

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2018

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

Decision (including any steps ordered)

1. The complainant has requested a list of names together with the full postal addresses of the placement providers participating in DWP employment schemes.
2. The Commissioner's decision is that the DWP need not provide the requested information by virtue of section 12 (costs).
3. No steps are required.

Background

4. The DWP had three employment schemes, the Mandatory Work Activity scheme ("MWA"), Work Experience and the Work Programme ("WP"). These schemes and other similar schemes are often collectively referred to as "workfare". Under the MWA and WP schemes placement hosts, which may be charities, private sector companies or public authorities, receive a benefit in the form of free labour. Placements are arranged by contractors and sub-contractors who receive payment from the DWP. In

the majority of cases, referral to the schemes was mandatory and non-compliance was subject to a sanction in the form of a loss of Jobseeker's Allowance for specified periods. The schemes affected many thousands

of jobseekers. By January 2012 nearly 50,000 claimants had been referred for placements on MWA. In the case of MWA there was an express commitment to placements benefiting local communities. Workfare schemes generally attracted considerable controversy and media attention.

5. The Commissioner understands that MWA programme ended on 31 March 2016.
6. The specific list of placement hosts requested by the complainant (detailed below) was produced by the DWP in accordance with the Court of Appeal judgment in Department for Work and Pensions v Information Commissioner & Frank Zola which was handed down on Wednesday 27 July 2016. The Court of Appeal having upheld the decision of the First-tier Tribunal in Department of Work and Pensions v Information Commissioner & Frank Zola [2013].
7. Pursuant to that judgment the DWP released a copy of the specific list of placement host names on the 'What do they know' website.

Request and response

8. On 23 July 2017 , the complainant wrote to DWP and requested information in the following terms:

"This request concerns the names of placement providers for MWA ("workfare") which the Court of Appeal ordered you to release in June 2016:

<https://www.whatdotheyknow.com/request/348484/response/845583/attach/html/3/326%202012%20Info.pdf.html>

Details of the case can be found here:

<http://www.bailii.org/ew/cases/EWCA/Civ/2016/758.html>

Please provide me with the same list of names together with the full postal addresses of the placement providers. In cases where the placement provider has more than one address, I would be content with the first address which appears alphabetically. For example, the British Heart Foundation probably had a large number of placement providers. But if it had only two, say, 1 Acorn Street and a 1 Beech Street – I would want only the full postal address for 1 Acorn Street.

I understand that the operation of DWP databases can be very expensive and difficult. If you are unable to comply with my request, let

me know what the difficulties are and I might be able to modify or refine it.

Appropriate section 16 advice and assistance would be very much appreciated if you can't process my request".

9. The DWP responded on 18 August 2017 and refused to provide the requested information citing the following FOIA exemption;
 - Section 32 – court records
10. Following an internal review the DWP wrote to the complainant on 15 September 2017. It stated that it upheld its decision.

Scope of the case

11. The complainant contacted the Commissioner 23 January 2018 to complain about the way his request for information had been handled.
12. During the course of her investigation the DWP informed her that it now also relied on section 12 (cost) not to meet the complainant's request.

Reasons for decision

13. The Commissioner considers that the scope of this decision includes the determination as to whether DWP was correct to rely on section 12. It is her position that if section 12 applies to one element of a request then it applies to the request in its entirety.

Section 12

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. 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.

Would complying with the request exceed the appropriate limit?

16. 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.
17. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
18. The DWP submissions on its reliance on section 12 are laid out in paragraphs 18 to 22 below.
19. It is now recognised that the list contained in court records did not include the placement host addresses and therefore it accepted that their response did not answer that element of the complainant's request.
20. With regard to the request for addresses, it confirmed that it held information falling within the description specified. However, it estimated that the cost of locating, retrieving and extracting the information requested would exceed the appropriate limit for central Government. The addresses are not collated centrally and are held under 11 different contracts. To provide the addresses would require it to contact each provider for each specific contract and ask them to locate, retrieve and extract all addresses held for this specific list of placement host, which covers a specific six months ending in 2012. It has estimated that the time required by the Department and providers to retrieve this historical information would be as follows.
21. These timings were produced in relation to other similar ICO cases and relate to a period when the contracts were live and the programme was still running. It is worth noting that the request from the complainant were received by the Department on 23 July 2016, the Mandatory Work Activity provision ended on 31 March 2016, one provider's contract was terminated earlier than the others, during 2012.
22. The providers may have placed the information into archive which would increase the time required to find and retrieve information. Equally the costing details outlined below are based on a DWP performance manager having an active point of contact within each of these providers

for that specific contract, as the contracts are no longer live these active contacts are no longer in use. Although the Department does have other contracts with these providers, they are for other provision in different geographical areas. Therefore identifying the relevant person in these organisations to answer questions on historical contracts would be an added difficulty.

