

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 20 July 2021

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 a breakdown of the number of child maintenance cases in which a specific scenario occurred.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) is entitled to rely on section 12(2) to refuse to confirm or deny whether it holds the requested information as to do so would exceed the appropriate limit. The Commissioner also finds that DWP has complied with its obligation to provide advice and assistance under section 16.
3. The Commissioner finds, however, that DWP has breached section 17(5) of the Act as it did not issue its section 12 refusal notice within the statutory timeframe of 20 working days.
4. The Commissioner does not require DWP to take any steps in relation to this request.

Request and response

5. On 1 February 2020, the complainant wrote to DWP and requested information in the following terms:

"Please could you provide a breakdown of the number of cases where the CMS has identified a diversion of income through the claiming of personal expenses using business funds and amended the maintenance accordingly. Please could you provide a breakdown by year. So for example:

2012: X cases
2013: X cases
2014: X cases
etc"

6. DWP provided the response on 24 February 2020. However it was a response to a different request, also made by the complainant, for the number of referrals made to the Financial Investigation Unit (FIU) where the paying parent was suspected of lying about payment arrears which resulted in sanctions being imposed.
7. The complainant requested an internal review on 24 February 2020 and confirmed that DWP had re-sent a previous response rather than answer the current request. The complainant anticipated that DWP's response would be that the requested information is not held as he had received this response to similar previous requests. The complainant disputed that the requested information would not be held as he believed that it would be recorded on the centralised system.
8. The complainant also raised that the claiming of personal expenses using business funds is a form of tax evasion and disputed that DWP would not keep records of "illegal activity" as he considered the DWP has a statutory duty to report tax evasion.
9. On 19 March 2020, DWP provided the outcome of its internal review. DWP did not acknowledge that it had provided a response to the wrong request and instead stated that it had replied that it does not record or hold any information regarding diversions in relation to the claiming of personal expenses. DWP confirmed that this is because it could not record such specific scenarios on the system.
10. DWP stated that it had advised in a previous response that there were two types of variation categories recorded on its system, which are "*additional income*" and "*special expense*". DWP stated that it had also previously confirmed the volumes of "*additional income*" variations category which were recorded as cleared and advised that this is the only count available from its system. DWP advised that the "*additional income*" category encompasses any type of diversion of income or any other additional income scenario.
11. DWP stated that the original request had not requested any information in relation to tax evasion or illegal activity. DWP stated that a previous request from the complainant had requested policies or guidance specifically relating to tax avoidance or evasion. DWP stated that it had advised that it does not have guidance specifically relating to tax avoidance or evasion. DWP set out that it cannot determine whether tax avoidance or evasion has occurred as this determination sits with HMRC.

DWP stated that it had previously confirmed to the complainant that FIU shared information with HMRC when there is evidence of tax irregularities.

Scope of the case

12. The complainant wrote to the Commissioner on 17 May 2020 to complain about the handling of their request for information. The complainant disputed that DWP did not hold the requested information.
13. The request is one of a series of requests made to DWP by the complainant seeking information regarding very specific scenarios that may occur as part of the Child Maintenance Service's assessment of paying parent liability.
14. During the course of the investigation, DWP amended its position and provided a fresh response on 10 March 2021. DWP relied on section 12(2) of the Act to refuse to comply with the request as to do so would exceed the appropriate limit.
15. DWP set out that the request was for "*the number of cases where (a) the CMS has identified a diversion of income (b) through the claiming of personal expenses using business funds and (c) amended the maintenance accordingly ...*" DWP explained that while it records when a change of circumstances has occurred on a case, it cannot link a change of circumstances directly to the three specific scenarios in the request.
16. DWP confirmed that to determine what information is recorded on a case would require a case by case examination.
17. DWP acknowledged its obligations under section 16 to provide advice and assistance. However, it considered that as the request is for such specific detail, it was unable to advise the complainant further on refining their request.
18. The complainant confirmed to the Commissioner that he disputes DWP's position that it cannot comply with the request within the appropriate limit. The complainant provided screenshots of the online portal on which parents can update their details. These screenshots include options to declare diversion of incomes. The complainant considers that as this information is specifically requested, DWP should be able to filter cases by the information submitted. The complainant also disputed that DWP had provided adequate advice and assistance in accordance with its obligations under section 16.

19. The Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on section 12 to refuse to comply with this request. She will also consider whether DWP has complied with its obligation to provide advice and assistance under section 16.

Reasons for decision

Section 12: Cost of compliance exceeds the appropriate limit

20. 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".*

21. Section 12(2) of the Act states:

"Subsection (1) does not exempt that public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit".

