

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 June 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding deaths occurring following sanctions to benefit payments. The Department for Work and Pensions (DWP) refused to provide the requested information, citing section 12(1) (cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that DWP was entitled to rely on section 12(1) of FOIA to refuse to comply with the request. The Commissioner is also satisfied that DWP met its obligation to provide advice and assistance in accordance with section 16 of FOIA. However he finds that DWP breached sections 10 and 17 of FOIA as it failed to provide its refusal notice within 20 working days.
3. The Commissioner does not require DWP to take any further steps.

#### **Request and response**

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4. On 15 December 2022, following advice to refine an earlier request, the complainant wrote to DWP and requested information in the following terms:

"Please proceed as per your suggested revision. i.e.:

“We feel that you should narrow your request to ask for the number of claimants who died within 3 months of an adverse sanction decision, for each month from January 2018 and allowing 3 months after the latest available date. For Income Support (IS), Jobseeker’s Allowance (JSA) and Employment Support Allowance (ESA) this will only include decisions made up to April 2022 and deaths up to July 2022. For Universal Credit (UC) this will only include decisions up to July 2022 and deaths up to October 2022. If you were to narrow your request in this way, the information available would consist of a table for each benefit containing the following items for each month from January 2018 to April 2022 for JSA, ESA and IS and January 2018 to July 2022 for UC:

- Month
  - Region of Great Britain for JSA, ESA and IS or Jobcentre Plus region for UC
  - Number of claimants eligible for sanctions on the count date for that month
  - Number of claimants eligible for sanctions who died within 3 months of the count date
  - Number of claimants with an adverse sanction decision in that month
  - Number of claimants with an adverse sanction decision who died within 3 months of the sanction decision date”
5. DWP responded on 18 January 2023 and stated that it holds information within the description specified in the request, but the cost of complying with the request would exceed the appropriate limit. Therefore, it cited section 12(1) of FOIA to refuse to comply with the request.
  6. Following an internal review DWP wrote to the complainant on 10 February 2023. It maintained its reliance on section 12(1) of FOIA.

## Reasons for decision

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### Section 12 – cost of compliance exceeds appropriate limit

7. Section 12(1) of FOIA provides 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 Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations).
8. 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. Therefore, the appropriate limit for DWP is £600.

9. The Fees Regulations also specify that the cost of complying with a request must be calculated at a rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for DWP.
10. 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 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.
11. 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 Commission 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.
12. 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.
13. It is important to note that whether or not section 12 of FOIA can be relied upon by a public authority is not affected by what information the complainant considers that the public authority should routinely record, or if a public authority should have a system from which it can readily extract the particular details sought by the request. The Commissioner can only base his decision on the way that the information is, as a matter of fact, held by the public authority at the time when it received the request for information.
14. In this case, DWP explained that on receipt of the request its analysts began the process of trying to collate the requested information. However, due to practical issues of handling the multiples relevant files, it was identified that it would not be possible to produce the exact information described in the request within the appropriate limit.

15. DWP went on to explain that the data for each of the JSA, ESA and IS caseloads is stored in individual quarterly datasets, the UC caseload data is held in one dataset, there is one dataset each for JSA, ESA, IS, UC (Live Service) and UC (Full Service) sanction decisions, and the deaths data is stored in one dataset. Therefore, to cover the full time period set out in the request, DWP would be required to access and work across a total of 63 individual datasets.
16. DWP further explained that in order to run a programme to interrogate each of the datasets, its analysts need to write complex code for each individual benefit type, to ensure that the correct data is identified and extracted. This is usually done as an iterative process to ensure each programme is functioning as intended and identifying the correct information within the scope of the request. Once it is sure that the correct information has been identified, DWP would then need to export the information for each benefit type to a spreadsheet and add the appropriate titles, labels, etc.
17. DWP estimated that to complete all of the tasks required to correctly locate, retrieve and extract all of the data within the scope of the request it would take approximately 40 hours of work.
18. The Commissioner is satisfied that DWP has estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, his decision is that the Council was correct to rely on section 12(1) of FOIA to refuse to comply with the request.

## **Section 16 – duty to provide advice and assistance**

19. When refusing a request under section 12, a public authority is required to offer advice and assistance to the complainant where it is reasonable to do so, in accordance with section 16(1) of FOIA. The aim of this advice and assistance is to help the complainant refine their request to one which might be able to be dealt with within the appropriate limit.
20. Section 16(2) clarifies that, providing the public authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

21. In its refusal notice on 18 January 2023, DWP advised the complainant of how they could refine the request in order that DWP may then be able to comply with it within the appropriate limit.
22. The Commissioner is satisfied that DWP provided sufficient advice and assistance as per the recommendations set out in the section 45 code of practice.. Therefore, it has not breached section 16 of FOIA.

### **Other matters**

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23. Whilst it does not form part of the decision set out above, the Commissioner wishes to acknowledge that this request was one in a series of requests from the same complainant which DWP refused under section 12 of FOIA. Each new request was a refined version of the previous one, following the advice and assistance provided by DWP. The Commissioner therefore empathises with the complainant and understands their frustrations having followed the advice they had been provided with to still be met with refusal notices for the same reasons. However, the Commissioner is also aware of the restricted nature in the ways which public authorities often have to record, store and retrieve information. He is therefore satisfied that the advice provided to the complainant throughout the series of requests and correspondence was a genuine attempt to assist the complainant, and not intended to mislead them at all. He is further satisfied that until DWP attempted to retrieve and collate the information within the scope of the revised requests, it was of the position that it may be able to comply with each of the suggested revisions within the appropriate limit.
24. The Commissioner also notes that during his investigation into this matter, DWP explained that it would be able to utilise the data which it uses to produce and publish sanction rates, to compile quarterly data on the number of deaths within 3 months for those receiving the benefit at a point in time and those receiving a reduction in their payment due to a benefit sanction at a point in time. However, due to some data issues, it would only be possible to do this for Universal Credit Full Service and for a slightly shorter time period. DWP advised that it would be willing to provide this information to the complainant if they wish to go ahead and submit a request for it.

## Right of appeal

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25. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**