

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 March 2023

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office (CO) relating to a review carried out by MyCSP into retirement pension scheme contributions. The CO refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the CO was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that the CO complied with its obligations under section 16 to offer advice and assistance but due to the nature of the request it was unable to assist the complainant in refining their request.
3. The Commissioner does not require the CO to take any steps.

Request and response

4. On 21 July 2021, the complainant made the following request for information to the CO:

"Please send me-: MyCSP have conducted a review focussed on the following sift criteria: members who took partial retirement, paid additional Widows Pension Scheme contributions and were single at retirement. I understand that MyCSP identified 326 cases which matched these criteria. Of these 36 cases were fully reviewed.

*Please provide me with the number of cases, within the batch of 36 fully reviewed, that had their additional contributions repaid via

salary?* If this request is too wide or unclear, I would be grateful if you could contact me as I understand that under the Act, you are required to advise and assist requesters. If any of this information is already in the public domain, please can you direct me to it, with page references and URLs if necessary.”

5. The CO responded on 24 June 2021. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of the cost limit laid down in the Fees Regulations¹ to search for information that might be relevant to their request. In accordance with this finding, the CO issued a section 12 refusal notice in reply to the complainant’s request for information. The CO explained that, due to the nature of the request, it was not possible to offer advice and assistance which would enable the information to be provided without exceeding the cost limit. The CO explained that it was mindful of its duty under section 36 of FOIA to provide reasonable advice and assistance to requesters. However, in the circumstances of this case, it explained that given that MyCSP would have to re-sift the 36 cases it was unable to provide any suggestions as to how the request could be narrowed to bring a fresh request within the cost limit.
6. The CO upheld its initial application of section 12 of FOIA via internal review on 30 September 2021.

Scope of the case

7. The complainant initially contacted the Commissioner on 10 September 2021, ie prior to the completion of the internal review to complain about the way their request for information had been handled. Following the completion of the internal review the complainant maintained their position that the CO was incorrect to refuse the request on the basis of 12 of FOIA.
8. The Commissioner considers the scope of this case to be to determine if the CO has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the CO met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

¹ Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).

9. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Fees Regulations.
10. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The CO relied on section 12(1) in this case.
11. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the CO is £600.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for the CO.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.

16. Where a public authority claims that section 12 of 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 of FOIA.

Would the cost of compliance exceed the appropriate limit?

17. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the CO to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. In its submission to the Commissioner the CO stated that the complainant requested a refund of their own WPS premiums through internal dispute resolution with MyCSP, the pensions administrator and the CO, following this the complainant was referred to the Pensions Ombudsman.
19. The Ombudsman confirmed maladministration and as a result the complainant considered that this was a systemic issue that could have affected other people and as such asked MyCSP to review.
20. The review MyCSP carried out began in July 2020 and was completed in March 2021 after extensive searches involving 1.5 million Civil Service pension holders. Of the 326 cases 36 had a rigorous review requiring a great deal of input from the employer and MyCSP and no errors were identified.
21. The CO argue that as no errors were identified in the review then no further work was carried out on these cases. In order for the CO to satisfy the complainant's request it would require further work.
22. The complainant argues that MyCSP have already conducted the review and carried out the searches therefore, it is reasonable to expect that the CO holds the information already and could access it easily.
23. The CO said that neither they or MyCSP have access to member's service history or payroll data, this is provided to them by employers and changes every month. Therefore, to revisit the 36 cases would be on a fresh basis as any records and calculations held as part of the original review would now be obsolete and would need to be completed again in its entirety.
24. The CO also said that because this would be a new request for information, specifically the parameters of the sift, it would be outside of any business as usual salary requests. This would mean that MyCSP would potentially need to liaise with 36 different employers in order to be able to find the appropriate HR person with access to the necessary

resources to fulfil the request. That information would then need to be checked for accuracy. It would also require clarification between the HR person and MyCSP to analyse the data, resolve any anomalies and decide how the data should be provided.

25. Additionally the CO said that a complex manual calculation to confirm if the contributions paid are equivalent to either 1.5%, 3% or 4.5%. This would then need to be checked for accuracy.
26. As the information is live and changing monthly with each contribution some individuals identified in the original 36 cases may have worked longer than others and therefore will have more WPS contributions to review. This means the time it would take to review each case will vary depending on the circumstances of the individual.
27. To further support its argument to engage section 12 the CO stated:

'At a minimum, an official would need to coordinate this search work. Searches would need to be identified and conducted and any information would need to be reviewed to ascertain if it is or is not in scope of the request. To allow this salary aspect to be addressed for the complainant, the hourly rate for a Senior Pension Advisor to search the WPS contribution based salary records and liaise with external, various employers to request and validate this information is £87.20 and it is expected to take, at the very minimum, 54 hours in total which will exceed the appropriate cost limit.'
28. The Commissioner asked the CO if a sampling exercise had been undertaken. The CO stated that the possibility of a sampling exercise would not be "sensible and realistic," and a small sample would not be representative of the whole. Therefore, it could only provide a speculative estimate for a sample of the records for the Commissioner to consider and judge in this case.
29. The Commissioner considers that the CO estimated reasonably that it would take more than the 24 hours to respond to the request. The CO therefore are correct to apply section 12(1) of FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

30. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice² in providing advice and assistance, it will have complied with section 16(1).
31. The Commissioner notes that the CO have acknowledged their obligation to provide advice and assistance however, it has been unable to offer the complainant guidance on how to narrow their search terms.
32. This is because of the circumstances of this case and given that MyCSP would have to re-sift the 36 cases, the CO are unable to provide any suggestions as to how the request could be refined.
33. The Commissioner is satisfied that in the circumstances of this case it was reasonable for the CO to conclude that it could not usefully offer any advice and assistance to the requester given the burden of the work involved in examining the information in respect of the 36 cases. Therefore, the Commissioner is satisfied that the CO met its obligations under section 16 of FOIA.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Jonathan Slee
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