Pensions ("DWP") introduced a new process for appealing adverse entitlement decisions across a range of benefits, including Employment Support Allowance ("ESA").
4. It is compulsory that dissatisfied claimants ask the DWP to look at its decision again and they have the opportunity to submit any further evidence. This is called Mandatory Reconsideration ("MR"). An appeal cannot be lodged with Her Majesty's Courts and Tribunals Service (HMCTS) until the mandatory reconsideration process has been completed.

5. On 29th May 2013, the DWP disclosed the data that it was going to collect to monitor the MR process¹. It stated ,

"DWP has identified data that will be collected in relation to Mandatory Reconsideration, as follows:

Number of Mandatory Reconsiderations requested;

Number of Mandatory Reconsiderations requested following request for statement of reasons;

Whether Mandatory Reconsiderations requested by phone, letter, form or digitally;

Number of cases where new evidence received with Mandatory Reconsideration;

Number of cases where Decision Maker telephones claimant for new evidence;

Number of cases where Decision Maker requests advice from Assessment Provider;

Number of case cleared in % of days – actual percentage figure will be proposed at a later date;

Number of Mandatory Reconsiderations revised favourably/unfavourably or no change to decision; and

Total number of Mandatory Reconsiderations made".

6. In June 2016, the DWP published Employment and Support Allowance Work Capability Assessments: Mandatory Reconsideration registrations, decisions and outcomes². The publication focuses on MRs made within the ESA Work Capability Assessment process in Great Britain - it provides the number of MR registrations, decisions made and the type of decision – ie revised or not revised. The time period covered is between October 2013 and April 2016.

1

<https://www.whatdotheyknow.com/request/160256/response/394281/attach/html/2/FoI.2087.RESPONSE.pdf.html>

2

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530202/esa-wca-mr-summary-june-2016-version2.pdf

Request and response

7. On 22 September 2015, the complainant requested information from the DWP, as follows:

1: "Please disclose the data that the DWP has been collecting for ESA mandatory reconsiderations since October 2013.

If the DWP intends to engage S.22 please:

2.1: Provide an approximate date when it intends to publish the data (e.g. 4th quarter 2015).

2.2: Confirm that it has settled on the data it intends to publish (i.e. decided which data will be disclosed, redacted or withheld)".

8. The DWP initial substantive response³ was to rely on section 22 to refuse the request. However it came to dispense with this reliance⁴ but instead to rely on section 12 (costs) not to meet the request.

9. In correspondence to the complainant⁵ the DWP explained, inter alia, its data collection on mandatory reconsiderations by saying;

"Data on mandatory reconsiderations (MRs) is recorded and held on the Decision Making and Appeals Recording System (DMACR). This is a live operational computer system which records and retains MR information for 14 months following the date of the decision. DWP statisticians started to extract and store data on MR decisions from the DMACR system in October 2014, initially on an ad-hoc basis and then monthly from June 2015. This means to produce the data from 1 to 22 September 2015 would require the use of new bespoke extract from the DMACR system.

The data from October 2014 was used to provide the ad-hoc publication produced in December 14 to show some early experimental statistics on MRs for ESA.

<https://www.gov.uk/government/statistics/mandatory-reconsiderations-of-dwp-benefit-decisions-data-to-october-2014>

³ DWP to complainant 19 October 2015

⁴ DWP to complainant 29 March 2016

⁵ ibid

However, DWP statisticians have experienced difficulties with using the data taken from DMACR as it contains more information than just MRs. To ensure the correct information is provided this has meant extensive investigations and further validation has been required”.

Scope of the case

10. The complainant contacted the Commissioner on 11 November 2015 to complain about the way his request for information had been handled.

Reasons for decision

11. 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”.

12. The Commissioner’s role is simply to decide whether or not the requested information can be provided to a requestor within the appropriate costs limit.
13. This limit is set in the Fees Regulations at £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours in this case.
14. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
15. Laid out below is the DWP’s explanation regarding its cost estimate
 - Read relevant documentation and consult ESA policy and operational experts to ensure we are capturing relevant data relating to all ESA decisions – 1 day

