

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 20 July 2021

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested a breakdown of the number of child maintenance cases in which a specific scenario has occurred.
2. The Commissioner's decision is that DWP is entitled to rely on section 12(2) of the Act to refuse to comply with the request.
3. The Commissioner finds, however, that DWP breached section 17(5) of the Act as it failed to provide its section 12 refusal notice within the statutory time frame.
4. The Commissioner does not require DWP to take any steps.

Request and response

5. On 4 February 2020, the complainant wrote to DWP and requested information in the following terms:

"Please could you provide a breakdown of the number of cases where the CMS has identified a diversion of income through the retention of profit in the NRP's¹ company and amended the maintenance accordingly. Please could you provide a breakdown by year. So for example:

¹ Non-resident parent

2012: x cases
2013: x cases
2014: x cases
etc”

6. On 18 February 2020, DWP provided its response. It stated that it does not record or hold any data on the Child Maintenance system in relation to the diversion of income through the retention of profit in the NRP's company.
7. On 18 February 2020, the complainant requested an internal review, stating only:

"I find it incomprehensible that you do not hold the information requested. Please could you review my case and provide the information requested. Please note, if you continue to withhold information against your duties under the FOIA, I will not hesitate to take matters further via the ICO".
8. DWP provided the outcome of its internal review on 19 March 2020. DWP upheld its original position as the request involved a number of specific and bespoke conditions and DWP stated that it is not possible to have a system which can provide data to cover such specific or bespoke areas or scenarios.

Scope of the case

9. The complainant contacted the Commissioner on 17 May 2020 to complain about the way his request for information had been handled.
10. The request is one of a series of requests made by the complainant to DWP about the Child Maintenance service in which, when responding, DWP took the position that it did not hold the requested information, or parts of the requested information.
11. During the course of the investigation, DWP amended its position and provided the complainant with a fresh response on 31 March 2021. DWP relied on section 12(2) of the Act to refuse to confirm or deny whether it held the information as to do so would exceed the appropriate limit. DWP explained that it would need to examine the individual cases in order to determine whether the scenario specified has occurred.
12. DWP acknowledged its obligations under section 16 to provide advice and assistance. DWP explained that as the request is so specific in nature, it could not provide specific advice under section 16.

13. The complainant confirmed to the Commissioner that they dispute DWP's position that it cannot confirm whether it holds the requested information within the appropriate limit. The complainant provided screenshots of the online portal on which parents can update their details. These screenshots include options to declare diversions of income. The complainant considers that DWP could therefore filter the cases that would require review using this information.
14. The Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on section 12(2) to refuse to comply with this request. She will also determine whether DWP has provided adequate advice and assistance in accordance with section 16.

Reasons for decision

Section 12: Cost of compliance exceeds the appropriate limit

15. Section 1(1) of the Act states:

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

- (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".*

16. Section 12(2) of the Act states:

"Subsection (1) does not exempt that public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone will exceed the appropriate limit".

17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004² (the Fees Regulations) at £600 for central governments. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that DWP may refuse to comply

² <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

with a request for information if it estimates that it will take longer than 24 hours to comply.

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;
 - a. determining whether it holds the information;
 - b. locating the information, or a document holding it;
 - c. retrieving the information, or a document holding it; and
 - d. extracting the information or a document holding it.
19. As DWP is relying on section 12(2) of the Act, only the first of these activities is relevant in this case.
20. Section 12 explicitly states that public authorities are only required to estimate whether the cost of complying with a request exceeds the appropriate limit, 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.

DWP's position

21. DWP confirmed that the only way to identify cases which involved the specified scenario would be to examine individual cases. DWP explained that details relating to specific decisions on a case may be recorded on the system in a notes facility, however, this is not a data source from which variables could be extracted.
22. DWP explained that caseworkers record the relevant information for the case in the freetext fields of individual cases. DWP explained that caseworkers only record relevant details, ie type of variation (income/expenses), amounts, frequency. DWP confirmed that the detail recorded is at the caseworker's discretion and could include details falling within the specified scenario in the request.
23. DWP confirmed that variations to maintenance payments are categorised at a high level, relating either to 'income' or 'expenses'.
24. DWP confirmed that it would need to review cases marked as "variation – additional income" to determine whether it holds cases in which the specified scenario occurred. DWP confirmed that it currently has approximately 79,000 cases marked as having an income related variation.

