

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2022

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested any reports sent to a specified director general on the topic of mail handling delays.
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 comply with the request.
3. However, the Commissioner considers that DWP has failed to provide adequate advice and assistance in accordance with section 16.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with further advice and assistance.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

6. On 13 August 2021, the complainant wrote to DWP and requested information in the following terms:

"Please deal with this as a request for information under the Freedom of Information Act. For each of the last 12 months, please provide me with figures showing the average time taken between PIP forms and evidence being posted to DWP and those documents being scanned onto the DWP IT system,

Please also provide, for each of the last 12 months, figures showing the average time taken between PIP forms and evidence being received by your mail handling agents and those documents being scanned onto the DWP IT system.

Please also provide any reports written in the last six months and received at director-general level about mail handling delays."

7. DWP provided its response on 8 September 2021. With regards to the last request, DWP confirmed that it estimated that the cost of complying with the request would exceed the appropriate limit of £600, or 24 hours, and it was therefore relying on section 12 to refuse to comply with that aspect of the request.
8. DWP advised the complainant to consider a shorter time frame and refine the request to a more specific subject matter.
9. On 10 September 2021, the complainant submitted a refined request in the following terms:

"With reference to your response to FOI2021/66238

You asked me to narrow down my request.

I would therefore be grateful if you could provide any reports received in July and August by the Director General, Work and Health Services, on the subject of mail handling delays."

10. DWP provided its response on 6 October 2021. It confirmed that it had undertaken some searches of the named Director General's inbox and had not located information falling within the scope of the request. However, DWP confirmed that in order to determine whether or not the Director General had received a report on mail handling delays within the specific time period, it would need to read each email and

attachment received to confirm if the contents fell within the scope of the request.

11. DWP confirmed that as the named Director General receives a large number of emails a day, it estimated that the cost of complying with the request would exceed the appropriate limit of £600, or 24 hours.
12. DWP provided advice to further refine the request and advised the complainant to consider a shorter time frame.
13. The complainant requested an internal review of the handling of their request for information on 7 October 2021. They disputed that it would exceed the appropriate limit to review the emails with attachments found in the Director General's inbox.
14. DWP provided the outcome of its internal review on 2 November 2021 and upheld its original response.
15. DWP confirmed that the Director General for Work and Health Services received approximately 150-200 emails per day. It set out that during July and August, there were 44 working days and using a conservative estimate of 150 emails per day, this would mean that at least 6,600 emails were received over this timeframe.
16. DWP explained that allowing 20 seconds per email, it would take 36 hours to identify if any information relevant to the request was held.

Scope of the case

17. The complainant contacted the Commissioner on 5 November 2021 to complain about the way their request for information had been handled. Specifically, they disputed that DWP was entitled to rely on section 12 to refuse to comply with the request.
18. The Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on section 12(1) or 12(2) to refuse to comply with this request. He will also go on to consider whether DWP provided adequate advice and assistance in accordance with section 16.

Reasons for decision

Section 12: Cost of compliance

19. Section 1(1) of FOIA states:

"Any person making a request for information to a public authority is entitled to –

- (a) to be informed in writing by the public authority whether it holds the information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him"

20. Section 12 states:

"(1) 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.

(2) Subsection (1) does not exempt the 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"

21. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments.

22. 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 effectively imposes a time limit of 24 hours for the public authority.

23. 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 in complying with the request:

- 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.

24. DWP confirmed to the Commissioner that it considered that it had "complied with" section 12(1) of FOIA as it had confirmed to the complainant that the initial searches it had undertaken had not located any information falling within the scope of the request.

25. The Commissioner has reviewed this case and he considers that DWP has misunderstood the purpose of sections 12(1) and 12(2). Section 12(1) can be relied on, rather than complied with, where a public

authority knows that it holds the requested information but collating this information would exceed the appropriate limit. Section 12(2) can be relied on where a public authority estimates that just determining whether or not the information is held would exceed the appropriate limit. Therefore it is not required to confirm or deny whether the information is held.

