

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2019

Public Authority: The Department for Work and Pensions

Address: 4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information regarding psychological aptitude tests taken by prospective and current employees of the Department for Work and Pensions (DWP).
2. The Commissioner's decision is that DWP is entitled to rely on section 12(1) of the Act to refuse to comply with the request.
3. The Commissioner finds, however, that DWP has breached section 10(1) of the Act as it failed to provide its original response with the statutory timeframe for compliance. It has also breached section 17(5) as it did not provide the complainant with its section 12 refusal notice within the statutory timeframe.
4. The Commissioner does not require DWP to take any steps.

Request and response

5. On 14 January 2017, the complainant wrote to DWP and requested information in the following terms:

"JobcentrePlus Work Coaches are well known for their Authoritarianism, Cruelty, Dishonesty, Emotional Superiority, Machiavelianism, Omnipotence, Psychotism, Selfishness, and Vengefulness personality traits.

Please provide copies of any psychological aptitude tests taken by prospective or currently employed DWP employees and the associated scoring table since 2010."

6. On 15 February 2017, DWP responded and confirmed that it held information falling within the scope of the request. It confirmed that it was relying on section 43 (Commercial Interests) to withhold the information.
7. On 16 February 2017, the complainant requested an internal review and disputed that section 43 of the Act was engaged. The request for internal review included allegations that DWP selected staff for specific personality traits and conditioned staff during their employment.
8. On 22 March 2017, DWP provided details of the outcome of its internal review. It acknowledged its late response but upheld the original response. DWP stated that psychometric testing is only used in recruitment campaigns for Senior Civil Service posts and that staff are not subject to ongoing psychology assessments.

Scope of the case

9. The complainant contacted the Commissioner on 17 May 2017 to complain about DWP's request handling in general. The Commissioner confirmed that, under section 50 of the Act, she could only consider individual requests for investigation and asked the complainant to set out which requests he wished to proceed to investigation. On 28 September 2017, the complainant confirmed that he wished to complain about the request made on 14 January 2017.
10. During the course of the investigation, it became apparent that DWP's interpretation of the request differed from that of the complainant's. The complainant confirmed that he was seeking psychometric tests taken by

DWP staff during their employment as well as during the recruitment process.

11. The Commissioner confirmed this interpretation to DWP at which point DWP confirmed that it wished to rely on section 12(1) of the Act to refuse to comply with the request.
12. DWP wrote to the complainant on 10 December 2018 to inform him of this change of position. DWP subsequently informed the Commissioner that it was unable to respond directly to the complainant as the email provided was no longer in use. The Commissioner therefore forwarded a copy of the fresh response to the complainant's known correspondence address on 8 January 2019 and confirmed that she had requested DWP's submissions regarding its reliance on section 12 of the Act.
13. The Commissioner considers that the focus of her investigation is to determine whether DWP is entitled to rely on section 12(1) of the Act to refuse to comply with the request. She will also consider whether DWP has provided adequate advice and assistance as required under section 16 of the Act.

Reasons for decision

Section 12(1) – Cost of compliance exceeds the appropriate limit

14. Section 12(1) of the Act states:

"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 by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (the Fees Regulations) at £600 for central government departments. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that DWP may refuse to comply with a request for information if it estimates that it will take longer than 24 hours to comply.

¹ <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

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, or a document containing it.
17. 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 view, an estimate for the purposes of section 12 has to be 'reasonable'; she expects it to be sensible, realistic and supported by cogent evidence.

DWP's position

18. DWP explained that in order to identify all the tests likely to be subject to this request, officers across its Leadership, Learning and Workforce Management department were consulted and requested to search their records to identify any tests used over the relevant period. DWP explained that, in total, the time taken to review and search records averaged 15 minutes per person, by a total of eight people.
19. DWP confirmed that the following tests fell within the scope of the request:
- Positive Action Pathway
A bespoke test administered by Civil Service Learning
 - Situational Judgement Test and Personality Questionnaire Tests undertaken as part of the Future Leaders Scheme
 - Situational Judgement Test and Personality Questionnaire Test undertaken as part of the Senior Leaders Scheme
 - Situational Judgement Test
Test undertaken as part of the DWP Summer School
 - Professional Aptitude Test – verbal numerical
Test undertaken in Civil Service recruitment since 2011
20. DWP confirmed that it had undertaken a sampling exercise with regards to the Situational Judgement Tests undertaken in the 2018 Future Leaders Scheme and Senior Leaders Scheme.

21. DWP confirmed that, in 2018, 150 tests were taken as part of the Future Leaders Scheme and 30 tests were taken as part of the Senior Leaders Scheme.
22. DWP explained that the schemes were open across the Civil Service and it would need to extract the candidate details from the GRS system in order to ascertain whether a candidate was an employee of DWP.
23. DWP explained that data is held in several systems, one for each of the different tests, and data would need to be extracted from each one in turn for each year in which the tests were used. Once the data is extracted into a table, it would be necessary to identify which of the data lines relate to DWP staff.
24. DWP explained that it would need to locate the individual candidates as each candidate takes a different variation of the test. DWP confirmed that there is no standard test taken by all candidates, rather, each candidate is presented with a different set of questions, either randomly chosen or dependent on the previous questions' response, from a large bank of potential test question. DWP would, therefore, need to isolate each individual test taken by any candidate employed by DWP at the time of the request.
25. DWP explained that identification of its employees would involve cross referencing a unique identifier for each individual test taken with the person data in the GRS system to identify the data lines pertinent to DWP staff and remove line items relating to employees of other departments. DWP explained that the test taker's employer department within the Civil Service Learning system is self-declared and it would therefore be necessary to check the email address registered with the system to ascertain the individual's employer department.
26. DWP confirmed that it estimated that this task would require approximately two minutes per data line to ascertain the correct government department.
27. DWP explained that this would give a total of 360 minutes (6 hours) to ascertain which candidates of the Future Leaders Scheme and Senior Leaders Scheme, in 2018, were DWP employees.
28. DWP explained that once it had ascertained which candidates were DWP employees at the time of the test, it would then need to locate and extract the individual test taken by the candidate. DWP did not provide an estimate for this activity.