22. The appropriate limit is set in 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.
23. 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;
- a. Determining whether it holds the information;
 - b. Locating the information, or a document holding it;

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

- c. Retrieving the information; or a document holding it; and
 - d. Extracting the information or a document holding it.
24. As DWP is relying on section 12(2) of the Act, only the first of these activities is relevant in this case.
25. Section 12 explicitly states that public authorities are only required to estimate whether the cost of complying with a request would exceed the appropriate limit, not give a precise calculation. In the Commissioner's 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

26. DWP confirmed that the only way to identify cases which involved the specific scenarios set out in the request would be to examine individual cases. DWP explained that details relating to specific decisions on a case may be recorded on the system in a notes facility, however, this is not a data source from which variables could be extracted.
27. DWP explained that caseworkers record the relevant information for the case in the freetext fields of individual cases. DWP explained that caseworkers only record relevant details, ie type of variation (income/expenses), amounts, frequency. DWP confirmed that the detail recorded is at the caseworker's discretion and could include details falling within the specified scenario in the request.
28. DWP explained that its system does not have a variable which would allow extraction of the requested information. DWP confirmed that variations to maintenance payments are categorised at a high level, relating either to "*income*" or "*expenses*".
29. DWP confirmed that in order to determine whether it held the requested information, it would need to review the individual cases categorised as "*additional income*" and that it holds approximately 79,000 cases of this type.
30. DWP explained that it cannot extract the requested information from the case worker notes as these notes are free text and would require individual review as the contents would determine whether the case falls within the scope of the request.
31. DWP confirmed that it could not filter the cases that would need to be reviewed using information submitted via the online portal.

32. DWP explained that the portal allows customers to update their information themselves, however, it is not the child maintenance system. DWP explained that in order to extract information of this nature from the portal, new programmes or code would need to be written to identify and extract information from the portal, and new data sets and reports would then need to be produced by digital colleagues.
33. DWP explained that the customer can use the portal to update their information themselves otherwise they would need to call or write to the child maintenance service. A work item would then be raised for the action required and notes may be added to the free text note screen on the child maintenance system.
34. DWP also confirmed that cases could be held where the customer had not declared the diversion and therefore filtering cases using the information submitted by the portal may not cover all cases falling within the scope of the request.

The Commissioner's position

35. The Commissioner accepts that DWP is unable to determine within the appropriate limit whether it holds any cases falling within the very specific scenario set out in the request.
36. The Commissioner acknowledges that the complainant believes that the information is held on the system and could be found by filtering the cases using the information submitted via the online portal. However, the Commissioner accepts DWP's explanation that it is not able to extract the requested information from the information received via the portal. The Commissioner also notes that even if DWP were able to extract information from the portal in this way, this would not identify all cases that would require review as not all case information is submitted via the portal.
37. It is at DWP's discretion how it records the information it holds to meet its business and statutory requirements. The Commissioner cannot require DWP to hold child maintenance cases in formats that can be searched by specific scenario.
38. The Commissioner accepts that in order to determine whether DWP holds any information falling within the scope of the request, it would be required to review the free text fields of up to 79,000 cases.
39. As set out above, the appropriate limit for central government departments is 24 hours, or 1440 minutes. The Commissioner accepts that it would not be possible to conduct the required search within the appropriate limit. DWP is not required to work up to the cost limit and is only required to provide an estimate for the purposes of section 12.

40. The Commissioner's decision is that DWP is entitled to rely on section 12(2) of the Act to refuse to comply with the request.

Section 16: Duty to provide advice and assistance

41. 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".

42. The Commissioner has published guidance on providing advice and assistance when refusing to comply with a request on the basis of section 12. Paragraph 59 of the guidance² states:

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- *either indicate if it is not able to provide any information at all within the appropriate limit;*
- *provide an indication of what information could be provided within the appropriate limit; and*
- *provide advice and assistance to enable the requestor to make a refined request".*

43. DWP explained to the complainant that due to the very specific nature of the request, it was unable to provide adequate advice on how to refine the request.

44. DWP explained to the Commissioner that even if it were to reduce the timeframe of its searches to one day of incoming information, it would need to review 300 cases to determine whether the subsequent assessments fell within the scope of the request. DWP therefore considered that it could not refine the request to provide meaningful information.

45. In light of DWP's explanation regarding how information is recorded on cases and the fact that individual case files would need to be scrutinised

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

in order to ascertain the circumstances of each case and whether it falls within the scope of the request, the Commissioner accepts that in the specific circumstances of this case, DWP has complied with section 16 by advising that it cannot aid the complainant in refining the request.

Section 17: Refusal notice

46. Section 1(1) of the Act states 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".

47. Section 17(5) states that:

"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".

48. As DWP confirmed that it was relying on section 12(2) outside of the statutory time for compliance, it has breached section 17(5) of the Act.

Other matters

49. The Commissioner wishes to place on record her understanding of the immense pressure placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the Act.

50. However, the Commissioner has concerns regarding the handling of this request. The Commissioner would expect a public authority with DWP's resources and expertise to understand the basic principles of the Act, particularly that information does not have to be held in discrete documents in order to be held for the purposes of the Act.

51. The Commissioner is also disappointed in the quality of the internal review. In addition to upholding the original, misleading response, DWP failed to acknowledge or rectify the fact that it had not, in fact, provided the complainant with a response to his request as it had attached the response to a different request.

52. The Commissioner expects DWP to take steps to ensure that it is not disadvantaging requesters by misapplying the procedural sections of the Act. Specifically, DWP should ensure that its staff are familiar with her guidance on "Determining whether information is held"³.
53. The Commissioner considers that the DWP FOI team has the experience and knowledge to ensure that requests are handled correctly. Where appropriate, she expects the wider DWP to use this resource, and her published guidance, to improve its request handling in future.

³ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

Right of appeal

54. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

55. 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.
56. 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

Victoria Parkinson
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