

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2018

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 information from the Department for Work and Pensions ("the DWP") about which of its work experience schemes for people seeking employment were offered by a particular organisation.
2. The Commissioner's decision is that the DWP has correctly refused the request under section 12 of the FOIA as the time for compliance would exceed the appropriate limit.
3. The Commissioner does not require the DWP to take any steps.

Request and response

4. On 29 October 2016, via the website What Do They Know, the complainant requested information from the DWP in the following terms:

"The Department was recently ordered to release all the names of Mandatory Work Activity providers by the Court of Appeal [link provided].

I am seeking information on the Jesus Army Centre's involvement in all DWP schemes which the Master of the Rolls Lord Justice Lloyd Jones pointed out are 'collectively referred to as "workfare".'

1. I would like the name of each workfare scheme the Jesus Army Centre was involved in e.g. the Work Programme and Community Work Placements.

2. I would like the start and end dates of their involvement in each scheme.

3. I would like the figures for DWP benefit claimants who participated in each workfare scheme with the Jesus Army Centre up to the year 2015 – as close to the end of the calendar year as costs permit."

5. The DWP responded on 25 November 2016. It stated that it held some information falling within the scope of the request. It explained that it did not recognise the term "workfare" but that it operated a number of employment programmes which were *"supportive initiatives, designed to help unemployed people gain skills and help them into paid employment"*. However, it explained that the information requested was held across 70 different providers and refused the request under the exemption at section 12 of the FOIA as it estimated that the cost of compliance would exceed the appropriate limit.
6. The complainant revised his request on 26 November 2016, as follows:
 - "1. Please provide the names and addresses of ALL providers.*
 - 2. Please provide the full postal address of the Jesus Army Centre.*
 - 3. Please provide the names of all workfare schemes that the providers provided to the Jesus Army Centre. I do not need this information for each individual provider. If, for example, all 70 providers provided scheme X, I do not need to know that each provider provided scheme X, only that scheme X was provided."*
7. The DWP responded to the complainant on 21 December 2016. It provided a link to public websites in response to requests 1 and 2 where the requested information could be found. With regard to request 3, the DWP explained that the information which it held was stored across 70 different providers, as before, and refused the request under section 12 of the FOIA.
8. The complainant requested an internal review on 21 December 2016. Specifically, he considered that he had not been provided with the information he had requested in question 1 of his revised request. He also disputed the application of section 12 of the FOIA to request 3.
9. The DWP responded on 2 March 2017. It upheld its position.

Scope of the case

10. The complainant contacted the Commissioner on 3 March 2017 to complain about the way his request for information had been handled.
11. During the course of the investigation, the DWP provided some further information to the complainant. It wrote to him on 13 November 2017. With regard to request 1, it provided the complainant with more specific information regarding where to access the information. With regard to request 3, the DWP clarified that the information requested was stored across 70 different *contracts* rather than 70 different providers. It also offered some general advice and assistance regarding narrowing the request so that it might fall within the appropriate costs limit, and where to access publicly available information in future.
12. The complainant contacted the Commissioner on 21 November 2017 and explained that he was still dissatisfied with the DWP's response to request 3. He acknowledged the advice and assistance provided by the DWP to help him to refine his request, but had now determined (via the link provided to him by the DWP) that there are only four Jesus Centres (the term 'Jesus Army Centre' having turned out to be incorrect), he maintained that *"records probably exist to make dealing with my request relatively straightforward."*
13. The following analysis therefore concerns whether the DWP correctly refused to provide the information requested in question 3 of the request of 26 November 2016 under section 12(1) of the FOIA, with reference to 'Jesus Centres'.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

14. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the fees regulations"). The task for the Commissioner here is to reach a conclusion on whether the DWP estimated reasonably that the cost of the request would exceed the limit.
15. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. 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 DWP.

16. 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 a document containing the information;
 - c) retrieving a document containing the information; and
 - d) extracting the information from a document containing it.
17. The four activities are sequential, covering the retrieval process of the information by the public authority.
18. As referred to in its response, the DWP has explained that it does not recognise the term "*workfare*", which has been applied by different groups of individuals to a range of different schemes offered to people seeking work, not all of which offer work experience.
19. However, when it receives requests for information about "*workfare*" schemes, it is sometimes able to provide information about specific programmes which include a work experience element. It has explained that "*a very large range*" of these are offered, or have been offered previously but no longer exist.
20. The DWP has explained how this information is held. It has explained that the information is not held centrally, but rather is held by "*contracted providers*" of the work experience programmes.
21. In the Commissioner's published guidance on calculating the cost of compliance¹, it is explained that a public authority may consider the time which would need to be spent by contracted or external staff.
22. The DWP has explained the relationship between itself, the contracted providers, and the placement hosts which individuals attend to participate in the programmes (such as the Jesus Centres). It has explained that, while some scheme providers are contracted to the DWP to source opportunities for the range of work experience programmes on

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

offer, and to deliver the programmes, no contract exists between the DWP and the placement hosts themselves.

