

## **Freedom of Information Act 2000 (the Act)**

### **Decision notice**

**Date:** 3 August 2021

**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 a breakdown of the number of child maintenance cases in which a specific scenario has occurred and the sanctions that may be implemented.
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 has breached section 17(5) of the Act as it failed to provide its section 12 refusal notice within the statutory timeframe. She also finds that DWP did not provide adequate advice and assistance under section 16. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance regarding the last element of the request, namely the sanctions that FIU may implement when it has determined that a paying parent has deliberately provided false information.
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 4 February 2020, the complainant wrote to DWP and requested information in the following terms:

*"Further to your FOI response 43026 sent on 17<sup>th</sup> December 2019 where you state:*

*"we do not invoke penalties where a parent has provided false information. Whenever a Child Maintenance Group (CMG) employee suspects a paying parent, receiving parent, third party or employer of criminal activity they may send a criminal referral to the Financial Investigation Unit (FIU) or enforcement for further investigation"*

*Please could you provide the number of referrals made to the FIU where a paying parent was suspected of lying about their ability to pay arrears. Please could you provide a breakdown of the number of referrals made each year.*

*Please could you provide information on the sanctions that the FIU implements on paying parents found to have lied about their ability to make arrears payments."*

6. On 24 February 2020, DWP provided its response. DWP explained that while it holds information in relation to FIU referrals, it does not hold specific information in relation to whether the parent has been suspected of lying. DWP provided a link to its published statistics<sup>1</sup>.
7. The complainant requested an internal review of the handling of their request on 24 February 2020. They disputed that the requested information would not be held within DWP's systems, either by categorisation or a facility to write a description about the case. The complainant considered that a database or spreadsheet query would obtain the requested information.
8. DWP provided the outcome of its internal review on 9 March 2020. DWP upheld its original response and confirmed that it cannot extract data in relation to such specific scenarios as there is no category for lying about the ability to pay.

## **Scope of the case**

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<sup>1</sup> <https://www.gov.uk/government/statistics/child-maintenance-service-statistics-data-to-september-2019-experimental>

9. The complainant contacted the Commissioner on 17 May 2020 to complain about the way their 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 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 so do would exceed the appropriate limit.
12. DWP explained that it does not formally record information in relation to referrals down to this level. DWP explained that there may be occasions where an officer has recorded some information in notes regarding this but it is unable to extract this information without examining each case. DWP confirmed that FIU routinely have in excess of 4000 cases.
13. 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.
14. On 21 April 2021, the complainant confirmed that they dispute DWP's position that section 12(2) applies.
15. 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

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### Section 12: Cost of compliance exceeds the appropriate limit

16. 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"*

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

*"Subsection (1) [of section 12] 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".*

18. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>2</sup> (the Fees Regulations) at £600 for central government departments. 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 with a request for information if it estimates that it will take longer than 24 hours to do so.
19. 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.
20. As DWP is relying on section 12(2) of the Act, only the first of these activities is relevant in this case.
21. Section 12 explicitly states that public authorities are only required to estimate whether the cost of compliance with a request would exceed 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**

22. DWP explained that referrals can be made to FIU where a caseworker suspects something is not in order and this would cover many scenarios, not only where the customer had lied about the ability to pay their arrears. DWP confirmed that it could only identify whether the specified scenario had occurred by examining individual cases as there is no

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

reference point which covers customers lying about their ability to pay arrears.

