

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 November 2021

**Public Authority:** Department for Communities  
**Address:** 9 Lanyon Place  
Belfast  
BT1 3LP

#### **Decision (including any steps ordered)**

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1. The complainant requested from Department for Communities ("DfC") information regarding Social Security Appeal stats for 2019/2020. DfC disclosed some information relating to the request but refused to provide the remainder under section 12(1) (cost of compliance exceeds the appropriate limit) of the FOIA.
2. The Commissioner's decision is that DfC was entitled to rely on section 12(1) of the FOIA to refuse to comply with the request. DfC had also complied with its duty under section 16 of the FOIA by providing advice and assistance. However, DfC breached sections 1(1)(a) and 10(1) of the FOIA by failing to respond to the request within the 20 working day time for compliance.
3. The Commissioner does not require DfC to take any steps as a result of this decision.

#### **Request and response**

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4. On 22 June 2020 the complainant wrote to DfC and requested information in the following terms:

*"We would appreciate it if you could provide us with a copy of the finalised Social Security Appeals stats for the financial year 2019/20: Outcome at Hearing by Appeal Type and Representation".*

5. On 18 September 2020 DfC responded and provided some information relating to the request – *“the total number of appeals received in 2019/20, the total number of successful appeals and the number of appeals that had representation.”* DfC also explained that in-depth information was not available at the time due to the case management system used by The Appeals Service (TAS) was being upgraded.
6. On the same day, the complainant asked DfC for an internal review.
7. On 23 December 2020, DfC provided its internal review response. It stated that to comply with the request in full would engage section 12 (cost of compliance) of the FOIA, and it explained the reasons.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 9 April 2021 to complain about the way his request for information had been handled. Specifically, the complainant believes DfC’s response is unreasonable and he does not accept the cost it quoted to comply with the request.
9. The following analysis focuses on whether DfC was entitled to apply section 12(1) of the FOIA to the request.

### **Reasons for decision**

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#### **Section 12 - cost of compliance**

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that section 12(1) effectively imposes a time limit of 24 hours for central government departments and 18 hours work for all other public authorities. The appropriate limit for DfC is £600 or the equivalent of 24 hours work.

13. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities:
  - determining whether the information is held;
  - 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.
14. 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. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004<sup>1</sup>, the Commissioner considers that any estimate must be “*sensible, realistic and supported by cogent evidence*”.
15. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
16. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
17. Where a public authority claims that section 12 of the FOIA is engaged, it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

### **Would the cost of compliance exceed the appropriate limit?**

18. As is the practice in a case where the public authority has cited the cost limit under section 12 of the FOIA, the Commissioner asked DfC to provide a detailed explanation of its estimate of the time and cost of responding to the request.

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<sup>1</sup> <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

19. In its submissions to the Commissioner, DfC maintained its reliance on section 12 of the FOIA and offered an explanation for how it had calculated that the request exceeded the cost limit.
20. The requested information is for further information (i.e. a breakdown by individual social security benefit) relating to the Social Security Appeal statistics from The Appeals Service (TAS) for the financial year 2019/2020.

### **DfC's position**

21. DfC explained that TAS would have to manually open each case to retrieve the information requested or 'buy in' the necessary skills to extract the information from the 'raw' database. DfC said that TAS estimated that to utilise either of these options to answer the request, would engage section 12 of the FOIA.
22. DfC included an estimate of the time/cost taken to provide the information falling within the scope of this request. It said that TAS had undertaken a sampling exercise to determine a realistic time frame and cost involved in manually retrieving the information requested. DfC stated that the exercise found that it would take "589 hours to examine the 12,718 records" within the scope of the request. It would therefore "cost over £14,700 to answer the request in full." DfC said that TAS also provided evidence of a realistic time frame and cost involved in extracting the information requested electronically from the 'raw' database. It found that it would again involve a disproportionate effort and incur considerable costs to provide the information requested.
23. During the Commissioner's investigation of this case, DfC was contacted and asked for further details regarding the upgrade of its case management system used by TAS. DfC was also asked about in-depth information that it said is currently unavailable because of the limitations the system has on what can and cannot be reported on.
24. DfC explained that "not all data is held in a format that enables ready extraction", and that "despite numerous attempts to get the report fixed on the current system, it has not been possible to do this."
25. DfC stated that work on the project to replace the IT system for TAS has continued, despite the impact of the Covid-19 pandemic (the project team working from home since March 2020). However, DfC explained that issues have contributed to a delay to the development phase thus resulting in a delay to the 'Go Live Date' which has been moved. DfC said that "this is still within the 24 month period allowed for the design, development and implementation of the new system."