23. Also the list of placement hosts is historical and related to placement hosts that were offering placement in 2012, as explained previously the list of placement hosts would have changed constantly throughout the duration of the provision, therefore providers would need ensure the addresses collated related to the specific time period requested.

Activity

Identifying what information is required. Separating the request and identifying the relevant Contract Management Team. Contract Management team contacting each provider to determine what information is held.

Cost Estimate

£68.75 - For MWA there were 11 separate contracts. This activity takes between 15-30 minutes. Using the minimum amount of time this equates to 2 hours 45 minutes. Though due to the issues related to the contracts no longer being active and the additional complications of locating the correct point of contact within the provider, this process could take longer to complete.

Activity

Writing and running reports for providers who may need to engage with series of subcontractors to locate identify, retrieve and extract the data. Data in the report is often entered into the system via freetext, so there are many duplicate names and addresses are all spelt slightly differently. A line by line check for duplicates is required.

Cost Estimate

£825 - This is based on 3 hour's work per contract, per provider. For MWA there are 11 contracts, this would equate to 33 hours.

The DWP were advised by providers that the work to extract the data can take between 1 hour and 10 minutes to 10 hours depending on the size or nature of the request.

The additional complications with this specific request have been outlined above, but include retrieving the information from archive, the age of the data involved (2012) , extracting accurate data, especially when a placement host may have changed their name, or may no longer exist. Therefore it has based its calculations on a time of 3 hours.

Activity

Review of the data to ensure it is covered by the scope of the request.

Cost Estimate

£12.50, this is based on one member of staff receiving the email responses and extracting the information. This presumes all providers meet the given deadline, no chase ups are required, and all use the correct template for their data. This would take 30 minutes.

Total Estimate £906.25

24. The Commissioner reminds herself, as re-iterated by the Upper Tribunal (Reuben Kirkham v Information Commissioner [2018] UKUT 126 (AAC)), that,

“The issue is whether or not the appropriate limit would be reached. The estimate need only be made with that level of precision. If it appears from a quick calculation that the result will be clearly above or below the limit, the public authority need not go further to show exactly how far above or below the threshold the case falls”.

25. After considering the DWP’s explanations set out above, the Commissioner accepts that it is necessary for the DWP to review the manual files/contact personnel in order to respond to the request.
26. The Commissioner is therefore satisfied, on the balance of probabilities that the above estimate is sufficiently reasonable enough to persuade her that section 12 was properly relied on.
27. Finding that the application of section 12 enabled the DWP not to meet the complainant’s request for information, she did not consider the applicability of section 32.

Section 16

28. Section 16 of FOIA places an obligation on public authorities to offer advice and assistance to requesters where it is reasonable to do so. When a request is refused under section 12(1) of FOIA, the Commissioner’s view is that section 16 obliges public authorities to provide practical suggestions on how the scope of the request could be

reduced so that information of interest to the requester might be provided.

29. Under section 16 of the Act the DWP explained that it would try to assist the complainant to narrow his request so that it might fall within the cost limit. It explained that many of the 500+ hosts are national organisations whose contact details would be reasonably accessible to him. If he were to submit a revised request for the postal addresses of any organisations that he were unable to trace from reasonably accessible information, it would consider that request, but could not guarantee that it would fall within the cost limit.
30. Although it has been unable to assist with narrowing the request sufficiently to allow disclosure of any information, the Commissioner recognises that, on this occasion, the public authority did provide advice to achieve the same. Accordingly, she is not prepared to find that it breached section 16

Right of appeal

31. 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

32. 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.
33. 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

Pamela Clements
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