

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 October 2023

Public Authority: Department for Work and Pensions

Address: 4th Floor
Caxton House
Tothill Street
London SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested information from the Department for Work and Pensions ("DWP") relating to court complaints against DWP under the Equality Act 2010 and information relating to equality training for named DWP employees.
2. DWP relied on section 12 (cost limit) of FOIA to refuse the request.
3. DWP also cited section 40(2) to withhold some information.
4. The Commissioner's decision is that DWP was entitled to refuse to comply with the request in accordance with section 12(1).
5. The Commissioner finds that DWP has complied with its obligations under section 16 of FOIA to offer advice and assistance.
6. The Commissioner considers that DWP has breached section 10(1) of FOIA as it did not confirm that it held information within the statutory time limit. It has also breached section 17(5) of FOIA as it did not provide the complainant with its refusal notice within the statutory time limit.
7. The Commissioner does not require any steps to be taken by DWP.

Request and response

8. On 3 November 2022, the complainant made the following request for information:

"In the case of Anne Giwa-Amu V DWP, A Judge ruled that Giwa Amu was a victim of direct Race and Age discrimination, Racial Harassment, and victimisation. Following that case, the DWP signs legally binding agreement to improve equality and diversity in workplace.

1. How many other court complaints been presented against the DWP under Sections 13, 19 and 27 of the Equality Act 2010 in the last 5 years? If any, please state the reference numbers of the cases.

2. Does the DWP provide equality training to work coaches? If so, please confirm how often.

3. Please confirm when the last time was my work coaches XXX, XXX, XXX, and XXX received their equality training.

I would appreciate it if the DWP could respond within 7 days from the date of this letter."

9. On 8 November 2022, DWP responded and advised the complainant to make an FOI request via a specific FOI email address.
10. On 19 December 2022, the complainant sent a chasing email to DWP, to the original email address used, not the specific FOI address provided.
11. On 10 January 2023, DWP responded advising the complainant again to make an FOI request to the specific FOI email address.
12. On 12 January 2023, the complainant sent another chaser to the original email address used and copied in the FOI email address.
13. On 17 April 2023, the complainant sent another chaser to both email addresses.
14. On 5 June 2023, DWP refused part of the request on the basis of the cost exemption in section 12 of FOIA and also cited section 40(2) (personal data) to withhold some of the information.
15. On 30 June 2023, DWP upheld this decision on internal review.

Scope of the case

10. The complainant contacted the Commissioner on 12 July 2023 to complain about the way their request for information had been handled.

11. The Commissioner wrote to DWP for its submissions in respect of this case and, in its response, DWP maintained its position as regards section 12 and section 40(2) of FOIA.
12. Therefore, the Commissioner considers the scope of this case to be to determine if DWP has correctly cited section 12(1) and section 40(2) of FOIA. The Commissioner has also considered whether DWP met its obligations to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

13. 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”).
14. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. DWP relied on section 12(1) in this case.
15. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for DWP is £600.
16. 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(1) effectively imposes a time limit of 24 hours for DWP.
17. 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.

18. 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*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". 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.
19. 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. It is worth noting that if one part of a request triggers the section 12 exemption, then that will apply to the entirety of the request and there is no requirement for the Commissioner to consider any other exemptions cited by the public authority.
20. Where a public authority claims that section 12 of 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 FOIA.

Would the cost of compliance exceed the appropriate limit?

21. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner expects DWP to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
22. In its submission to the Commissioner, DWP explained that the only way to search for court proceedings involving sections 13, 19 and 27 of the Equality Act 2010 would be by manually searching each case for the requested time period of five years to determine whether the relevant sections of the Equality Act 2010 have been raised in the pleadings.
23. DWP confirmed that it had undertaken a sampling exercise based on one case which involved looking through the case files to check whether the court complaint against the DWP related to sections 13, 19 or 27 of the Equality Act 2010. DWP advised that case files regularly contain over 400 pages.
24. DWP reported that the time taken to review one court case to find references to the relevant sections of the Equality Act 2010 was 10.5 hours which, based on 10.5 hours x £25 per hour, equates to £262.50.

25. DWP advised the Commissioner that during the five year period requested, there had been 30 court cases against DWP and therefore, based on the sampling exercise carried out, DWP estimated that it would take 10.5 hours x 30 cases = 315 hours (315 hours x £25 = £7,875) to review all 30 cases to find information potentially in scope of the request.
26. The Commissioner considers that, even if the estimate provided by DWP were cut by half, the work involved in identifying information in scope of the request would still exceed the 24-hour limit.
27. It is the Commissioner's view that DWP estimated reasonably that it would take more than the 24 hours / £600 limit to provide the information requested. DWP was therefore correct to apply section 12(1) of FOIA to the complainant's request.

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

28. 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 practice¹ in providing advice and assistance, it will have complied with section 16(1).
29. The Commissioner notes that in its initial response to the complainant on 5 June 2023, DWP advised the complainant as follows:

“The information relevant to Question 1 is not held centrally and would require high levels of manual handling to enable a response to be provided. We are not able to provide advice on how you can narrow your request to a point where you might reasonably be expected to receive a response.

You may wish to narrow your request to question 2 as we hold the information you are seeking for this part of the request.”
30. The Commissioner is satisfied that DWP has met its obligations under section 16 of FOIA as it signposted how to narrow the request to potentially bring it under the cost limit.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Section 40(2) – personal information

31. As question 1 of the request triggered the section 12 exemption and section 12 therefore applies to the entirety of the request, there is no requirement for the Commissioner to consider the section 40(2) exemption cited by DWP.

Procedural matters

32. The Commissioner considers that DWP has breached section 10(1) of FOIA as it did not confirm that it held information within the statutory time limit. It has also breached section 17(5) of FOIA as it did not provide the complainant with its refusal notice within the statutory time limit.
33. The Commissioner also reminds DWP that a public authority may not specify the means by which somebody may make a request. Any request for information sent to a public authority address is valid under FOIA. DWP did not act in accordance with FOIA by asking the complainant to make their request via a specified email or postal address.

Right of appeal

34. 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

35. 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.
36. 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

Micheal Lea
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