25. DWP confirmed that it is unable to extract information from the freetext notes in the Child Maintenance system. Each freetext field would need to be reviewed to determine its contents.
26. DWP confirmed that it was unable to use the information submitted via the online portal to refine the number of cases that would need to be reviewed.
27. DWP explained that the portal is the method by which parents can update their information themselves, otherwise they would need to call or write to the Child Maintenance Service. DWP confirmed that following receipt of an update to information falling within the specified scenario, a service request for "*Variation – other income*" would be raised for the action required and notes may be put into the freetext fields.
28. DWP confirmed that the portal is not part of the Child Maintenance system. DWP explained that in order to extract information of this nature from the online portal, new programmes and code would need to be written to identify and extract information from the portal and new data sets and reports would then need to be produced.
29. DWP also explained that this information would not identify the cases where the payment amount was amended, as specified in the request, as this information is not held within the online portal. DWP confirmed that the cases on the Child Maintenance system would need to be reviewed to determine whether the payment amount had been amended as a result of the specified income variation. DWP also explained that using a dataset created from the online portal would not identify all cases in which this scenario had occurred as there could be cases where the paying parent did not declare the diversion of income.

The Commissioner's position

30. The Commissioner accepts that DWP is unable to determine whether it holds any cases falling within the very specific scenario set out in the request without individually reviewing each case. The Commissioner acknowledges that the complainant believes that the information is held on the Child Maintenance system and could be found by filtering the cases using the information submitted via the online portal. However, the Commissioner accepts DWP's explanation that it cannot filter cases using this information. She also accepts that as not all information is submitted via the portal and not all paying parents will declare a diversion of income, even if DWP were able to filter cases using this information, this will not cover all cases that may need to be searched to determine whether the information is held.

31. It is at DWP's discretion how it records the information it holds to meet its business and statutory requirements. The Commissioner cannot require DWP to hold child maintenance cases in formats that can be searched by specific scenario.
32. The Commissioner accepts that in order to determine whether DWP holds the requested information, it would be required to review the freetext fields of up to 79,000 cases.
33. As set out above, the appropriate limit for central government departments is 24 hours, or 1440 minutes. The Commissioner accepts that it would not be possible to conduct the required searches within the appropriate limit. DWP is not required to work up to the costs limit and, where the limit applies, is only required to provide an estimate for the purposes of section 12.
34. The Commissioner's decision is that DWP is entitled to rely on section 12(2) of the Act to refuse to comply with the request.

Section 16: Duty to provide advice and assistance

35. Section 16(1) of the Act states:

"It shall be the duty of the 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".

36. The Commissioner has issued guidance on providing advice and assistance when refusing to comply with a request on the basis of section 12³. Paragraph 59 of the guidance states:

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- *either indicate if it is not able to provide any information at all within the appropriate limit;*
- *provide an indication of what information could be provided within the appropriate limit, and*

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

- *provide advice and assistance to enable the requestor to make a refined request”.*
37. DWP explained to the complainant that due to the very specific nature of the request, it was unable to provide adequate advice on how to refine the request.
38. DWP explained to the Commissioner that it could not aid the complainant in refining the request as even reducing the timeframe of the request to one day of incoming information would mean 300 cases would require review and it could not therefore provide advice and assistance to aid the complainant in making a meaningful request.
39. In light of DWP’s explanation that individual case files would need to be scrutinised in order to ascertain the circumstances of each case, the Commissioner accepts that in the specific circumstances of this case, DWP has complied with section 16 by advising that it cannot aid the complainant in refining the request.

Section 17: Refusal notice

40. Section 1(1) of the Act states that:

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

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request; and

(b) if that is the case, to have that information communicated to him”.

41. Section 17(5) states that:

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact”.

42. As DWP confirmed that it was relying on section 12(2) outside of the statutory time for compliance, it has breached section 17(5) of the Act.

Other matters

43. The Commissioner wishes to place on record her understanding of the immense pressure placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities

must make, between prioritising front-line services and continuing to meet their obligations under the Act.

44. However, the Commissioner has concerns regarding the handling of this request. The Commissioner would expect a public authority with DWP's resources and expertise to understand the basic principles of the Act, particularly that information does not have to be held in discrete documents in order to be held for the purposes of the Act.
45. The Commissioner expects DWP to take steps to ensure that it is not disadvantaging requesters by misapplying the procedural sections of the Act. Specifically, DWP should ensure that its staff are familiar with her guidance on "Determining whether information is held"⁴.
46. The Commissioner considers that the DWP FOI team has the experience and knowledge to ensure that requests are handled correctly. Where appropriate, she expects the wider DWP to use this resource, and her published guidance, to improve its request handling in future.

⁴ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

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
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