

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 May 2018

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
6 -12 Tothill Street  
London  
SW1H 9NA

#### Decision (including any steps ordered)

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1. The complainant has requested information about Winter Fuel Payments to recipients in France. The Commissioner's decision is that the Department for Work and Pensions correctly relied on section 12 (cost limit) to refuse the request. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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2. The Department for Work and Pensions (DWP) has responsibility for the calculation and payment of UK State Pensions and Winter Fuel Payments (WFPs) to, amongst others, those eligible and living in France.
3. On 18 October 2016 the complainant requested the following information from DWP (request 3979):

*"Please search your database and mailing files for UK Claimants of the Winter Fuel Payment for the winter of 2014/2015 who were at that time resident in the following Regions, selected by their Département postcodes within each Region, the first two digits of which are as shown below:*

1. *Aquitaine - 24, 33, 40, 47, 64*
2. *Basse-Normandie - 14, 50, 61*
3. *Bretagne - 22, 29, 35, 56*
4. *Languedoc-Roussillon - 11, 30, 34, 48, 66*
5. *Pays de la Loire - 44, 49, 53, 72, 85*
6. *Poitou-Charentes - 16, 17, 79, 86"*

4. On 15 November 2016 DWP responded and refused the request under section 12(1) of the FOIA. It explained that as part of its cost estimate it had included a request made around the same time (request 4121), and a request that it had complied with previously (request 3424). Having aggregated these requests DWP estimated that the cost of compliance would exceed the appropriate limit.
5. The complainant requested an internal review on 9 January 2017. In this he made a number of points on how the DWP should be able to obtain the requested information from its records within the appropriate time limit.
6. The DWP issued its internal review on 6 February 2017. This upheld the refusal notice of 15 November 2016 and refused the request under section 12(1) of the FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner 17 April 2017 to complain about the way request 3979 had been handled.
8. The Commissioner considers the scope of this investigation to be whether DWP was entitled to aggregate the requests under section 12(4) of the FOIA and whether DWP was entitled to rely on section 12(1) to refuse to comply with request 3979. She will also consider whether DWP has fulfilled its obligations under section 16 of the FOIA.
9. The Commissioner notes that she issued a decision notice in a similar case in 2015. That case involved a request for information relating to Winter Fuel Payments to recipients in Spain. The Commissioner's decision was that DWP was entitled to rely on section 12 to refuse the request. The complainant appealed the decision notice to the First-tier Tribunal. He subsequently refined his request to the extent that DWP was able to comply without exceeding the cost limit. The Commissioner would stress that each decision is made having taken account of all the circumstances of the case.

## Reasons for decision

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### Section 12: cost limit

10. Section 12(1) of the FOIA provides that an 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, known as the cost limit (£600 for central government, £450 for all other authorities). Section 12 of the FOIA should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:
- (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.
11. Regulation 4(4) states that the authority should calculate the cost of complying with a request by multiplying the time estimated by £25 per hour. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to comply with the request. In the case of DWP, the £600 limit applies, which equates to 24 hours.
12. Section 12(4) of the FOIA and regulation 5 of the Fees Regulations provide that requests may be aggregated where two or more requests are made within sixty working days, and where they relate to any extent, to the same or similar information. Where these conditions are met an authority can legitimately refuse multiple requests under the cost limit, even if compliance with one or more of these requests would not themselves exceed the cost limit.
13. The Commissioner's guidance on aggregating requests can be found in her guidance on requests where the cost of compliance exceeds the appropriate limit<sup>1</sup>. Paragraphs 44 and 45 of the guidance state:

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

*"Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.*

*A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested."*

14. DWP confirmed that it had aggregated three requests made by the complainant on 19 September 2016 (request 3424), 18 October 2016 (request 3979) and 21 October 2016 (request 4121). Request 3979 is the subject of this decision notice, and the request of 19 September 2016 was for similar information in respect of Corsica, Sardinia and Sicily.
15. Having considered the wording of the requests in this case, the Commissioner is satisfied that each request clearly relates to UK claimants of the Winter Fuel Payment who live outside the UK. The Commissioner is also satisfied that DWP received the requests within 60 days, and that the requests were submitted by the same applicant. The Commissioner therefore finds that DWP was entitled to aggregate the requests under section 12(4) of the FOIA.
16. The Commissioner has gone on to consider whether compliance with the aggregated requests would exceed the 24 hours allowed under the cost limit.