23. The DWP therefore does not have any contractual relationship with the Jesus Centres which would enable it to require them to provide the information directly.
24. Moreover, the DWP has explained that it does not retain a central list of placement hosts.
25. The DWP has explained that some work experience programmes are provided by 'prime providers' (for example, Learn Direct). It has a contractual relationship with these prime providers who will, therefore, provide the DWP with information required to respond to freedom of information requests.
26. DWP has explained that it does not dictate how each contracted provider should hold the information.
27. Moreover, not all of the information held relating to its programmes is held by prime providers. The DWP explains that *"a prime provider may then subcontract sourcing work experience opportunities to other providers in that contract package area."*
28. The DWP has explained what it means by a 'contract package area.' These are the geographical regions into which the UK is divided up for the delivery of each programme.
29. The DWP has explained that, while the outstanding part of the request focuses on one placement host (which operates in four locations), it has no way of knowing which of its schemes may have been offered at the Jesus Centre without contacting multiple providers – both prime providers and subcontracted providers – who may potentially have delivered schemes via the four centres and may therefore hold relevant information.
30. The DWP's position, therefore, is that by narrowing the scope of the request to only one placement host, the complainant has not reduced the scope of the search which it would have to carry out in order to locate all of the information which is held falling within the scope of the request.
31. The DWP has also noted that the scope of the request is not narrowed by any particular timeframe, which may have limited the amount of information that would have to be searched through, nor to any scheme in particular.
32. The DWP has therefore provided an estimate of the costs which would be incurred in providing the information requested; that is, in locating

and searching through information relating to all of its programmes containing a work experience element, to ascertain which ones were offered at the four Jesus Centres.

33. The DWP has carried out a sampling exercise which relates to three specific work experience programmes: the Mandatory Work Activity ("MWA"), Community Work Placements ("CWP") and Work Programme ("WP").
34. These were named as examples by the requester before he revised his request and may potentially have been offered at the Jesus Centres. Although the complainant's request is not limited to these three programmes, the DWP therefore considers that the sampling exercise is relevant in estimating the time it would take to respond to the request.
35. The DWP has provided evidence that information relating to the provision of these three programmes is held by approximately 70 different 'contract packages;' that is, by different providers across different geographical areas.
36. The DWP explained that to identify the information relevant to the request, it would be necessary to contact all relevant contract management teams, and then for a performance manager on each team to contact each provider to determine what is held.
37. The DWP has written to two providers who are contracted to deliver the three schemes, in order to conduct the sampling exercise; namely Rehab Jobfit and G4S.
38. The sampling exercise showed that this process took at least 15 minutes per separate contract, and the DWP explained that since 39 separate contracts exist for the WP scheme alone, it would take 9 hours and 45 minutes to identify information just relating to this scheme.
39. The DWP considers that this was the quickest method of identifying relevant information, as the performance managers on the management teams work regularly with the providers, and have the most up to date list of contacts in order to direct the emails appropriately.
40. At the rate of £25 per hour, this element would result in a cost of £243.75 to the public authority.
41. The DWP has also stated that the providers which it contacted to carry out the sampling exercise explained that they would need to extract data from their referral systems in order to identify whether any programme, such as WP, had been offered via the Jesus Centres.
42. The provider responses set out that it would be necessary to write and run reports to extract the relevant data. In carrying out this task for the

purposes of the sampling exercise, the providers found that it took a minimum of 70 minutes to extract the relevant data for a particular contract package, and could take up to 10 hours.

43. Basing its estimate on the minimum time taken, the DWP calculated that it would take 45 hours and 30 minutes for data to be extracted for the WP programme alone (70 minutes X 39 contracts). This would result in a cost of £1137.50 to the public authority.
44. Finally, the DWP estimated that a further half an hour would be necessary to review the relevant responses and data provided, which is equivalent to a cost of £12.50.
45. The DWP therefore estimated that the cost of checking whether just one specific scheme, WP, was offered by any or all of the four Jesus Centres, was £1393.75 (55 hours and 45 minutes' work). This significantly exceeds the appropriate costs limit of £650 (24 hours' work).
46. The DWP's position therefore is that to provide the names of "*all... schemes*" that were provided via the Jesus Centres would by far exceed the appropriate costs limit.
47. Before considering the sampling exercise itself, the Commissioner considered the fact that this exercise was also cited in ICO case reference number FS50649178².
48. In that case, the DWP applied section 12(1) to a request for the names of "*all companies*" who were (at the date of that request) participating in the MWA and any other "*workfare*" scheme. This differs from this case, in which the complainant has asked about only one placement host.
49. However, the Commissioner agrees with the DWP that its application of the exemption in that case, and the sampling exercise it carried out, are relevant here. The DWP set out, as explained above, that information is not stored according to placement host, but is held according to the work experience programmes themselves, by the providers of those programmes or by those who are sub-contracted to arrange for their provision.
50. Therefore, by limiting the scope of the request to one placement host, as previously mentioned, the DWP's position is that this does not limit the extent of the searches that would have to be carried out. The information is likely to be held across multiple contracts.

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2172651/fs50649178.pdf>

51. The Commissioner has considered the explanations offered by the DWP and the reasonableness of its estimate. She considered these factors in some detail in ICO case reference FS50649178, referenced previously, in which she raised further questions about how the information was held and how it might be extracted.
52. Taking into account the sampling exercise and the further explanations offered in that case, the Commissioner is satisfied that the DWP has estimated reasonably that it would exceed the cost limit to locate, retrieve and extract information relevant to a specific work experience programme, WP, in order to determine whether it had been offered at the Jesus Centres.
53. She has therefore determined that the DWP correctly refused the request under section 12(1) of the FOIA.

Right of appeal

54. 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 1234504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

55. 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.
56. 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

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