26. DfC stated that the contractor/supplier project has 24 months to design, develop and integrate the new system and that reporting will be a part of it.
27. DfC described the way in which it holds the requested information and also clarified details of the project to replace the IT system for TAS. Following its review of its position, DfC confirmed that given the way it holds the information, the process of retrieval remains the same. It is therefore likely that the cost of complying with this request would exceed the appropriate limit.
28. At the Commissioner's request, DfC was asked to confirm its estimate, and to clarify whether a sampling exercise had been undertaken in order to determine its estimate. DfC stated that the estimate is for 32 hours (32 hours x £25 = £800). It explained that "*...on-site Professional Services requires a minimum of two (2) contiguous eight (8) hour days per on-site visit*". DfC said the estimate was for 32 hours and as such above the fees threshold.
29. DfC confirmed that a sampling exercise was completed at the time of the internal review and extrapolated and averaged over the number of records. It provided the Commissioner with its proof sampling exercise to show that it was undertaken.
30. DfC was also asked whether a sampling exercise was undertaken to determine the cost involved in extracting the information requested electronically from the 'raw' database. DfC explained that "*as the information could not be electronically extracted from the database due to the issues with the system, such a sampling exercise was not possible.*" It also confirmed that the estimate was taken by sampling from the electronic workflow system and not any manual files.
31. DfC said as a final point in its submissions, that it should be noted that TAS or DfC do not publish any statistics regarding appeals. It also stated that the Northern Ireland Courts & Tribunal Service (NICTS) publish receipts and disposal of TAS data. DfC added that there is no agreement with the advice sector to provide the information which the complainant requested.

### **The complainant's position**

32. The complainant informed the Commissioner that he submits requests for the Social Security Appeal statistics from TAS on an ongoing annual basis, and shares them publicly upon receipt of this information. However, the complainant is dissatisfied that this year DfC is unable to provide all of the information and he believes DfC's response is unreasonable. He said that "*it is unacceptable that a public body cannot*

*access the stats necessary to monitor performance that were available every other year because it has lost expertise which it has not replaced."*

33. The complainant disputed the explanation by DfC for refusing to comply fully with his information request. He said that DfC's explanation related to only one of the two options which it identified as available to them. Option "1" DfC would have to manually open each case to retrieve the information requested, option "2" 'buy in' the necessary skills to extract the information from the 'raw' database. The complainant argued that *"As there is no evidence of the attempts to cost the buying in of IT expertise to access the stats, it is submitted that there is no data to support a conclusion that the estimated cost of £14,700 is reasonable in relation to the 2<sup>nd</sup> option."*
34. The complainant referred to the ICO guidance<sup>2</sup> on section 12 of the FOIA (paragraph 13) and he said *"it is arguable that the public authority could "buy in" 24 hours of expertise in order to fulfil the request."* The complainant further argued that DfC's previous response indicated that expertise was required to extract the stats and that this expertise was no longer available. He said that subsequent advice from TAS, stated that it may be possible to extract information from the 'raw' database by using a database query tool, or by writing and running a program using programming language. However, the in house skills and experience to do this, it said, is not available to TAS.
35. The complainant is of the view that having acknowledged that it lacks the expertise to carry out this work, he said *"there is no information from TAS of how it was determined that the cost to do so by engaging a new expert or re-engaging the previous expertise would be excessive."*