The Commissioner's position

29. The Commissioner is dissatisfied with the quality of the submissions provided by DWP. Whilst a public authority is not required to make a precise calculation of the cost of complying with a request, she would expect to be provided with further detail than has been provided in this case. In particular, she expected to be provided with the estimated time to extract the tests themselves. However, in the circumstance of this case, the Commissioner considers that it would be disproportionate to delay this investigation further by returning to DWP for additional submissions.
30. The Commissioner is not persuaded that the extraction of DWP candidates would, as described, take two minutes per candidate. However, even if this were to be reduced by half to one minute per candidate, this would still give an estimate of three hours to identify where information is held for the tests taken in two schemes in one year only. This task would need to be duplicated for each test and each year the tests were used since 2010. The individual tests would then need to be extracted from each candidate's record.
31. The Commissioner notes that the sampling exercise uses candidates from the 2018 schemes which falls outside the scope of the request. Whilst this is not ideal, and it would be better practice to sample information falling within the scope of the request, the Commissioner is prepared to accept the sampling exercise as indicative of the numbers of candidates that would need to be checked to ascertain their employer department.
32. As the request is for "*copies of **any** psychological aptitude tests*" [emphasis added], the Commissioner accepts that DWP would need to provide each individual test taken in the absence of a standard test taken by all candidates.
33. The Commissioner considers that, on the basis of the individual nature of the tests, the time frame of the request and the number of candidates identified by the sampling exercise, it is unlikely that DWP could comply with the request within the appropriate limit.
34. The Commissioner therefore considers that DWP is entitled to rely on section 12(1) of the Act to refuse to comply with this request.

Section 16: Duty to provide advice and assistance

35. Section 16(1) of the Act states:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

36. DWP advised the complainant in its fresh response that he may wish to refine his request to data related to a limited number of recruitment campaigns, for campaigns relating to a specific job role, or for tests taken for specific purposes by individuals within the department.
37. Section 16 does not require public authorities to provide in depth calculations or detailed estimates of what information could be provided within the appropriate limit. It requires public authorities to provide such advice and assistance as is reasonable to expect. The Commissioner considers that DWP has provided reasonable advice and assistance by explaining how the request may be refined.
38. The Commissioner therefore considers that DWP has complied with section 16 of the Act.

Section 10(1): Time for compliance

39. Section 1(1) of the Act states:

"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."

40. Section 10(1) of the Act states:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

41. As set out above, the request was made on 14 January 2017. DWP provided its response on 15 February 2017, 23 working days following receipt of the request.
42. DWP has therefore breached section 10(1) by not complying with section 1(1)(a) within the statutory timeframe for compliance.

Section 17(5): Refusal Notice

43. Section 17(5) of the Act states:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for

complying with section 1(1), give the applicant a notice stating that fact."

44. As DWP did not provide the complainant with a refusal notice stating its reliance on section 12 within the statutory timeframe for compliance, it has breached section 17(5) of the Act.

Other matters

45. The Commissioner is concerned at the handling of this request and the subsequent handling of the investigation by DWP. The Commissioner requested the withheld information on multiple occasions prior to DWP amending its position and relying on section 12. She is concerned that DWP appears to have applied an exemption to information it had not reviewed. The Commissioner expects DWP to take steps to ensure that any exemptions applied relate specifically to the requested information and are not applied to a request without due consideration of the information itself.
46. During the course of the investigation, the email provided to DWP by the complainant ceased to accept further correspondence. This was due to the request being made via the WhatDoTheyKnow website. Requests made via this site are closed six months after the last correspondence in order to prevent abuse of the facility by spam emails.
47. The complainant set out to the Commissioner that he considered it was DWP's responsibility to re-open the closed request in order to provide its fresh response. DWP disputed this and set out that it considers that it is the complainant's responsibility to ensure that their correspondence address is up to date.
48. The Commissioner has contacted the website administrators who have confirmed that if a requester contacts them to re-open a request, this will be actioned. The Commissioner, therefore, concurs with DWP and considers that it is the requester's responsibility to re-open the online request for the duration of the investigation or provide the public authority with an alternative correspondence address.
49. Finally, the Commissioner observes that the complainant has, in this request and others, used an unhelpful tone and made unsubstantiated accusations against DWP and its staff. Whilst the Commissioner appreciates that the complainant is clearly frustrated at how the DWP has conducted itself in relation to his case, she asks the complainant to moderate his language and refrain from making accusations in his requests for information. The Commissioner recommends the

complainant focus any future requests to ensure that they clearly describe the information sought.

Right of appeal

50. 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 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

51. 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.
52. 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
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**