

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2015

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 the names of charities and companies who have given placements to Mandatory Work Activity or Help to Work participants (Community Work Placements).
2. The Department for Work and Pensions (DWP) relied on section 14(2) (repeated request) not to meet the complainant's request for information.
3. The Commissioner's decision is that the DWP's reliance on section 14(2) was erroneous.
4. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Issue a fresh response under the FOIA without relying on section 14(2) of the FOIA.
5. 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.

Background

6. Since May 2011, job centres in the UK have had the power to refer people in receipt of unemployment benefit (Job Seekers Allowance) to attend Mandatory Work Activity (MWA). These are work placements with

local businesses and organisations where claimants work 30 hours a week for four weeks. The work is unpaid and failure to attend can result in loss of benefit.

7. Information on placement host names, as sought by the complainant, is substantially similar to requests in the case of DWP v Information Commissioner & Z ("Z").
8. In the case of Z the Commissioner ruled against the DWP on three Freedom of Information requests and the First-tier Tribunal upheld the ICO's decision¹. The DWP was granted permission to appeal to the Upper Tribunal who dismissed the appeal against the First-tier Tribunal's judgment and refused DWP's application to appeal their decision. The DWP has subsequently submitted an application for permission to appeal to the Court of Appeal.
9. In a further three cases the Commissioner ruled against the DWP on similar information requests and the First-tier Tribunal upheld the Commissioner's decision².
10. Previously, the complainant on 11 July 2014 asked the DWP as follows:
 - *I am now requesting the names of all charities and companies using unemployed/sick/disabled to do workfare/MWA/help to work and how much each of these are paid per person and how many unemployed had gained full-time employment lasting longer than a year.*
11. To that request the DWP replied as follows:
 - *The information about the names of charities and companies who have given placements to MWA or Help to Work participants (Community Work Placements) is exempt from disclosure under sections 29(1)(a), 29(1)(b), 36(2)(c) and 43(2) of the FOIA.*
 - *MWA and Community Work Placements are delivered by contracted providers who are responsible for sourcing placements*

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1437/Department%20for%20Work%20&%20Pensions%20EA.2014.0073,%200109%20&%200130%20\(22.12.2014\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1437/Department%20for%20Work%20&%20Pensions%20EA.2014.0073,%200109%20&%200130%20(22.12.2014).pdf)

² *ibid*

and DWP does not hold information on payments to placement hosts. The Department does not specify what the placement should be, but does expect that every placement will offer people the opportunity to gain fundamental work disciplines, as well as being of benefit to local communities.

- *The information on full time work lasting more than a year for people who had been on MWA can only be made available at disproportionate costs. However please see a link to the impact assessment of MWA which looked at off-benefit and employment impacts 21 weeks after starting a placement MWA:*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/222938/early_impacts_mwa.pdf

- *No one will have got a job lasting more than a year from a Community Work Placement as it only started in April this year. However please see a link to the impact assessment of Community Action Programme (CAP) and Ongoing Case Management pilots (OCM) (the pilots on which Community Work Placements and the Mandatory Intervention Regime are based on):*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265931/svltudec-413-adhoc.pdf

Request and response

12. On 7 August 2014, the complainant requested from the DWP information of the following description:
 - The names of charities and companies who have given placements to Mandatory Work Activity or Help to Work participants (Community Work Placements).
13. On 24 September 2014, DWP responded. It refused to provide the requested information and cited the following exemption as its basis for doing so:
 - Section 14(2) (repeated request)
14. Though the complainant requested an internal review on 8 October 2014 the DWP has not conducted the same.

Scope of the case

15. The complainant contacted the Commissioner on 22 September 2014 to complain about the way his request of 7 August 2014 had been handled.

Reasons for decision

16. Section 1 of the FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:

- The duty to inform the applicant whether or not requested information is held and, if so,
- the duty to communicate that information to the applicant.

17. Section 14(2) provides as follows;

- *Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.*

18. The Commissioner's position is that section 14(2) can only be applied when all three of the following criteria have been fulfilled;

- the request is identical or substantially similar to a previous request from the same requester;
- the authority has previously provided the information to the requester or confirmed that it is not held in response to the earlier FOIA request; and
- a reasonable interval has not elapsed between the new request and the previous request.

19. The DWP cites the complainant's request dated 11 July 2014 and its replies thereto to rely on section 14(2) not to comply with the complainant's request made on 17 August 2014.

20. As stated above the DWP can only rely on section 14(2) if, inter alia, it had previously complied with the same or substantially similar request by supplying the requested information to the complainant or confirming it was not held.

21. The Commissioner is not satisfied, on the balance of probabilities that the DWP did in fact comply with the complainant's request. It is apparent that the DWP has previously neither furnished the complainant with the "names of all the companies and charities who have given placements to MWA or Help to Work participants" nor averred that it does not hold the information. By way of reminder, the DWP's response to the complainant's previous request for host names, was to withhold them by reference to sections 29(1)(a), 29(1)(b), 36(2)(c) and 43(2) of the FOIA.
22. The DWP, in support of its case, had referred the Commissioner to his previous decision in FS50526262. In that decision, the Commissioner's position was that he considered that the term 'previously complied with a request for information' refers to where an authority has responded to the previous requests by either providing requested information and/or by issuing a valid refusal notice. However the Commissioner is not bound by his previous decisions. Moreover, in respect of that case, he now notes that the decision was erroneous and contradicted his own published guidance on the matter³.
23. Having dismissed DWP's use of section 14(2) of the FOIA he orders it to issue a fresh response to the complainant's request of 7 August 2014 without relying on section 14(2) of the FOIA.

Other Matters

Internal review

24. Part VI of the FOIA section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
25. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be

³ <https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

reasonable to take longer but in no case should the time taken exceed 40 working days.

26. Regarding the DWP's failure to conduct an internal review, the FOIA does not require an authority to have a review procedure in place or indeed to conduct a review. However the Code of Practice made under section 45 of the FOIA and the Commissioner recommend that it is good practice to have one.
27. Section 17(7) of the FOIA provides that, in a refusal notice, an authority must give details of any review procedures, as well as details of the right of appeal to the Commissioner. The Commissioner notes that these details were included in the DWP's refusal notice of 24 September 2014. He would therefore have expected the DWP to have undertaken an internal review in response to the complainant's request for it.
28. Significant failures, or repeated unreasonable delays, in dealing with internal reviews, or other failures to conform to the codes of practice are monitored by the Commissioner. In some instances this may lead to regulatory intervention; for example, the issuing of a Practice Recommendation.

Right of appeal

29. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF