

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 October 2017

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### Decision (including any steps ordered)

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1. The complainant has requested information from the Department for Work and Pensions (DWP) about organisations participating in a specific work placement scheme, and more generally any organisation participating in a “work for your benefit” placement. The DWP has refused to comply with the request, relying on section 12 – cost of compliance exceeds the appropriate limit.
2. The Commissioner’s decision is that DWP is entitled to rely on section 12 in this case. However, she does not consider that DWP has provided the complainant with any advice or assistance which may have assisted in refining the request and she therefore considers that DWP has breached section 16.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - provide advice and assistance to enable the complainant to submit a refined request within the cost limit.
4. 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 the Act and may be dealt with as a contempt of court.

#### Request and response

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5. On 1 August 2016, the complainant wrote to DWP and requested information in the following terms:

*"Please can you send me the most up to date list of all companies who are participating in the MWA [Mandatory Work Activity] scheme, together with any other "work for your benefit" schemes (colloquially known as workfare) and work programme schemes, in light of the court of appeals ruling in July 2016"*

6. DWP responded on 22 August 2016 refusing the request in accordance with section 12.
7. Following an internal review on 20 September 2016, DWP upheld its original position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 4 October 2016 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of the investigation is to determine whether DWP was entitled to rely on section 12 in this case.

### **Background**

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10. In October 2012, the Information Commissioner issued decision notices under the following references, FS50438502, FS50441818 and FS50438037. These notices ordered disclosure of information in respect of three requests for information made to DWP.
11. The requests were for details of organisations which provided work placements under DWP schemes. The requests either related to specific areas, specific providers, specific schemes or a combination of these. In each of the cases, DWP relied on section 43 (commercial interests) and section 36 (effective conduct of public affairs) to refuse the request. The Commissioner's decision was appealed in each case and all three cases progressed through the appeals process to the Court of Appeal. The Commissioner's decisions were upheld and disclosure of the requested information ordered in each case.
12. Whilst the Commissioner considers that reference to these cases is relevant in terms of background to the wording of the current request, she does not consider that her decision in this case requires direct reference to the 2012 cases or the subsequent appeals as those

requests were for different information and the issue under consideration was not the application of section 12. The Commissioner has not therefore included copies of the relevant decisions or subsequent appeals.

13. DWP initially set out that there are three schemes relevant to this request; Mandatory Work Activity (MWA); Community Work Placement (CWP) and the Work Programme (WP) with MWA accounting for 11 contracts to provide work placements with a variety of organisations in a variety of areas, CWP accounting for 18 contracts and WP accounting for 39 contracts.
14. In terms of background, it is worth noting here that DWP has asserted that it does not recognise the term 'workfare' but that in relation to this request it is clear that the request is in relation to placement hosts and it is on that basis that it has responded to the request.

## Reasons for decision

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### Section 12 – cost of compliance exceeds the appropriate limit

15. Section 12 (1) 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".*

16. In other words, section 12 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.
17. 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 or £600 in this case.
18. 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.
19. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
  20. 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': she expects it to be sensible, realistic and supported by cogent evidence.
  21. In its initial response to the complainant, DWP set out that because the request was for the names of placement hosts on all schemes, with no time limit, it would not be able to comply with the request within the cost limit. The Commissioner initially considered that the interpretation of the request was too broad as the timeframe was clearly 'at the time of the request' and accordingly she would need further detail from DWP.
  22. This initial submission also provided some detail in relation to the cost of complying with the request but that detail, coupled with the wide interpretation of the request, was not sufficient to allow the Commissioner to reach a decision.
  23. The Commissioner set out to DWP that her interpretation of the request was that the requested information was a list of companies involved in each scheme at the date of the request i.e. 1 August 2016; she noted that it appeared to be DWP's position that the request was for all providers involved in the schemes since their inception.
  24. The Commissioner further set out to DWP, her observation that as a result of a different request made on the same date as this request, it had released a list of work placement hosts involved in one scheme for a period of six months prior to the date of that request. DWP was asked whether the response to that request would in fact fulfil the request made by the complainant in this case.
  25. In its response, DWP explained that of the three programmes captured by the request; MWA, CWP and WP, one of the programmes, MWA had ended on 31 March 2016, by which time all placements had ended and in line with the date of the request, this removed that particular scheme from the scope of the request.
  26. In relation to the request made on the same day, it is DWP's position that the request was narrower than the complainant's insofar as it sought details of employment hosts only for CWP for the six months prior to the date of the request which was 1 August 2016. DWP has confirmed that the response captured all organisations within all regions

for CWP only. DWP has set out that it was able to comply with this request within the costs limit because it was limited to one scheme and was for a specific time period. With regard to the interpretation of the request under consideration in this notice, the lack of a time frame in the request is crucial to the interpretation. Without any time parameters other than the date of the request, DWP would have to search all claimant records in order to locate information about which organisations were providing work placements. The Commissioner has expanded upon this issue at paragraph 40.

