

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 May 2018

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### Decision (including any steps ordered)

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1. The complainant has requested information from the Department of Work and Pensions (DWP) about various matters. DWP has relied on section 12 – costs of compliance exceed the appropriate limit.
2. The Commissioner's decision is that DWP is entitled to rely on section 12 to refuse this request. She notes that the response to the request was provided outside of the statutory 20 day time limit and accordingly DWP has breached section 10 FOIA. The Commissioner does not require DWP to take any further steps.

#### Request and response

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3. On 21 September 2015, the complainant wrote to DWP and requested information in the following terms:

*"1) In Spring 2014, what percentage of Work Coaches in Leics/Northants had completed the module of the Advisor Pathway about helping people with health problems*

*2) In Spring 2015 the letter being sent to people in the ESA Support Group was changed. Presumably there was an investigation as to how this happened. What were the results of that investigation?*

*3) Who authorised the use of the letter that [named individual] received (the story featured in the Leicester Mercury on [specified date])*

*4) Letters were sent to loan parents on Income Support that falsely threatened their benefits if they didn't attend an interview. I would like to know who made the decision and at what level it was authorised.*

*5) Why does DWP see fit to allow work experience people access to my National Insurance Number?"*

4. DWP responded on 4 December 2015. In response to question 1 it relied on section 14(2) – repeat request - to refuse to comply with the request. In response to question 2, DWP stated that it was not obliged to create information or provide explanations in order to comply with a request under FOIA. In respect of questions 3 and 4, DWP relied on section 40(2) – personal information - to refuse the request. In response to question 5, DWP stated that was not a valid request under FOIA.
5. Following an internal review, requested on 6 December 2015, DWP upheld its reliance on section 14(2) – question 1, set out that it did not hold any information – question 2 and maintained its reliance on section 40(2) - questions 3 and 4. In his internal review request, the complainant reworded question 5. DWP treated this as a fresh request and disclosed the requested information.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 31 March 2017 to complain about the way his request for information had been handled.
7. In July 2017, during the course of the investigation, DWP advised the Commissioner that it no longer wished to rely on section 14(2) in respect of the request at question 1 but instead would rely on section 12 – costs exceed the appropriate limit. The complainant did not accept that compliance with his request would exceed the cost limit.
8. The Commissioner considers that the scope of the request is to determine whether DWP was correct to rely on section 12 in respect of question 1. It is her position that if section 12 applies to one element of a request then it applies to the request in its entirety. With that in mind, her investigation is to determine if section 12 applies to question 1 of the request and therefore to the entire request.

## Reasons for decision

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9. Section 1(1) of FOIA states that

*(1) 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(1) of FOIA states that:

*(1) 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.*

The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments such as the DWP. 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 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.

A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".

11. Section 12(2) of FOIA states that:

*(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the cost*

*of complying with that paragraph alone would exceed the appropriate limit.*

12. In order to assess whether a public authority is entitled to rely on section 12, the Commissioner will ask the authority to set out a detailed cost analysis which may include a sampling exercise to support the application of section 12. The Commissioner accepts that in this case, the provision of a submission including a sampling exercise has been made more difficult by the timing of the application of section 12, almost two years after the request was made.
13. DWP has provided the Commissioner with four submissions in this case. Each had raised issues which prompted the Commissioner to go back to DWP for further information. The submissions have given the Commissioner a great deal of information relating specifically to the costs associated with identifying whether the course/modules in question have been completed. This is only one element of the search.
14. DWP provided a sampling exercise in relation to the number of work coaches (367) in post in Leicestershire and Northamptonshire at July 2017. It has provided detail of the system, Resource Management (RM) which was in place at the time of the request and detail of its replacement system, Standard Operating Portal (SOP). It has also set out that the Civil Service Learning system (CSL) is pertinent to searches relating to the request and has provided detail of those searches.
15. It became apparent from the first three submissions that DWP's focus was on how it could identify whether a specific course and/or specific modules could be identified as having been completed. DWP set out a search process that was lengthy, cumbersome and which would not guarantee accuracy of information.
16. Having considered the detail of the three submissions, the Commissioner approached DWP for a further submission in respect of section 12 as she did not consider that all aspects of the request had been adequately addressed.
17. In its submissions, DWP has set out that there are 14 Jobcentre Plus buildings (sites) in the Leicestershire and Northamptonshire district and that the requested information is not centralised and therefore could not have been retrieved electronically as a group by job title or location. DWP has further explained that there was no business need for centralised collation of the training records and the purpose of recording training information is to allow individuals to maintain a personal training record. The information on the training record is of course accessible to an individual's manager. DWP has asserted that adding any

further functionality to the system at the time would have incurred extra cost for a function it did not require. This cost to the public purse was not justified.

