

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2014

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 information about Work Capability Assessments. The Department for Work and Pensions (DWP) disclosed some of the information but refused to disclose the remainder, citing section 12 of the FOIA (cost of compliance exceeds appropriate limit).
2. The Commissioner's decision is that the DWP has correctly applied section 12 but has not complied with the obligation under section 16 to provide advice and assistance.
3. The Commissioner requires the public authority to provide the complainant with advice and assistance, under section 16 of the FOIA.
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

5. On 3 July 2013, the complainant wrote to the Department for Work and Pensions and requested information in the following terms:
 1. *Where claimants have failed to attend Work Capability Assessments (medical assessments) for ESA claims, in what percentage of those cases has it been accepted by the decision*

maker at first instance (i.e. not on appeal or reconsideration) that they had good cause for the failure? (This may be given over any reasonable recent time period, such as one year. Likewise, if it is not possible to discover the total, please look at any reasonable sample size.)

2. If there is a different policy depending on whether it is the first, second, third (etc.) missed appointment, please give a breakdown of percentages by each such category.

3. If there is such a policy as in 2, please supply it.

4. What procedures are in place for the decision maker to identify on his or her own initiative whether a claimant has good cause from their health condition? For example, is there any procedure to pick up on the fact that a claimant is blind and would therefore obviously have good cause not to be able to read a letter requiring attendance?

6. The DWP responded on 31 July 2013. It provided some information within the scope of the request (a response to Q2 – Q4) but refused to provide the remainder (a response to Q1). It cited the provision under section 12 of the FOIA as its basis for doing so.
7. Following an internal review the DWP wrote to the complainant on 16 August 2013. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 27 August 2013 to complain about the way their request for information had been handled.
 9. After liaising with the complainant, the Commissioner focussed his investigation on whether the DWP was correct to apply section 12 of the FOIA to Q1 of their information request.
 10. The Commissioner also considered whether the DWP had satisfactorily fulfilled its obligations under section 16 of the Act; to provide advice and assistance to the requester.
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Reasons for decision

Section 12

11. Section 12 of FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
12. The estimate must be reasonable in the circumstances of the case.
13. The appropriate limit is currently £600 for central government departments (and £450 for all other public authorities). Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 24 hours work in accordance with the appropriate limit of £600 set out above which is the limit applicable to the DWP. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information,
 - (b) locate the information, or a document which may contain the information,
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
14. Where a public authority claims that section 12 of the 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.
15. To determine whether DWP applied section 12 and section 16 of the FOIA correctly the Commissioner has considered the submissions provided by DWP to the complainant, as well as the submission it provided to him as part of his investigation.
16. In its reply to the complainant, the DWP said that it does not routinely collate data on the percentage of cases where an individual has failed to attend a Work Capability Assessment (WCA), that the decision maker has accepted at the first instance. It said that to collect this data would exceed the appropriate limit of £600 and that section 12 was therefore engaged.

17. In their request for an internal review, the complainant had asked whether conducting a sample exercise, as mentioned in their original request, might reduce the cost to under the £600 limit. Maintaining its original position, in its response the DWP said:

"To comply with an FOI request the department must supply recorded information already held on the date the request was made. It does not require staff to make a value judgement on what could be considered a 'reasonable sample' and then to create this new information."

18. In its submission to the Commissioner, the DWP gave a more detailed breakdown of the costs involved in complying with the request.
19. *Is the information held?* The Department accepts that it holds the requested information. Specifically, information about 'good cause' decision making regarding what has and has not been allowed in relation to non-attendance at a WCA (though not to the level of first, second, third occasion of non-attendance). But DWP told the Commissioner that it would need to undertake a specific, clerical exercise to locate, identify, retrieve and extract the relevant information.
20. *Locating and retrieving the information:* DWP explained that, at the time of the request, the information was spread across potentially 90 databases. This is because prior to October 2013, when a new IT system was introduced, each benefit office had its own database due to the amount of decision making-related information that each held.
21. Routine management information can be automatically gathered from the 90 databases using pre-defined data queries. However DWP says it can take up to 10 hours to collate these databases to obtain even basic level information.
22. DWP says that it would need to produce a bespoke data query to retrieve the requested information and that it does not have the technical knowledge required to write a query of the necessary complexity – able to deal with multiple databases and the format (Word documents) in which the information is held.
23. DWP says that complying with the request would therefore involve downloading each database across the network (again taking up to 10 hours), identifying separate Word document files, reading the decision in each and determining if there is reference to historical occurrences of failures to attend WCAs.

24. *Extracting the information:* DWP says that in August 2013 alone it considered 15,619 'failed to attend' (FTA) WCAs decisions and that this is typical.
25. It estimates that identifying the 'allowed' FTA cases would take 15 minutes by interrogating the databases once they had downloaded. To determine whether an allowance was the first, second or third instance, however, would necessitate an officer reading each decision.
26. For the 15, 619 cases in August, at an estimated five minutes per case, this would take well over 1000 staff hours, at a cost of more than £30,000.
27. In most cases, decisions on 'non-allowed' FTA cases are not recorded as it is not relevant to the decision outcome on the benefit claim. Again, it would take an officer reading through individual decisions to find any cases where this information could be identified.
28. DWP argued that conducting a sample exercise would be burdensome without the guarantee of retrieving information relevant to the request. It might involve reading thousands of decisions in order to find a sample of, for example, 400 cases where the number of FTA instances was recorded. A random 10% sample of three months worth of FTA cases, meanwhile, may return no information at all regarding the occurrences of FTA.
29. The Commissioner considers the DWP's evidence and arguments to be reasonable and cogent. He is satisfied that complying with the request would exceed the appropriate limit of £600 and that DWP has correctly applied section 12 to the request.

Section 16

30. Section 16 of the FOIA places a duty on the public authority to provide advice and assistance to the person who has requested information from it.
31. DWP told the Commissioner that it would be possible to show the number of FTA cases in a given period, where good cause was allowed, as a percentage of the whole. This would not breach the cost limit but might contain multiple decisions for certain claimants, so that:

'...we could state 'out of x decisions good cause was allowed in y%' but we could not state 'out of x claimants that claimed good cause y% was accepted.'
32. However, DWP also said that it did not offer the complainant any advice or assistance, such as at paragraph 31, because their request had been

very specific. Without checking with the complainant, it judged that the basic information it could provide would not meet the complainant's requirements.

33. The Commissioner is not satisfied that the DWP fulfilled its obligations under section 16. He considers that the DWP should have provided the complainant with more specific advice as to how their request might be refined so that it could be dealt with under the cost limit.

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: 0116 249 4253

Email: GRC@hmcts.gsi.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

Pamela Clements
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