

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 June 2014

Public Authority: Department for Work and Pensions
Address: Caxton House
6-12 Tothill Street
London SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information about state pensions. The Department for Work and Pensions ('the DWP') refused to disclose the information, citing section 12 of the FOIA (cost exceeds appropriate limit) and section 40 (personal data) as its basis for doing so.
2. The Commissioner's decision is that the DWP has correctly applied section 12 and section 40 to the request but breached section 16 (advice and assistance).
3. He does not require the DWP to take any further action.

Request and response

4. On 31 October 2013, the complainant wrote to the DWP and requested information in the following terms:

This FOI request relates to the halting on my state pension that was put into effect beginning 9 Aug 2013.

(1) How many UK seniors living in Canada have had their pension stopped on the mistaken belief that they are no longer alive?

(2) If so, how many seniors have had their State Pension restored because it was proved they were in fact living persons?

The DWP having been provided with the names, addresses, and phone numbers of persons - of a professional status - who can attest that I am a living person has been ignored by the DWP's.

(3) Considering that this was a simple solution in determining my living status why has the DWP decided to inflict hardship - not to mention stress - on me by stopping my State Pension - informing me of this situation by regular mail "after" the fact?

It has been acknowledged by the DWP that I had contributed to the Graduation Pension fund during my working years in the UK and that my "employers cards" have been destroyed.

(4) Having paid into the 'Graduated Pension' fund, what difference did the G.P. payments make to my regular State Pension, and why knowing I am still alive - with the DWP being given the opportunity to verify this fact - is my rightfully earned State Pension being illegally halted?

(5) Has the DWP engaged in any correspondence with Canada Pensions relating to the halting of my UK State Pension, if so what was the purpose of making contact with Canada Pensions?

5. The DWP responded on 13 December, following the Commissioner's intervention. It said that parts (3), (4) and (5) of the request were exempt from disclosure under section 40 of the FOIA, as they concerned the complainant's own personal data. It also said that it did not hold any information relating to parts (1) and (2) of the request.
6. Following an internal review, the DWP wrote to the complainant in February 2014. It now said that it did not hold information relating to parts (1) and (2) as it had been requested, and that to collate this as new information would exceed the appropriate cost limit of £600. It maintained its position that parts (3), (4) and (5) were exempt under section 40(1) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 24 November 2013, to complain about the way their request for information had been handled.
8. Section 1 of the FOIA is concerned with whether or not a public authority holds the information requested. In this case, the DWP had said that it did not hold the information as it had been requested and it would need to collate it as new information. To clarify, the Commissioner is satisfied that the DWP does, in fact, hold the information because it holds the 'building blocks' necessary to generate it. However, the question is whether it can provide the information to the complainant at an appropriate cost.
9. Consequently, the Commissioner has focussed his investigation on the DWP's application of section 12 to the information request and in addition, section 16 and section 40.

Reasons for decision

10. Section 12 of the 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.
11. The estimate must be reasonable in the circumstances of the case.
12. 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.

13. 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.
14. To determine whether the 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.
15. In relation to requests (1) and (2), the DWP clarified that, although it had initially told the complainant that it did not hold this information in the format they had requested, it does exist within its systems.
16. DWP has explained to the Commissioner that the information is held electronically on its Pensions Service Computer System (PSCS) within a large volume of customer records. It does not collate the relevant data as a matter of routine and would need to have a bespoke collection of data created in order to provide the requested information.
17. DWP has argued that it would incur a disproportionate cost if it were to request its Information Technology suppliers to create a bespoke search of the data, or to examine individual records, or a combination of both, in order to collate the information the complainant has requested.
18. The DWP has told the Commissioner that there are in excess of 150,000 records for Canada. Having first undertaken a bespoke data search to identify all its customers resident in Canada, the DWP has estimated that it would then take five minutes per record to determine if the requested information is held, locate the information within the record and retrieve and extract the information.
19. Examining 150,000 records would take approx 12, 500 hours, costing the DWP approx £312,500 (12,500 x £25).
20. If DWP were to speed up the examination of each record to 30 seconds per record, it would still cost the DWP £31,250.
21. On the basis of this explanation, the Commissioner is satisfied that the DWP is correct not to comply with requests (1) and (2) because the cost to the DWP of complying with these requests would exceed the appropriate level set out in section 12 of the FOIA.
22. Section 16 of the FOIA places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.

23. DWP has recognised that in its response to the complainant, it did not make reference to section 16. It has told the Commissioner that it considers that the complainant had already applied a limiting factor, namely that their request concerned pension recipients in Canada.
24. Retrospectively, the DWP has not been able to identify any other ways in which the scope of the request could be narrowed. Limiting the request to a specific time period would not be possible because, although a bespoke scan of the PSCS could identify customers resident in Canada, the data sets necessary to specify a particular time period are not available. It would be necessary to manually examine records in order to identify specific time periods.
25. The Commissioner is prepared to accept these arguments but reminds the DWP that it should offer advice and assistance to applicants directly, during its handling of their requests.
26. Section 40(1) of the FOIA says that information is exempt from disclosure if it is the personal data of the applicant.
27. The Commissioner accepts that parts (2), (3) and (4) of the request appear to concern the complainant specifically and may be best handled through the DWP's complaints procedure and/or through a subject access request under the Data Protection Act. As such, he considers that the DWP correctly applied section 40(1) to these elements.

Right of appeal

28. 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

29. 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.
30. 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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