27. The Commissioner now accepts that all parties have interpreted the request in the same way but that this only became clear when DWP set out the need to review all claimant records in order to fulfil the request.
28. The Commissioner notes that DWP was able to comply with a request for one provider for a period of six months within the costs limit and she has gone on to consider whether this is relevant to the request detailed in this notice. She considers it to be relevant in terms of assessing the costs and in terms of disclosing information.
29. Having asked DWP to provide her with details of the costs of complying with the request for six months in relation to one scheme, DWP has detailed that the cost of compliance was in fact £650.
30. In determining the costs in relation to the complainant's request, DWP has set out that it wrote to its two providers, who are contracted under both the CWP and WP schemes.
31. Both providers have set out to DWP that data is held in a central system with one contractor explaining that host information held all relates to specific contracts, contract package areas, sub-contractors and individual customers through the software. DWP does not specify how a provider must hold and organise the relevant information.
32. DWP has set out that for the WP scheme, there are 39 separate contracts and that a performance manager would have to contact each contractor in relation to every different contract it holds. The process would therefore be that DWP contacts the provider of the scheme who in turn would amend the email as required and forward to the 'prime provider's' organisation for each of the contacts held. This is the quickest method as the performance managers work regularly with the providers and have the most up to date list of contacts ensuring therefore that the email is directed appropriately within the provider organisation.
33. Although there are 39 contracts in relation to WP, there are only 16 different contractors. However, it is DWP's submission that it is

necessary to contact the relevant contract management team for each separate contract and that this can take between 15 and 30 minutes. For the purposes of the costs analysis, DWP has relied on the minimum time and estimated that contacting each contract team would therefore take a total of 9 hours and 45 minutes at a cost of £243.75 (ie 15 minutes x 39).

34. The Commissioner has considered whether DWP could reduce this time by opting to contact only the 16 contractors. Whilst she recognises that this would reduce the time from 9 hours and 45 minutes to only 4 hours, she also acknowledges that the contacting of each contract management team would be necessary at some point and therefore the costs are necessarily incurred irrespective of what stage in the process they are incurred.
35. DWP has gone on to set out that both of the providers explained that in order to provide the information to DWP they would need to extract data from their referral systems.
36. The Commissioner has focused on the determining whether the appropriate cost limit would be met in relation simply to the WP scheme as it has the greatest number of contracts.
37. The provider response set out that it would be necessary to write and run reports to extract the relevant data. It has explained that some data in the reports is entered on to the system via free text and there can therefore be many duplicate names and addresses with some being spelt slightly differently for the same host. This therefore means that a line by line check for duplicates is necessary. DWP has been advised by the providers that these activities, including the writing and running of the reports, could take in total anything between 1 hour and 10 minutes and 10 hours depending on the nature and size of a request. The calculations provided to the Commissioner, although not specific to this request, have relied on the minimum time of 1 hour and 10 minutes. Given that the WP scheme has 39 contracts, the necessary time to undertake this activity would be 45 hours and 30 minutes which equates to a cost of £1137.50. Added to the figure of £243.75, the cost in terms of information relating to this scheme alone are £1381.25 which significantly exceeds the appropriate limit.
38. In considering whether this estimate is reasonable, DWP has been asked to explain the need for consideration of free text entries; it has explained that each claimant is referred to a generic 'placement opportunity' with the specific placement host being detailed in free text and therefore, to provide details of placement hosts for any specific time frame requires a search of all free text entries.