- Write and check necessary code to extract cases from DWP monthly datasets which relate to all ESA MR decisions - 0.5 day
 - Read relevant documentation and consult DMACR data experts and IT security experts to find out exact dates and further details of the data retention policy and consider the implications of such – 1.5 day
 - Identify and ensure we have extracted all the relevant data from DMACR which we will need to provide a full historic data series from 28 to October 2013 to 22 September 2015 - 1 day
 - Estimate how many decisions are incorrect or missing and develop methodology to provide suitable estimates or adjustments if necessary. This is an iterative process so can take additional time - 0.5 day
 - Write necessary code to extract cases from all datasets identified. This is an iterative process so can take additional time –1 day
 - Perform data merge with at least 13 different datasets to capture all cases and ensure duplicate cases are removed - 0.5 day
 - Total number of days – 6.
16. The complainant was invited to comment on the above submissions of the DWP. A precis of his comments are laid in paragraphs 17 to 22 below.
17. “The multiple cost estimates provided by the DWP play on the need to identify the requested information, extract it, and make sure it is correct and so on. Whilst much of what the DWP included in its cost estimate is invalid in respect of s.12 FOIA, clearly some work is required to locate and extract the requested information from the Decision Maker and Appeals Case Recorder (DMACR) Computer System.”
18. Referring to the report cited at paragraph six, above the complainant opines that this is the same source that the DWP stated it would be using to satisfy his information request.
19. “Therefore it must be the case that the DWP has already carried out much of the required work to locate, identify, confirm and extract the information required to satisfy my RFI.”
20. He added, “the type of information being sought is held in tables within a relational database on a computer system. The DWP will have already identified the relevant tables within its DMACR Computer System which

hold the information and produced and tested the SQL queries required to extract the information (i.e. the various totals it published).

21. Therefore the DWP only needs to change things such as table names and the variable names used within the respective table that hold the actual data (i.e. variable name used to signify if new evidence was received with a MR for a claimant).
22. The DWP will argue that the Commissioner must consider the situation at the time of the information request. However it would be absurd to ignore what has happened during the unreasonable delay caused by the DWP if it meant that submitting my information request today resulted in the DWP disclosing the requested information. I suggest that the Commissioner is allowed to take into account the work carried out by the DWP in producing the disclosed information....
23. If the Commissioner examines the 8 items provided by the DWP in its most recent cost estimate (Ref 2016-IR134 dated 29 April 2016) she will see that most if not all of the work associated with each of those items will have had to be completed in order for the DWP to produce the information it published and provided the URL to".
24. The Commissioner asked of the DWP⁶ as follows ;

"You assert that, 'due to the considerable additional work needed to ensure that the collected data is correct and giving only the information for MRs and also to provide data for the time period in your request' the need for you to rely section 12.

I ask, regarding the above paragraph whether the said "work" could be avoided by merely providing (minus personal data of course) the complainant with the macro data; notwithstanding that the said data would include information he has not sought?"

25. The DWP replied⁷ as follows;
 - "You have suggested providing the macro data minus personal data to allow the requestor to try and work out which is the relevant data. Unfortunately it is not as simple as just removing explicit personal identifiers such as name and address. We have considered the work needed to ensure adequately statistical

⁶ 19 July 2016

⁷ 23 August 2016

disclosure control (SDC) in line with the Anonymisation Decision Making Framework recently published by the UK Anonymisation Network: [http://ukanon.net/ukan-resources/ukan-decisionmaking-
framework/](http://ukanon.net/ukan-resources/ukan-decisionmaking-framework/).

- We would have to consider every variable in the data set and remove or blur any which could be used to identify an individual in a way that was tailored to the complainant's request. This work to identify and extract the relevant and permissible variables would be complex and iterative, balancing the value and risk of variables against each other. This process could take some time and once received the requestor would then require additional guidance in how to use any data provided. We estimate that this complete process would at least equal the time taken so no savings would be made".
26. As stated above the fee regulations effectively imposes a ceiling of 24 hours in this case for the DWP to comply with the complainant's request for information. If the DWP correctly estimates that it will take longer than 24 hours, to comply with the request, then it is discharged from its duty under section 1(1)(b)
 27. The Commissioner must evaluate the DWP reliance on section 12 in the circumstances that prevailed when it came to rely on the section.
 28. Notwithstanding the complainant's submission on the point the Commissioner accepts that it was reasonable for the DWP to estimate that the time and cost of locating and extracting the requested information would exceed the limit. Even if the DWP's estimation is an overestimation of the time it would take (to comply with the request) the Commissioner's view is that (on any fair calculation) it will still take in excess of the "one day" laid out in the fees regulations.
 29. Her conclusion is, therefore, that section 12(1) was engaged and so the DWP was not obliged to comply with the complainant's request for information.

Right of appeal

30. 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

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

31. 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.
32. 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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