

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 July 2024

**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, from the Department for Work and Pensions (DWP), certain information about national insurance accounts.
2. DWP refused the request, on the basis of section 12(1) of FOIA (cost of compliance).
3. The Commissioner's decision is that DWP has failed to demonstrate that section 12(1) is engaged.
4. The Commissioner requires DWP to take the following steps<sup>1</sup> to ensure compliance with the legislation.
  - Issue a fresh response to the request that doesn't seek to rely on section 12 of FOIA.

---

<sup>1</sup> The Commissioner expects the public authority to take appropriate precautions to protect any personal data when disclosing information in a spreadsheet or similar format; <https://ico.org.uk/for-organisations/eir-and-access-to-information/information-commissioner-s-office-advisory-note-to-public-authorities/>

5. The public authority must take these steps within 30 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 FOIA and may be dealt with as a contempt of court.

## Request and response

---

6. On 10 January 2024, the complainant wrote to DWP and requested information in the following terms:

“Please tell me

1) The number of distinct national insurance accounts (having different national insurance numbers) which are identical in full name and date of birth.

2) The number of distinct national insurance accounts (having different national insurance numbers) which are identical in full name and date of birth, but differ in sex or gender.

If you cannot provide an exact numbers [sic], approximations would be fine ...”.

7. DWP responded on 7 February 2024. It refused the request on the basis of section 12(1) of FOIA. With reference to section 16 of FOIA (advice and assistance), DWP said “As your overall request is broad and covers quite a large time period, we are not able to provide adequate advice on how you can narrow your request”.
8. Following an internal review, DWP wrote to the complainant on 11 March 2024, maintaining its original position. It explained that the work required to comply with the request would take over 30.5 hours, and would exceed £600, the limit under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations).

## Scope of the case

---

9. The complainant contacted the Commissioner on 11 March 2024 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of this case is to decide whether DWP was correct to cite section 12(1) to refuse the request.

## Reasons for decision

---

### Section 12(1)

11. Section 12(1) of FOIA states that a public authority isn't 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".
12. The appropriate limit is set out in the Fees Regulations, and it's £600 for government departments such as DWP.
13. The notional cost of the staff time needed to comply with a request must be estimated at a rate of £25 per person per hour. This means that section 12(1) effectively imposes a time limit of 24 hours for DWP.
14. For the purpose of its estimate, a public authority can only take account of the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or a document which may contain it;
  - retrieving the information, or a document which may contain it; and
  - extracting the information from a document containing it.
15. A public authority doesn't have to make a precise calculation of the cost of complying with a request; only an estimate is required, however it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence.
16. The complainant has argued that DWP's estimates "include a lot of work not strictly required to fulfil my request", and said "the total time is only marginally above the limit".

17. They consider that much of the work DWP described could be avoided.

18. At internal review, DWP said:

"We ... have broken down the work which would be required in order to provide a response to you.

- **Request process overview and requirements:** The work involved in raising, approving, developing, testing, and executing a script request for DWP and Supplier teams. The DWP team drafts the request requirements and submits them for peer review and admin logging. This work would take 3.5 hours.
  - **Impact and assignment:** The Supplier team picks up the request, assigns a resource, reviews the requirements, and provides an impact. This work would take 3 hours.
  - **Development and testing:** The Supplier team develops the script, performs peer review, tests the script, documents the test results, and sends them to DWP for approval. This work would take 15 hours.
  - **Live proving run and changes:** The Supplier team prepares the script package and the DWP team executes the script, assures the results, and raises any questions or changes if required. This work would take 3.5 hours.
  - **Live production run:** The Supplier team raises a live change and discusses it at the Change Approval board. The DWP team executes the script, assures and shares the live results. This work would take 5.5 hours".
19. The nature of the work listed by DWP isn't always clear to the Commissioner; nor is it clear to him that all of the work falls under the permitted activities set out in the Fees Regulations (see paragraph 14), even if DWP's internal processes require such work. For instance, it's not clear to the Commissioner what "provides an impact" means (under 'impact and assignment'). DWP also included the sharing of results in its estimate (under 'live production run').
20. The 15 hours stated for 'development and testing' sounds generous.
21. There appears to be some duplication of work, such as assurance.

22. DWP has listed some work that may not be required. For instance, under 'live proving run and changes', DWP said changes would be raised **if required**, yet under 'live production run' DWP assumes changes will be required and talks about a 'live change' being raised and discussed at an approval board.
23. The Commissioner isn't convinced that the 'live production run' would take 5.5 hours of **staff** time. Time spent by a computer processing information without staff input can't be included in the estimate.
24. The Commissioner wrote to DWP for submissions, and asked DWP to clarify its estimate, to help him to understand the activities DWP had included and so that he could check that activities hadn't been included twice for assurance. In his request for submissions, the Commissioner made it clear that if DWP failed to explain its position adequately he'd be more likely to uphold the complaint against DWP.
25. However, in response DWP simply upheld the calculations it had provided at internal review, and emphasised the burden of the request; DWP also said it had completed a sampling exercise to verify the calculations, but it didn't provide the Commissioner with any further details of that.
26. Given his concerns about DWP's estimate, and DWP's failure to provide the clarification he requested, the Commissioner isn't satisfied that complying with this request would exceed the appropriate limit. He therefore finds that DWP wasn't entitled to rely on section 12(1) of FOIA to refuse the request.

## **Right of appeal**

---

27. 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)

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Daniel Kennedy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**