

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2015

Public Authority: Department for Work and Pensions (DWP)

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information about the number of civil servants involved in the rollout of Universal Jobmatch (UJM) who received a box 1 review marking and the associated costs. DWP has refused the request citing FOIA section 12 – costs exceed the appropriate limit.
2. The Commissioner's decision is that DWP is entitled to rely on section 12 to refuse the request. However, DWP failed to discharge its duty under section 16 of the FOIA.
3. The Commissioner does not require the public authority to take any action.

Request and response

4. On 10 October 2014, the complainant wrote to DWP and requested information in the following terms:

"How many civil servants involved in the roll-out of Universal Jobmatch received a box one marking after the relevant end-year review. And subsequently what was the total cost for rewarding those civil servants with a box one marking."
5. On 7 November 2014 DWP responded.

6. DWP refused to provide the requested information. It cited the following exemption as its basis for doing so: section 12 – cost of compliance exceeds the appropriate limit.
7. The complainant requested an internal review on 8 November 2014. DWP sent the outcome of its internal review on 25 November 2014. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 29 November 2014 to complain about the way his request for information had been handled. Specifically the complainant's concern surrounded the usability of the Jobmatch website and he accordingly felt that no civil servant involved in the rollout deserved a box 1 marking.
9. The Commissioner considers the scope of the investigation is to determine whether DWP was correct to rely on section 12 to refuse the request and whether it adequately discharged its obligation under section 16.
10. The Commissioner accepts DWP's position that the relevant year end for performance reporting purposes relating to the roll-out of UJM is March 2013.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

11. Section 12(1) of FOIA states that:

"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".

12. In other words, section 12 of FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
13. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government departments and £450 for all other public authorities. 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 in this case.

14. 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:
 - determining whether it holds the information;
 - 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.
15. The four activities are sequential, covering the retrieval process of the information.

Would Compliance exceed the appropriate limit?

16. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. In the Commissioner's view, an estimate for the purposes of section 12 has to be 'reasonable': he expects it to be sensible, realistic and supported by cogent evidence.
17. In its submission to the Commissioner, DWP stated that the information requested is not collated. This was established as part of the research into the initial request and subsequent internal review.
18. DWP clarified its performance appraisal process and advised that as of the end of March 2013, of its 92,587 employees at DWP, 19,159 (20.69%) across all generalist grades had been awarded a box 1 (exceeded) marking. All employee performance ratings are held against individual employees personal records in the Resource Management (RM) system.
19. It explained that the RM system is configured to report on a 'point in time' basis and a report run on 31 March 2013 would identify staff in that cost centre on that day. It would not produce information for staff in that cost centre on 30 March 2013, let alone for the entire period covered by the request.
20. DWP has neither current nor historical reporting tools to extract information relating to any individual employee's performance rating. Management Information (MI) reports were only intended to track 'in year' the volume of the different performance ratings input on to the RM system against the cost centre and pay band/grade.

21. In order to respond to the request, DWP would need to know the individual names of all the employees in Universal Job Match at the end of March 2013. As DWP is not required to keep separate paper or electronic records of named individuals by cost centre for specific performance periods, it is not possible to retrieve the individual names.
22. DWP has asserted that the process of manually checking individual employee records would involve each line manager. It set out the process involved. Each line manager would have to access the RM system to view employee information (2 minutes). They would then need to access the record of each of their direct reports to determine if the 'assignment' for the relevant period was recorded as UJM (20 seconds per employee). If the assignment is recorded as UJM then the line manager will then have to look at the overall box marking in a different screen (15 secs per employee).
23. Because of the way the RM system is configured (ie to a point in time basis as set out in paragraph 19) it is not possible to narrow the search process by additional criteria (eg cost centre) other than to identify staff in a particular cost centre on the day of the search. There is therefore no option to narrow any search of this system. DWP notes also that line managers have no access to the records of employees who have left DWP.
24. The estimates provided to the Commissioner suggest that the exercise set out above would take 2.5 minutes per employee which would equate to 231,467 minutes for the 92,587 members of staff equating to 3,857.79 hours in total which would mean a cost of £96,444.
25. The Commissioner notes that not every employee will have UJM recorded as the 'assignment' and therefore the third step of checking the box marking will not be applicable in every case. However, he notes that the estimated time for this part of the exercise is 15 seconds per employee and therefore even removing the time taken to complete this step from every case would still leave a total figure of 3472 hours at a cost of £86,800.
26. DWP has gone on to state that it considers the request to be a request for non-standard data. It asserts that in these circumstances, to extract the data electronically would require a bespoke data sweep which would need to capture all current employees and those who had left since March 2013. This would significantly expand the volume of records to be searched given that DWP has held a number of large scale exit schemes since 2013. Based on previous quotes for reports for data, DWP believes the cost would be in the region of £2000.

27. It is the Commissioner's view that the estimates which DWP has provided to him are reasonable and are supported by realistic and cogent evidence.
28. The Commissioner finds that DWP was entitled to rely on section 12(1) FOIA to refuse the request.

Section 16 – Duty to provide advice and assistance

29. Section 16 states:

- (1) *"It shall be the duty of a 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.*
- (2) *Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."*

30. The Commissioner notes that the DWP initial response and internal review response did not address the duty placed on a public authority under section 16.
31. In its submission to the Commissioner, DWP has asserted that the complainant had already applied a limiting factor in specifying that his request related only to employees in UJM as at March 2013 and that it could not advise how the request could be limited further.
32. Whilst the Commissioner accepts that DWP may not be able to suggest how the request could have been further refined, he notes that DWP did not attempt to engage with the complainant to identify any possible alternative options he may have wished to consider. For example, restricting the search to the most senior staff may have been something the complainant would have considered and although the same process may have been necessary, the refined search may or may not have exceeded the costs limit.
33. The Commissioner accepts that whilst refinements to a request may not always appear possible to a public authority, this does not remove its general obligation under section 16 to provide advice and assistance to a complainant. The Commissioner therefore considers that DWP has breached section 16 of the Act in this case.

Other matters

34. The Commissioner notes that neither the initial response nor the internal review provided by DWP sets out any estimate to support its reliance on section 12.
35. The provision of a reasonable estimate supported by cogent evidence allows a complainant the opportunity to make an informed decision in terms of whether to pursue their request/complaint further. Despite refusing the request, this degree of transparency on the part of a public authority can mean potentially avoiding a request for internal review and/or complaint to the Commissioner. Provision of such an estimate also provides a starting point for advice and assistance, and therefore any discussion about possibly refining the request.

Right of appeal

36. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

37. 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.
38. 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

Alexander Ganotis
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