18. Based on the sampling exercise relating to information about the modules of the course, the Commissioner has considered the CSL records as an example. She accepts DWP's assertion that a search time of 4.75 minutes per individual is necessary; for 367 people this equates to approximately 29 hours. DWP has set out that it would be likely that both the CSL records and the RM system would need to be checked to establish if the course modules had been completed.
19. DWP has set out that the time for checking both CLS and RM systems is 10 minutes per person (it has provided a sampling exercise for both the CSL and RM system). This equates to 61 hours and 10 minutes for the 367 work coaches.
20. The Commissioner considers therefore that the lowest possible cost estimate, after the work coaches have been identified, is 29 hours, with the highest estimate being 61 hours and 55 minutes. The Commissioner considers that the costs of this exercise alone would significantly exceed the appropriate limit.
21. The Commissioner noted that the figure of 367 work coaches was used for the sampling exercise and asked DWP whether this figure was pertinent to the time frame detailed in the request.
22. With regard to that specific point, in its fourth and final submission DWP set out that although feasible in Spring 2014, even at the time of the request it would have been far from straightforward to identify all relevant individuals. It does not know and cannot readily identify the work coaches in place in a particular geographical area in Spring 2014.
23. However, DWP has asserted that the number of work coaches in Spring 2014 was likely to be around the same as the July 2017 figure of 367 and if anything, the figure in 2017 would have been slightly lower.
24. The Commissioner has considered how the time frame of Spring 2014 is pertinent to the request. She notes that DWP has applied its own start and end date to the request and considers that these dates are sufficient to encompass the timeframe of 'Spring 2014'. She further considers that had the complainant intended to ask about specific dates he would have made this clear. He has not disputed the timeframe.

25. DWP has explained that it cannot therefore identify how many or which work coaches (within the timeframe of the request) were employed as such and therefore cannot identify who had completed the modules referred to. This, it has explained, is due to the fact that each time a cost centre changed on RM or indeed its replacement, SOP, any information held for the previous cost centre is lost. Similarly, if an individual moves to an office or to a post with a different cost centre, it impacts on the data. It is DWP's position that reliable data is simply not available to it. The issue impacts on all kinds of data and is not just relevant to the requested information.
26. Therefore, even at the time of the request, some 15-18 months after the time frame set out in the request, identifying the individuals who were work coaches would have represented a cost burden to DWP.
27. The Commissioner considers that it is unacceptable for a public authority to be vague in respect of costs. She would normally discount theoretical assertions as they cannot be considered relevant to the application of section 12 without the requisite detail. However, she notes that compliance with the request effectively relies on two elements being addressed; firstly the identification of work coaches in a specific location at a specific time and secondly, once identity is known, the searches required to ascertain if those work coaches had or had not completed the course.
28. Although DWP has not provided any cost analysis to support its position in terms of the first element of the request, the Commissioner accepts that this would have been an issue at the time of the request and that any current analysis regarding work coach identification would be without merit given that a new system is in place with much historical data lost.
29. It is therefore appropriate, in the Commissioner's view, to consider the theoretical cost of identifying the work coaches in addition to the costs analysis in relation to the time it would take to identify whether a work coach had completed the course/modules detailed in the request.
30. As detailed in DWP's cost analysis, as it takes 10 minutes for an individual to check their records held on Civil Service Learning (CSL) and on DWP's RM system, only 144 individuals could check their records within the time frame of 24 hours as set out in the Fees Regulations. This of course does not account for the additional time which would be required to initially identify individuals who were work coaches in Spring 2014 nor does it include time to extract any of the data.

