

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 14 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 the number of messages sent to the Child Maintenance Service (CMS) via its online portal and a breakdown of the time taken to respond.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) is entitled to rely on section 12(1) to refuse to comply with the request as to do so would exceed the appropriate limit.
3. The Commissioner finds, however, that DWP has breached section 17(5) of the Act as it did not issue its section 12 refusal notice within the statutory timeframe of 20 working days.
4. The Commissioner does not require DWP to take any steps in relation to this request.

Request and response

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

"1. Please could provide [sic] a month-by-month breakdown of the total number of messages sent to the CMS from parents using the CMS's online portal.

2. Please could you provide a breakdown of the length of time taken for the CMS to respond to online portal messages received from parents. Please provide a breakdown as follows:

Within 3 months: X messages (Y%)
Within 6 months: X messages (Y%)
Within 9 months: X messages (Y%)
Within a Year: X messages (Y%)
Within 18 months: X messages (Y%)
Within 2 Years: X messages (Y%)
Over 2 Years: X messages (Y%)

6. DWP provided its response on 18 February 2020 and confirmed that it held some information falling within the scope of the request. DWP confirmed that it held the volume of messages received on the self-service portal and provided the number of messages received by month from May 2018 to November 2019.
7. DWP explained that it does not link the action taken on a case to the receipt of a message received via the portal and therefore could not provide information regarding the time taken to action the message.
8. The complainant requested an internal review on 18 February 2020 and disputed that DWP did not hold the requested information. The complainant explained that DWP had previously confirmed that it had time-related targets related to certain tasks. The complainant also noted that when a message is sent via the online portal, the sender will receive a notification stating that they will receive a response within 7 days. The complainant considered that DWP must record the time taken to respond in order to measure whether it is meeting this target.
9. DWP provided the outcome of its internal review on 4 March 2020. DWP upheld its original response.

Scope of the case

10. The complainant contacted the Commissioner 19 May 2020 to complain about the handling of their request for information. Specifically, they disputed that DWP did not hold the remaining requested information.
11. This request is one of a series of requests made by the complainant 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.
12. During the course of the investigation, DWP amended its position and provided the complainant with a fresh response on 23 March 2021. DWP relied on section 12(2) of the Act to refuse to confirm or deny whether it held the remaining requested information as to do so would exceed the appropriate limit. DWP explained that it would need to check individual

cases in order to determine and identify each action required and the date that the final action was taken and completed.

13. DWP acknowledged its obligation 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. DWP confirmed that it had advised previously that it recorded the volumes of messages received on the self-service portal and it had provided these volumes. DWP also confirmed that it does not link the action taken on a case to the receipt of a message received. DWP explained that its Digital partners are developing a new range of Management Information to specifically capture the messages and their clearance. DWP provided a link to the published clearance information about Child Maintenance cases¹.
15. DWP later confirmed that it was no longer relying on section 12(2) and instead wished to rely on section 12(1) to refuse to comply with the request.
16. The Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on section 12(1) to refuse to comply with the second element of the request, namely the breakdown of time taken to respond to messages received via the online portal. 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

17. 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."*
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¹ <https://www.gov.uk/government/collections/statistics-on-the-2012-statutory-child-maintenance-scheme>

18. Section 12(1) of the act states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

19. 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 government departments. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25. 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 comply.

20. 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.

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 to obtain the requested information, it would have to manually review the individual cases to link the receipt of an online portal message to any action taken as a direct result of this message. DWP explained that it would need to create a list of cases where a portal message had been received and review each case to note the date the action was taken in order to create the breakdown as specified by the complainant. DWP explained that depending on the nature of the

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

message, the action may not be completed until several weeks after the initial message had been received.

23. DWP confirmed that it receives, on average, 100,000 messages per month.
24. DWP confirmed that it was unable to extract this data without reviewing individual cases and that response times are not logged as part of caseworker's performance reviews.

The Commissioner's position

25. The Commissioner accepts that DWP cannot comply with the request within the appropriate limit of 24 hours. The request does not include a timeframe for which the complainant is seeking the breakdown of figures and therefore DWP is required to consider all messages that it has a record for. The Commissioner notes that the longest category that the complainant is seeking figures for is "Over 2 years" and, on the basis of DWP's estimate of 100,000 messages per month, DWP would need to consider a minimum of 2,400,000 actioned messages.
26. The Commissioner has considered whether reviewing cases on the basis of individual messages would lead to duplication of work and whether an alternative approach could reduce the workload. The Commissioner has reviewed the published statistics provided to the complainant at internal review and notes that, as at March 2020, DWP held Child Maintenance cases for approximately 750,000 children. The Commissioner considers that even if DWP were to review only its open cases to determine the time taken to action any messages received on the individual cases, it could not do so within the appropriate limit.
27. The Commissioner notes that DWP has confirmed that it can provide the number of service requests cleared in a given time period but she accepts that this data does not provide the length of time that had elapsed since DWP received the correspondence that triggered the creation of the service request.
28. The Commissioner also notes that DWP has confirmed that it has time-based standards for certain activities however as the request covers all messages received via the online portal, the Commissioner accepts that DWP would be required to review individual cases for messages falling outside of these activities.
29. 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 a specific data variable.

30. The Commissioner accepts that in order to collate the requested information, DWP would be required to review 750,000 cases individually.
31. 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 search and review of individual cases within the appropriate limit. DWP is not required to work up to the appropriate limit and is only required to estimate whether it can comply with the request within the appropriate limit.
32. The Commissioner's decision is that DWP is entitled to rely on section 12(1) of the Act to refuse to comply with the second element of the request.

Section 16: Duty to provide advice and assistance

33. 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"

34. 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*
- *provide advice and assistance to enable the requestor to make a refined request."*

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

35. DWP explained to the complainant that it was unable to provide advice on how to refine the request.
36. DWP confirmed to the Commissioner that providing data based on just one day's messages would still require it to review approximately 4000 messages and this would exceed the appropriate limit.
37. The Commissioner notes that DWP provided the complainant with a link to its published statistics and in a previous related request, they confirmed that DWP has previously informed the complainant that it has targets for actions related to "mandatory reconsideration" and "variations" requests.
38. The Commissioner is unable to determine what further information could be provided to the complainant in relation to this request. As such, 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

39. 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 description specified in the request; and

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

40. Section 17(5) states that:

"A public authority which, in relation to any requests for information, is relying on the claim that section 12 or 14 applies most, within the time for complying with section 1(1), give the applicant and notice stating that fact."

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

Other Matters

42. 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 frontline services and continuing to meet their obligations under the Act.

43. 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 need to be held in discrete documents in order to be held for the purposes of the Act.
44. 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 held⁴.
45. 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

46. 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

47. 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.
48. 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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