23. DWP explained that when a caseworker considers that input from FIU is required, the caseworker will create a service request or work item in the Child Maintenance system to request an investigation.
24. DWP confirmed that since 2017, more than 9000 cases on the Child Maintenance Service had a service request or work item requesting an FIU investigation. As set out in DWP's revised response to the complainant, FIU has approximately 4000 ongoing cases at any time.
25. DWP confirmed that it could confirm the intake numbers to FIU and this was provided to the complainant in its original response via the link to the published statistics.
26. DWP explained that it would need to obtain a list of cases referred to FIU and would need to examine the cases to review the freetext information. DWP explained that whilst FIU do record some high level management information, similar to the information provided to the complainant in DWP's original response, it does not retain management information which has the level of data that the complainant requires. DWP confirmed that the reason for referral would be held as free text information and is not a data variable or tick box that it could derive data from.
27. DWP explained that FIU records the outcomes of its investigations by completing a closure report which notes whether there is a change to the assessment, eg "no change to assessment" or "change to assessment – evidence held". DWP confirmed that FIU categorises its cases by either civil or criminal and the requested information on referrals for lying about an inability to pay could fall into either category as it would depend on whether the activity constituted breaking the law.
28. DWP confirmed that it cannot examine Child Support Agency<sup>3</sup> cases as they are no longer available to review and only a debt balance is visible. DWP confirmed that closed cases on the Child Maintenance system are routinely deleted after 14 months so these cases are unlikely to be available to review.

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<sup>3</sup> The Child Support Agency was the predecessor to the Child Maintenance Service and was abolished in 2012.

29. DWP confirmed that FIU routinely has 4000 cases ongoing with approximately 600 new cases each quarter. DWP considered that with an estimate of 10 minutes per case to identify the requested information, providing only one month's intake would exceed the appropriate limit.

### **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 extracting data from the system. However, the Commissioner accepts DWP's explanation that it cannot be extracted and the individual freetext fields would need to be reviewed.
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 or FIU 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 field of up to 9000 cases. As the request does not include a timeframe, it would include all cases still held by DWP.
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 review 9000 cases in 1440 minutes. If DWP were to review the 9000 cases referred to FIU since 2017, DWP would be required to review one case every 10 seconds. The Commissioner accepts that obtaining the list of cases with an FIU referral service request, individually reviewing each case for its referral reason and collating the number of cases would not be possible within an average of 10 seconds per case.
34. The Commissioner therefore 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 appropriate limit and is only required to provide an estimate for the purposes of section 12.
35. 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**

36. 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"*

37. The Commissioner has issued guidance on providing advice and assistance when refusing to comply with a request on the basis of section 12<sup>4</sup>. 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:*

- either indicate if it is not able to provide any information at all within the appropriate limit; or*
- provide an indication of what information could be provided within the appropriate limit, and*
- provide advice and assistance to enable the requestor to make a refined request"*

38. 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.

39. The Commissioner notes that the request does not focus solely on the number of cases falling within the specific scenario set out by the complainant but also includes a request for information about sanctions that FIU implements. Whilst the Commissioner accepts that DWP is unable to aid the complainant in refining the request for the figures, she considers that DWP has not considered whether it could provide advice and assistance in relation to the remainder of the request.

40. The Commissioner considers that DWP could reasonably provide advice and assistance by confirming to the complainant whether it holds information on the sanctions that can be implemented by FIU and whether this can be provided within the cost limit.

41. The Commissioner requires DWP to provide the complainant with advice and assistance regarding what information can be provided in relation to the last element of the request, namely:

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

*"Please could you provide information on the sanctions that the FIU implements on paying parents found to have lied about their ability to make arrears payments"*

### **Section 17: Refusal notice**

42. 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".*

43. 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".*

44. 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**

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45. 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.

46. However, the Commissioner has concerns regarding the handling of this request which occurred before the pandemic affected the UK significantly. 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.

47. The Commissioner is also disappointed in the quality of the internal review. In addition to upholding the original, incorrect response, DWP failed to recognise the complainant's questions as reasons for disputing its incorrect response and instead informed the complainant that it was not required to create information to answer their questions. The Commissioner considers that had DWP more diligently addressed the



complainant's questions during its internal review, it would not have upheld its original response.

48. 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"<sup>5</sup>.
49. 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.

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<sup>5</sup> [https://ico.org.uk/media/for-organisations/documents/1169/determining\\_whether\\_information\\_is\\_held\\_foi\\_eir.pdf](https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf)

## Right of appeal

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50. 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](mailto:grc@justice.gov.uk)

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

51. 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.
52. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**