### **DWP's position**

17. DWP explained that in order to comply with any of the requests it needed to commission work from its IT contractors. This incurred a charge, and the hourly rate was greater than the £25 per hour permissible under the Fees Regulations.
18. DWP said it had complied with request 3424 and provided the requested information to the complainant on 17 October 2017. DWP provided the Commissioner with a copy of an invoice indicating that its IT contractors had charged £1256 for providing the requested information. This in itself clearly exceeded the £600 cost limit.
19. The Commissioner asked DWP for a breakdown of the £1256 cost against the work require, but DWP was unable to provide this. The invoice recorded that two supplier days' work was required, and

although it contained a description of the work required it did not explain how the estimate of two days had been calculated:

- Extract a data set from the 2014/15 Winter Fuels EEA of all records where a country code for France (128) or Italy (133) are present.
  - Create and peer review of a script to extract postal code data from all 4 lines of the address for each extracted record (identify and isolate strings of 5 digit numbers).
  - Create a script to interrogate first numerical elements of the extracted postal codes and produce separate counts of cases.
20. With regard to request 3979, DWP said that its IT contractor had estimated that compliance with the request would require between 4.5-5 supplier days' work. DWP provided the following description of the work required:
- Design and cost: 1 day
  - Produce code: 1.5-2 days
  - Test: 0.75-1 day
  - Implementation: 1 day
21. By DWP's estimate, compliance with the aggregated requests 3424 and 3979 would therefore require at least 52 hours, more than twice the cost limit of 24 hours. DWP did not provide an estimate regarding request 4121.

### **The complainant's position**

22. The complainant advised the Commissioner that he did not seek to challenge DWP's aggregation of his requests. Rather, he was of the view that DWP ought to be able to comply with request 3979 within the cost limit.
23. The complainant drew the Commissioner's attention to software he had previously used for database management.
- "...I believe all that is needed is to purchase the Corel package, and set up Paradox to search all fields looking for postcodes in the database for the Départements requested."*
24. The complainant also reiterated submissions he had made when challenging the Commissioner's previous decision notice (ref FS50570566). He stated that there was one database for all UK

pensioners living within EU/EEA countries, containing approximately 474,000 names. DWP regularly sent targeted mailshots to subsets of these individuals, which in the complainant's view suggested that DWP ought to be able to extract the requested information in a relatively straightforward manner.

### **The Commissioner's findings**

25. When applying section 12, a public authority does not have to make a precise calculation of the costs of complying with the request; only an estimate is required. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*<sup>2</sup>, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*".
26. The Commissioner has first considered DWP's assertion that compliance with the requests would require work to be commissioned from its IT contractors. The Commissioner notes that in her previous decision notice she accepted this position with regard to a request that was for similar information. The Commissioner has not seen compelling evidence in this case to suggest that she ought to adopt a different approach. For example, the complainant has suggested that DWP ought to be able to use its mailing lists, but DWP has stated that it does not in fact hold such mailing lists. DWP maintains that in order to produce the information requested by the complainant, it would need to interrogate its systems at the database level.
27. The complainant has also suggested that DWP ought to purchase a particular type of software on the basis that it is relatively inexpensive and should be able to generate the requested information. The Commissioner interprets the complainant as suggesting that DWP's failure to use this software is evidence that its estimate is unreasonable. The Commissioner's guidance sets out her view that an estimate is unlikely to be reasonable where a public authority has failed to consider an absolutely obvious and quick means of locating, retrieving or extracting the information. However she does not consider that the purchase of software falls within this criteria. The Commissioner is guided by the view of the Upper Tribunal as set out in the case of *Kirkham v Information Commissioner [2018] UKUT 126 (AAC)*. The Tribunal dismissed the appellant's suggestion that a public authority ought to buy in expertise, or download open source software, in order to

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<sup>2</sup> <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

Paragraph 12

conduct the search as per his specifications. Similarly, in this case the Commissioner does not accept the complainant's argument with regard to DWP.

28. For the reasons set out above the Commissioner accepts that it is reasonable for DWP to include in its estimate the cost of commissioning work from its IT contractors. The Commissioner has then gone on to consider whether the cost as estimated is reasonable. With regard to request 3424 this is less than straightforward because DWP only provided the overall cost rather than a breakdown of the cost attached to each element of the work required. In the absence of a costed breakdown of the work required the Commissioner considers it unlikely that the figure of £1256 is objectively reasonable. DWP was able to confirm that this represented two supplier days, which in terms of time rather than cost would not exceed the 24 hours (3.5 days) allowed under section 12.
29. The Commissioner is not required to make a decision as to whether compliance with request 3424 would exceed the cost limit since the subject of the complaint in this case is request 3979. Therefore she has gone on to consider DWP's cost estimate in respect of request 3979. If the Commissioner finds that compliance with request 3979 would itself exceed the cost limit then the cost of compliance with request 3424 would have no bearing on the outcome of the outcome of the case.
30. As set out above DWP stated that compliance with request 3979 would take at least 36 hours. While the Commissioner considers that the time required for each activity may be slightly overestimated, she is not persuaded that the estimate is so inaccurate as to fall under the 24 hour cost limit. In any event, if compliance with request 3979 would fall under 24 hours, the Commissioner would then need to consider the estimate in respect of request 3424 in more detail, as well as obtaining an estimate for the third request, 4121. The lack of precision in DWP's arguments does not prevent it from having presented a reasonable estimate that compliance with request 3979, either on its own or aggregated with requests 3424 and 4121, would exceed 24 hours. Therefore the Commissioner finds that DWP was entitled to rely on section 12 in order to refuse to comply with the request.