### **DfC's response to the complainant's concerns**

36. During the investigation, DfC was asked for clarification to justify its position and it provided its response. DfC explained that *"complications arose as regards the vulnerability and age of the legacy system there was, and still is a significant risk that if any work was completed on the legacy system, data could be corrupted or worst case scenario, lost altogether. The cost was therefore not the only consideration. More so the department decided not to proceed at that time was the risk to further corruption of reports or indeed of the live caseload which would have had a catastrophic impact on the ability to run the business."*

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

*The information contained on the NIAPS (Northern Ireland Appeals Processing System) 1 database the Northern Ireland Appeals Processing system is recorded primarily for administrative purposes i.e. to enable TAS to function effectively and efficiently. Not all data are held in a format that enables ready extraction in the format requested."*

37. DfC confirmed that due to this risk, the 2019/20 data on closed cases will not be extracted or migrated to provide information falling within the scope of this request - "*finalised Social Security Appeals stats for the financial year 2019/20; Outcome at Hearing by Appeal Type and Representation*".

### **The Commissioner's position**

38. The Commissioner, during her investigation of the case, had asked DfC a number of questions in order to establish whether it was entitled to rely on section 12 exemption. Having considered DfC's responses and submissions, she accepts these and also its explanation that to use either of the two options; to manually open each case to retrieve the information or 'buy in' the necessary skills to extract the information from the 'raw' database, would exceed the appropriate cost limit.
39. The Commissioner also considered the estimates provided by DfC, and she is satisfied that they are realistic and reasonable. She accepts that for DfC to comply fully with the request would exceed the appropriate limit. Therefore, DfC was entitled to rely on section 12(1) of the FOIA to refuse the request.

### **Section 16 – duty to provide advice and assistance**

40. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice<sup>3</sup> ("the Code") issued by the Secretary of State, it will have complied with section 16(1).
41. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the requestor with reasonable advice and assistance.

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<sup>3</sup> <https://ico.org.uk/for-organisations/section-45-code-of-practice-request-handling/>



42. The Commissioner's guidance<sup>4</sup> states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
43. In this case, the Commissioner notes that DfC explained that given the unique circumstances, it is not able to advise on reforming the complainant's request to bring it under the cost limit. However, the Commissioner recognises that DfC attempted to comply with section 16 by providing advice to the complainant in explaining that the NIAPS system is currently being updated. DfC said that the contract for the replacement of NIAPS was procured in November 2019 and the project is currently at the design and development stages. DfC informed the complainant that the planned timeframe for completion is November 2021, and that reporting and query mechanisms will be included in the design stage. DfC added that the information requested will therefore be available in the future.
44. The Commissioner considers that this was an appropriate response in the circumstances of this case, and that there is no feasible way in which the request can be meaningfully reformed. She accepts DfC's explanation and its assurance that the information will in the future, be available. The Commissioner is satisfied that DfC met its obligation under section 16 of the FOIA.

## **Procedural matters**

### **Section 10 – time for compliance**

45. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
46. Section 10(1) of the FOIA states that 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.

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<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>



47. In this case, the complainant submitted his request to DfC on 22 June 2020. DfC acknowledged the request on the same day but did not provide its response until 18 September 2020. DfC therefore did not meet the requirements of section 10(1) of the FOIA as it responded to the request outside the 20 working days.
48. The Commissioner notes from the internal review response, that DfC acknowledged the fact that it had responded to the request under normal correspondence on 18 September 2020. DfC apologised to the complainant for the way his request was handled and the extreme delay in providing some of the information requested. DfC stated that there were mitigating factors including vastly reduced staffing levels and remote working due the Covid-19 pandemic. It said that as the request was for recorded information held by DfC, the request should have been handled under the requirement of the FOIA rather than normal correspondence. DfC concluded its response by assuring that *"lessons have been learned and the business area will act on these to improve processes in the future."*
49. From the evidence provided, it is clear that DfC did not initially deal with the information request in accordance with the FOIA. The Commissioner finds that DfC had breached sections 1(1)(a) and 10(1) of the FOIA by failing to respond to the request within the 20 working day time for compliance.

## Right of appeal

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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@justice.gov.uk](mailto:grc@justice.gov.uk).

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

**Phillip Angell**  
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