39. DWP has asserted that placements are bespoke and that upon referral from a Jobcentre plus, a benefit claimant must be provided with a meeting within 5 days. This meeting allows for a discussion in relation to employment goals, experience and any necessary restrictions or adjustments. It is on the basis of that meeting that a provider must then source a placement for the claimant.
40. DWP has also explained that as the request is for organisations participating in the scheme on a specific date, it would be necessary to check all claimant records held. It has gone on to explain that there is no minimum or maximum duration of a placement and therefore, in terms of this request, there are no time parameters which could be applied to the request to locate the requested information. In other words, DWP's position is that someone could have been placed with a specific organisation on 31 July 2016 and the organisation will fall within the scope of the request whilst another individual may have been placed with an organisation on 31 December 2015 and may still be on that placement at the time of the request and therefore the organisation will fall within the scope of the request. In these circumstances, the Commissioner accepts that DWP's initial interpretation of the request was correct.
41. Whilst the Commissioner considers that the further back in time the placement was undertaken, the less likely it is that the placement would still have been ongoing at the time of the request but she accepts that without a start and end date to the request, DWP cannot impose a random date.
42. It is DWP's position that the bespoke nature of referrals to these schemes means that providers do not select placement hosts from an existing list and accordingly that individual records need to be checked to identify placement hosts. It has confirmed that providers are required to make available information required by specific FOIA requests but the contract arrangements do not require those providers to send on-going returns to DWP in relation to placement hosts.
43. In its submission, DWP has also asserted that a check of all addresses is required because it allows for the provision of accurate information. It has also explained that it is necessary to check free text entries to be sure that a claimant has been referred for work placement and not for an employment opportunity as the information is recorded on the same system.
44. The Commissioner accepts the rationale behind the search in relation to whether the organisation is involved in a placement or an employment opportunity, as this relates to information falling within the scope of the request. She has then gone on to consider the position in relation to the

search of free text for addresses in order to provide accurate information. It is the Commissioner's position that any request under FOIA is for recorded information and that accuracy of information should not normally be factored into costs in relation to section 12.

45. However, in this case the Commissioner has considered DWP's example of the potential incorrect recording of a charity organisation's address which, had the organisation's address been recorded correctly would in fact identify a different charitable organisation under the same general organisation heading. In these circumstances, the Commissioner considers that checking the addresses recorded in free text actually relates to the scope of the request and would be necessary in order to identify the requested information. If the free text were not checked, the requested information could potentially include information which was not within the scope of the request or conversely may not capture all of the requested information.
46. Furthermore, the Commissioner considers that as the free text entries have to be checked to identify a placement opportunity as opposed to an employment opportunity, and that addresses have to be checked for duplicates, as set out in paragraph 36, this activity, although referred to as ensuring accuracy of information, is actually a similar activity to checking for duplicates and is encompassed within the costs of the overall activity. Whilst the Commissioner considers that DWP could have referenced this activity more clearly and appropriately within the permitted activities, she considers that in isolation, cross referencing the address information in the free text does not represent additional cost but that it is a permitted activity.
47. The submission from DWP clarifies that its estimate is based on the quickest methods possible of undertaking the four permitted activities. DWP has acknowledged that it does not know exactly how each provider extracts and collates the DWP's data; their estimates are based on responses received from its sampling exercise of two providers. In addition to the time/costs detailed, DWP has set out that it would be required to collate the information from the scheme providers and to copy and paste the data from the WP and CWP providers into excel which would add to the costs.
48. Having considered DWP's submissions the Commissioner is satisfied that it would exceed the cost limit to fulfil the part of the request covering the WP scheme. She has reached this finding because she accepts that DWP has provided a reasonable estimate, supported by a detailed description of the process needed in compiling this information, which clearly demonstrates that the cost of compliance exceeds £650. The Commissioner considers that the credibility of the DWP's estimate is



supported by the fact that it was based on a sampling exercise. As the cost of complying simply with the WP scheme part of the request is greater than £650 it follows that the DWP can refuse the entire request on the basis of section 12 of FOIA.

### **Section 16 – advice and assistance**

49. Section 16(1) places a duty on a public authority to provide advice and assistance, so far as it would be reasonable to do so to those who have made or propose to make a request for information to it.
50. DWP, in its response to the complainant, advised that it would consider a revised request but did not offer any advice as to how the request might be revised in order to try to bring it within the cost limit. It is clear that the request could have been narrowed by the inclusion of a start date to create a narrower time frame and/or could have been narrowed by requesting information on one scheme only or by narrowing the scheme information by geographical area. In these circumstances, the Commissioner considers that DWP has breached section 16 FOIA.

## Right of appeal

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51. 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 7395836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

52. 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.

53. 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** .....

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**