#### Section 16: advice and assistance

31. Section 16 of the FOIA provides that a public authority is required to provide advice and assistance to applicants. DWP was of the view that it could not provide practical advice or assistance to the complainant that would help him submit a request that would not exceed the cost limit.

32. The Commissioner accepts DWP's position in this case on the basis that the complainant has submitted several requests for a large amount of information. He does not accept DWP's position that it cannot produce the requested information without referring it to its IT contractors. The Commissioner therefore accepts that it is unlikely that a refined request would deliver the substance of the information the complainant wishes to receive.

### **Other Matters**

33. The Commissioner is of the view that the investigation in this case has been made more difficult by the quality of DWP's engagement. The Commissioner has received a large number of complaints about DWP since FOIA access rights came into force in 2005. This is not unexpected, given that DWP is a large central government department.

34. However, the Commissioner is disappointed that, despite the frequency of contact with her case officers, DWP still appears to require several opportunities to provide relevant information in any particular case. The Commissioner routinely advises public authorities that they will be given one opportunity to provide a detailed response to her enquiries. The Commissioner recognises that departments such as DWP will have competing priorities and demands on their resources. However, the Commissioner expects that all public authorities will ensure that appropriate attention is given to information rights.

## Right of appeal

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35. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

36. 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.
37. 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

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex 1: information requests**

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### Request 3424, submitted 19 September 2016

Please search your database and mailing files for UK Claimants of the Winter Fuel Payment as follows:

1. The number of Claimants of the WFP for the winter of 2014/2015 who were at that time resident on the island of Corsica with French Postcodes the first two digits of which are 20.
2. The number of Claimants of the WFP for the winter of 2014/2015 who were at that time resident on the island of Sardinia with Italian Postcodes the first two digits of which are 07, 08 and 09.
3. The number of Claimants of the WFP for the winter of 2014/2015 who were at that time resident on the island of Sicily with Italian Postcodes the first two digits of which are 90, 91, 92, 93, 94, 95, 96, 97, and 98.

### Request 3979, submitted 18 October 2016

Please search your database and mailing files for UK Claimants of the Winter Fuel Payment for the winter of 2014/2015 who were at that time resident in the following Regions, selected by their Département postcodes within each Region, the first two digits of which are as shown below:

1. Aquitaine - 24, 33, 40, 47, 64
2. Basse-Normandie - 14, 50, 61
3. Bretagne - 22, 29, 35, 56
4. Languedoc-Roussillon - 11, 30, 34, 48, 66
5. Pays de la Loire - 44, 49, 53, 72, 85
6. Poitou-Charentes - 16, 17, 79, 86

Request 4121, submitted 21 October 2016

Please search your database and mailing files for the number of Claimants of the Winter Fuel Payment resident on the island of Sicily for this year of 2016/2017. Full detail can be found at annex A.

Annex A

Dear DWP Strategy Freedom of Information, I fully understand the necessity for the Department to express the caveat, of which I am aware. However, I was appalled to learn that the data capture/database management of the Winter Fuel Payment system is so poor, particularly, as the Department is active with the distribution of 'Life Certificates'. Since there is a sanction of withholding Pension payments if 'Life Certificates' are not returned, I would have expected they would be an excellent source of gradually updating the database. However, since my request focussed on postcodes, may I submit my question in respect only for Sicily in a different form? As the Department will be mailing letters to Claimants of the Winter Fuel Payment in a short time, to be followed closely by the transmission of the actual payments, please search your database and mailing files for the number of Claimants of the Winter Fuel Payment resident on the island of Sicily for this year of 2016/2017. I understand from the Department's Methodology Statement that the mailing file is being processed right now. I therefore ask that the search is done to extract a record of those payments to be made in Sicily by: numeric postcodes; alpha recognition of the word Sicily; or the DWP's own specific country coding; whichever will produce an accurate assessment of what is contained within the completed mailing file when the number of payments are sent to be processed following data matching.

I recognise the revised request relates to a different year, but I note from published statistics that the total for Italy fell by 60 in the year 2015/2016 compared to 2014/2015.