

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2023

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested information from the Department for Work and Pensions (“the public authority”). The Commissioner’s decision is that the public authority was entitled to refuse to comply with the request in accordance with section 12(1) (cost limit) of FOIA. The Commissioner also finds that the public authority did not comply with its obligations under section 16 of FOIA to offer advice and assistance.
2. The Commissioner requires the public authority to take the following steps:
 - Provide advice and assistance to the complainant to assist in submitting a request falling within the appropriate limit.
3. 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

4. On 18 March 2022, the complainant made the following request for information to the public authority:

“Thanks for your email. I will ask you one more time to look at this, because your answer does not take into account the point I raised. I have asked you to look at the mailboxes of the small number of staff who send the emails, not the inboxes of those who received them. I am sure that there are only a small number of staff who compile and send these summaries, and I would ask you only to search for these briefings from them. Feel free to look only at morning media summaries, but please look at the timeframe I have requested, looking at emails sent and not received.

[Timeframe to be considered is for the last three months of 2021]”

5. The public authority refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.

Reasons for decision

Section 12 – cost of compliance

6. This reasoning covers whether the public authority is correct to apply section 12(1) (cost limit) of FOIA to the request.¹ The appropriate limit² for the public authority in this case is £600.
7. The public authority considers that the cost of complying with this request would exceed the appropriate limit under FOIA. It has explained that due to the large volume of emails that its Press Office sends out each week, identifying and compiling the relevant information within the scope of the request could not be achieved within the cost limit.
8. The public authority explained that its Press Officers send out over 300 emails per week and estimated that, in order to identify the relevant information, it would take 15 Press Officers 2 hours each to search their sent items and locate the requested information. In order to carry out

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

² <https://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made>

the search of sent items, the Press Officers would use the search term "monitoring" which would highlight a number of different emails. Although this search term should bring up the relevant information, it may also return some information outside the scope of the request. Individuals would need to further sift through these emails to identify the requested morning briefings. Therefore, the public authority estimates that the combined time required for retrieving and extracting three months' worth of information would take at least 30 staff hours. The public authority considers that the hourly rate in its calculations is £22.34. This work, in itself, already breaches the cost limit, costing £670.20.

9. The public authority explained that the next step would be to access its Cloud server to retrieve, extract and compile all relevant press cuttings that are sent out with the requested media briefing emails. It explained that a search would require input of precise date, times and titles of the press cuttings. One Press Officer would need to spend 2 hours per requested month. The public authority estimates that this step would take 6 staff hours for the three months of information requested at a cost of £134.04. Both retrieved sent items and press cuttings from the Cloud server would then need to be compiled into one document and cross-referenced. This final step is also estimated to take 2 hours per requested month, totalling 6 staff hours for the requested three months. Once again, the cost equals £134.04.
10. The public authority added that Press Officers routinely delete emails in order to free up space so it would likely also be necessary to consult with the IT section to recover deleted items that would fall within the scope of the request. It estimated that, if needed, this would take about 2 hours per Press Officer to contact the IT section but it highlighted the it had not included this task in its estimate.
11. In summary, the public authority estimates that the total hours needed to retrieve and extract the information in scope of the request would be 42 hours (£938.28). The public authority checked that its estimates were reasonable by carrying out a sampling exercise with two of its Press Officers.
12. The Commissioner is satisfied that the public authority's arguments above are justified, because it has explained that, due to the large volume of emails its Press Office sends, the cost limit would be reached in the first step of locating the requested information. Therefore, the reasonably estimated cost for obtaining the requested information is clearly in excess of the cost limit.
13. The Commissioner's decision is that the public authority was correct to apply section 12(1) of FOIA to the request.

Section 16(1) – The duty to provide advice and assistance

14. Section 16(1) of 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 practice³ in providing advice and assistance, it will have complied with section 16(1).
15. The Commissioner notes that the request in this case is a refined version of a previous request and that, even with a reduced scope, the public authority advised the complainant that due to the request being so broad and covering a large time period, it was not able to provide adequate advice on how the complainant could narrow their request to a point where they might reasonably be expected to receive a response.
16. In its submission to the Commissioner, the public authority considered that it could have provided clearer advice and assistance in its responses. The Commissioner is therefore satisfied that the public authority did not meet its obligations under section 16 of FOIA. The public authority must now provide appropriate advice and assistance to the complainant.

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

17. 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

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

18. 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.
19. 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

Michael Lea
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