

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 21 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 has occurred.
2. 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 and it has complied with its obligations to provide advice and assistance under section 16.
3. The Commissioner finds, however, that DWP breached section 17(5) of the Act as it failed to provide its section 12 refusal notice within the statutory time frame.
4. The Commissioner does not require DWP to take any steps.

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 by the NRP¹ arranging a

¹ Non-resident parent

payment of income into a limited company structure instead of being paid directly. Please could you provide a breakdown by year. So for example:

2012: x cases

2013: x cases

2014: x cases"

6. On 24 February 2020, DWP provided its response. DWP stated that it did not hold or record any data on the Child Maintenance system in relation to diversion of income by the NRP arranging payment of income into a limited company structure instead of being paid directly.
7. The complainant requested an internal review on 24 February 2020 and disputed that DWP did not hold the requested information. The complainant disputed that the information was not held in the Child Maintenance system as a categorisation or description of the reason the payment amount was varied.
8. DWP provided the outcome of its internal review on 11 March 2020 and upheld its original response.

Scope of the case

9. The complainant contacted the Commissioner on 17 May 2020 to complain about the way their request for information had been handled.
10. The request is one of a series of requests by the complainant to DWP about the Child Maintenance Service in which DWP took the position that it did not hold the requested information, or parts of the requested information.
11. During the course of the investigation, DWP amended its position and provided the complainant with a fresh response on 18 March 2021. DWP relied on 12(2) of the Act to refuse to confirm or deny whether it held the information as to do so would exceed the appropriate limit. DWP explained that it would need to check individual cases in order to determine whether the scenario specified has occurred.
12. DWP acknowledged its obligations under section 16 to provide advice and assistance. DWP explained that as the request is so specific in nature, it could not provide specific advice under section 16.
13. The complainant confirmed to the Commissioner that they dispute DWP's position that it cannot confirm whether it holds the requested information 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 diversions of income. The complainant considers that DWP could therefore filter the cases that would require review using this information.

14. The Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on section 12(2) to refuse to comply with this request. She will also determine whether DWP has provided adequate advice and assistance in accordance with section 16.

Reasons for decision

Section 12: Cost of compliance exceeds the appropriate limit

15. 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".*

16. 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 will exceed the appropriate limit".

17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004² at £600 for central governments. 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.

² <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

18. 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;
 - c. retrieving the information, or a document holding it; and
 - d. extracting the information or a document holding it.
19. As DWP is relying on section 12(2) of the Act, only the first of these activities is relevant in this case.
20. 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

21. DWP explained to the Commissioner that each case on the Child Maintenance system would need to be reviewed to determine the exact scenario regarding the individual's income. DWP explained that due to the varied and complex nature of this area of work, there are no specific instructions advising caseworkers how to document a specific scenario.
22. DWP explained that it may be able to determine a number of cases where the specified diversion of income had occurred and a variation had been applied as a result of the identified diversion of income. DWP confirmed that this would only be identifiable where this level of information was held in the case's freetext notes.
23. DWP explained that it would need to review approximately 79,000 cases under the category of "variation – additional income" in order to determine whether it held the requested information.
24. DWP confirmed that it was unable to extract the information from the freetext notes and would need to manually review the cases to determine the contents of the notes.
25. DWP explained that it was unable to use the information submitted via the online portal to filter the cases that would need to be reviewed. DWP explained that the portal is the gateway to enable a customer to provide information, however, it is not part of the Child Maintenance system.

26. DWP explained that in order to extract information of this nature from the portal, new programmes or code would need to be created to identify and extract information and new datasets and reports would then need to be created by digital colleagues.
27. DWP explained that customers can only update their information themselves via the online portal, otherwise they would need to call or write to the Child Maintenance Service.
28. DWP explained that there is also a potential that there could be cases where the customer had not declared a diversion which would not be identified using data from the portal.

The Commissioner's position

29. The Commissioner accepts that DWP is unable to determine whether it holds any cases falling within the very specific scenario set out in the request without individually reviewing each case. The Commissioner acknowledges that the complainant believes that the information is held on the Child Maintenance 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 cannot filter using these cases. She also considers that as not all information is submitted via the portal and not all paying parents will declare a diversion of income, even if DWP were able to filter cases using this information, this will not cover all cases that may need to be searched to determine whether the information is held.
30. 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 information relating to child maintenance cases in formats that can be searched by specific scenario.
31. The Commissioner accepts that in order to determine whether DWP holds the requested information, it would be required to review the freetext fields of up to 79,000 cases.
32. 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 costs limit and is only required to provide an estimate for the purposes of section 12.
33. 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

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

"It shall be the duty of the 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".

35. The Commissioner has issued guidance on providing advice and assistance when refusing to comply with a request on the basis of section 12³. Paragraph 59 of the guidance 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."*

36. 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.

37. DWP explained to the Commissioner that even reducing the timeframe of the request to one day of incoming information would mean 300 cases would require review. DWP considered that it could not therefore provide advice and assistance to aid the complainant in making a meaningful request.

38. 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 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

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

39. 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".

40. Section 10(1) 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. Section 17(5) of the Act 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".

42. 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

43. 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.

44. 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.

45. 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"⁴.

45. 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.

⁴ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

Right of appeal

46. 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

47. 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.
48. 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
Senior Case Officer
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Wycliffe House
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