26. Whilst DWP has confirmed that it did not locate any information in its initial searches, its refusal notice also confirmed that it could not state with certainty that no information is held as it would need to review each email received.
27. The appropriate subsection is therefore section 12(2) as DWP is unable to confirm whether or not a report was received without reviewing every email received by the Director General.
28. The Commissioner will therefore consider whether DWP is entitled to rely on section 12(2) to refuse to comply with the request.
29. As set out above, DWP explained that the Director General receives approximately 150-200 emails per day and this means that there would be at least 6,600 emails falling within the time period set out in the request.
30. DWP confirmed to the Commissioner that the figures provided were based on a sampling exercise in which the number of emails received over five days was used to calculate an average. DWP confirmed that the figure of 20 seconds per email was based on an average as some emails could be read quickly but others would have required much longer to read through the contents of a potential email chains and possible attachments.
31. DWP explained that the Work and Health Services Directorate is responsible for the day to day running and operational delivery of Universal Credit, Disability Services and Working Age Operations via Jobcentres and Service Centres across Great Britain and Northern Ireland.
32. DWP explained that it would need to review all emails, and not just those with attachments, as emails may also include a link to a shared folder where the document is stored. In addition, a message may be included in the body of the email without any attachment or link, such as a Business Continuity Alert.
33. DWP explained that the initial keyword search gave an indication on how long it would take to identify this information. DWP also considered that as the request was not for a specific report, a broad search would be required.

34. The complainant set out to the Commissioner that they considered that DWP would not need to review all emails as the Director General responsible for mail handling would be aware of issues brought to them.
35. DWP confirmed to the Commissioner that the named Director General is not responsible for mail handling and the Senior Responsible Officer in DWP for the Mail Handling Unit is the Director for Service Planning and Delivery.
36. The Commissioner asked DWP if there were alternative methods of determining whether information was held, for example, are issues of concern recorded separately to emails?
37. DWP confirmed that incidents that may have an impact on the delivery of services to customers are communicated across DWP as Business Community Alerts, which are sent by email to any colleague nominated to receive them.
38. The Commissioner is satisfied that DWP would need to review individual emails to determine whether the contents include a report on mail handling times. He is also satisfied that DWP's estimate of 20 seconds per email is a reasonable one. As DWP has confirmed that it would need to review at least 6,600 emails, he is satisfied that this could not be achieved within the appropriate limit of 24 hours or 1440 minutes.
39. The Commissioner therefore finds that DWP is entitled to rely on section 12(2) to refuse to comply with this request.

Section 16: Advice and assistance

40. Section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.
41. DWP explained that, on reviewing the request again, it considers that it is a broad ranging request, that is not specific, and that reports could be considered as anything that was issued to the Director General in a variety of formats such as Teams messages, email, paper copies etc.
42. DWP set out that in its initial response, it advised the complainant to narrow the timeframe to possibly fit within the costing limits. However, it acknowledged that it could have provided more specific advice to indicate what time period they were interested or to ask the complainant for the name of a specific document or report if known to them. DWP explained that this additional information may then have enabled DWP to provide the information requested.

43. DWP explained that the most senior manager responsible for issues with mail handling would depend on the scale of the issue and the impact on DWP services. DWP explained that any impact on specific product lines, such as the impact on processing a particular benefit, would be reported to the Director General responsible for that product, and potentially the Permanent Secretary and Ministers depending on the scale of the issue.
44. DWP explained that the request specifically asked for information held by the Director General for Work and Health services, therefore it did not approach other parts of DWP when preparing its response. DWP explained that should there have been any issues with the Mail Handling process at that time, or any other occasions, then this would have been reported to the Leader(s) responsible for managing the contract.
45. DWP acknowledged that its response and internal review could have been more helpful in clarifying to the requester that the Director General for Work and Health Services is not the senior leader responsible for Mail Handling.
46. In light of DWP's acknowledgement that further advice and assistance could have been provided to the complainant, the Commissioner requires DWP to contact the complainant and provide the advice and assistance set out above.

Right of appeal

47. 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

48. 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.
49. 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
Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
SK9 5AF