31. The Commissioner accepts DWP's position that were it to comply with the request, the information it held within scope may not have disclosed an accurate percentage figure but she is not concerned with accuracy of information and considers that a narrative accompanying the percentage would have addressed the issue for DWP.
32. It is clear however that given that the number of work coaches in place in 2014 was likely to be about the same as in 2017 or possibly greater, DWP would clearly exceed the cost limit by checking 367 records; it could only check those records once it had identified the individuals who were employed as work coaches in Spring 2014.
33. The submissions set out that the RM files cannot be filtered by job title, location or training activity and extraction by line managers would have been subject to the same time constraints as for individual staff members.
34. The complainant disputed DWP's cost analysis setting out his view that it was inconceivable that the system referred to was not supported by a 'software house' or that standard or ad hoc reports are not created for DWP's own use. He described DWP's revised position as mischievous and ignorant asserting that it was a further attempt to withhold information.
35. During the course of the Commissioner's investigation, the complainant contacted the Commissioner setting out that he considered the crux of the matter to be DWP's contract with the company providing support for their personnel IT system. He set out that given that a single line algorithm (such as an example he had provided in earlier correspondence) was required, it would take five minutes or ten at most to produce the requested information.
36. In response to the complainant's assertion, DWP has explained to the Commissioner that its IT support contractors are only able to provide reports if the information is held in the SOP system. The training module in question, was not mandatory and if undertaken, relied on participants manually entering the course details on to their training record on the RM system; with the training itself having been completed on DWP's Civil Service Learning site. DWP was therefore satisfied that information falling within the scope of the request would be held on the CSL or RM system but that manual input by any individual who had undertaken the training was necessary. Any data about the training which had been manually entered did not transfer from the RM system to the SOP system and therefore the IT contract is not pertinent to the search required in this case. Again, this does not take account of the need to identify the relevant work coaches before undertaking any search.



37. With regard to HR producing a list of work coaches, DWP has stated that its HR services are outsourced and it has been confirmed that such a list could not be produced as its HR files cannot be filtered by job title, location or training activity. The Commissioner notes that this would at any rate have to be an historical search and DWP has already explained why that would not produce the requested information.
38. In all of the circumstances therefore, the Commissioner must consider whether DWP has satisfactorily established that complying with the request would exceed the cost limit. She has taken into account the information provided by DWP and the complainant.
39. The Commissioner accepts that DWP could not accurately identify all individuals who were work coaches in Spring 2014. It could not identify them at the time of the request and nothing has changed since that point which would facilitate that identification. Indeed it is the case that more individuals will have moved on to a different post or different location and potentially that historical data will have been lost due to system updates.
40. The Commissioner accepts that in all of the circumstances, DWP has satisfactorily established that complying with part one of the complainant's request would, at the time of the request, have exceeded the cost limit. The method set out is not only the quickest method, it is the only method of retrieving the requested information about course completion. In the circumstances, the Commissioner finds that DWP was entitled to refuse to comply with the request, relying on section 12 FOIA.

## **Section 16 – advice and assistance**

41. Section 16(1) places a duty on a public authority to provide advice and assistance, so far as it would be reasonable to do so to those who have made or propose to make a request for information to it.
42. It is the Commissioner's position that at the time section 12 was applied to this request, the opportunity to provide practical advice or assistance had been lost. In the period between the request being made (September 2015) and DWP's reliance on section 12 (July 2017) the RM system had been replaced by the SOP and not all information had been migrated. Additionally, as DWP has explained, it was increasingly difficult to identify the work coaches.



43. Whilst the Commissioner considers that DWP should have provided the complainant with detail around the costs issue, she notes that DWP's submissions to the Commissioner required further detail at each stage. The Commissioner therefore considers it unlikely that any explanation to the complainant would have provided clarity, and in fact may have had entirely the opposite effect to providing advice and assistance.
44. The Commissioner recommends that in future DWP provides an explanation of the costs to the complainant in its refusal notice and sets out why it cannot provide advice and assistance.

### **Other matters**

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45. The Commissioner is more than a little concerned by DWP's handling of this case. DWP's submissions fell woefully short of what is expected of any public authority, let alone a large government department which is fully conversant with both the FOIA and the nature of the ICO's investigations. The poor case handling necessarily meant that the investigation could not be concluded without seeking further detail from DWP and this in turn has caused significant delays.
46. The Commissioner is also of the opinion that DWP's internal review ought to have identified the erroneous reliance on section 14(2). The delay in reliance on section 12 made the investigation itself more convoluted and caused confusion for the complainant.
47. The Commissioner is therefore taking this opportunity to remind DWP that her practice is to give a public authority one opportunity to set out its position in respect of a request. In any future cases where DWP relies on section 12, the Commissioner will expect DWP to ensure that its cost analysis is adequately set out at the first time of asking. Failure to do so may lead to the Commissioner finding that DWP has not satisfactorily established that section 12 applies.
48. The Commissioner would also like to record that in difficult circumstances, she acknowledges that the complainant has exercised extreme patience and has accepted without question the lengthy delays in resolving this case.

## Right of appeal

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49. 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 7395836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

50. 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.
51. 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** .....

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
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