

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

### **Decision notice**

**Date:** 27 September 2018

**Public Authority:** Department for Work and Pensions (DWP)

**Address:** 4th Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA

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

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1. The complainant has requested various information regarding "compliance interviews" from the Department for Work and Pensions.
2. The Department for Work and Pensions relied on section 12 (costs) to withhold requested information, the Commissioner's decision is that it was correct to do so.
3. The Commissioner however requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance in accordance with the DWP's obligations under section 16 FOIA.
4. The public authority must take these steps within 35 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 the Act and may be dealt with as a contempt of court.

#### **Background**

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5. The DWP has explained to the Commissioner that Local Service Compliance (LSC) is the term for the action taken to ensure a benefit claimant gives the correct information and reports all relevant changes at the right time during the life of the benefit claim. These are not criminal investigations and interviews are not performed under caution. Claims to benefits are reviewed routinely for a variety of reasons to ensure conditions of entitlement to benefit are being met, that it has been notified of any changes in circumstances and to confirm that no official errors have been made.

## **Request and response**

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6. On, or about 24 October 2016, the complainant requested information from the DWP. The DWP provided the complainant with its substantive reply on 11 November 2016. The requests and replies thereto are laid out below (all errors as in the originals) ;

### Questions 1 and 2

- 1- "A list of cognate material held at DWP to the effect of the relevant Minister at DWP direct knowledge of "compliance interview".
- 2- DWP official description of a "compliance interview" , together with list of relevant rationale , account, statements and like document authorising implementation and administration of " compliance interview".

### Reply

"Section 21 of the Freedom of Information Act 2000 (FoIA) allows us to direct you to information already reasonably accessible in the public domain. To do this we have provided the links to the redacted Fraud Guidance that is followed by DWP FES and contains information on the rights of the Department to access information.

Fraud investigations guide

<https://www.gov.uk/government/publications/fraud-investigations-staff-guide>"

### Question 3

"Statutory provisions on which basis "compliance interview" is established in law and carried out, identifying specific primary legislation authorising putting in place of a "compliance interview".

Reply

"Again as directed by Section 21 of the FoIA I have further provided links to the relevant sections of DWP Legislation

[http://www.legislation.gov.uk/uksi/1987/1968/pdfs/uksi\\_32\(1A\)](http://www.legislation.gov.uk/uksi/1987/1968/pdfs/uksi_32(1A).pdf) for Compliance.

[http://www.legislation.gov.uk/uksi](http://www.legislation.gov.uk/uksi/2013/1614/pdfs/uksi_1614_1618.pdf) - Regulation 16 - 18 for suspension and termination of a benefit claim.

Please note: DWP does not, as a matter of course, publish detailed internal operational guidance on its external website for a number of different reasons, not least of which is the frequency of change required to that guidance in order to address varying issues. These may arise as a result of changes to legislation or representation from regulatory bodies, ombudsman or customer representative groups".

Question 4

"Copies of prescribed form of standard Letters , template etc used for notifying , inviting or engaging service users as to details and nature of "compliance interview" and what, if any, they are required to do by way of participation. Identify specific responsibility holder at DWP for compliance with the case law in administration of "compliance interview".

Reply

"When a claimant is asked to attend a LSC interview in order to review a claim instructions are contained within the body of the letter regarding the basis of the interview i.e. 'When we meet you we will talk about any changes which might affect your benefits'. As previously noted above DWP does not, as a matter of course, publish details of internal operational guidance".

Question 5

"Identify specific responsibility holder at DWP for compliance with the case law in administration of "compliance interview".

Reply

The Permanent Secretary has the overall responsibility for DWP FES. There is no case law for LSC as previously stated a Compliance interview is not a Criminal Investigation and therefore not subject to prosecution in a court of Law. Responsibility for conducting individual Compliance interviews rests with LSC Officers. These staff members are all internally trained to a set standard.

Question 6

Copy of any review , amendment, report etc produced by the above position holder in respect of the way " compliance interview" is carried out and administered subsequent to High Court ruling against DWP on sufficiency of information 2012-EWHC 2292 (admin).

Reply

There is no fraud and error legislation or policy in relation to compliance interviewing as these cases are not a criminal investigation, not prosecuted and therefore not subject to any legal review or amendment. There is however, internal guidance on how compliance interviews are to be conducted – see questions 1& 2.

With regard to the High Court ruling to which you refer this appears to refer to sector based work academies. Referrals to these services are made by Jobcentre work coaches/advisors and not by any FES Local Service Compliance team members.

7. Following an internal review the DWP wrote to the complainant on 2 December 2016. It stated that aside from erroneously providing non-working links it upheld its original decision. It then provided working links. Otherwise it maintained its position as originally stated to the complainant.

**Scope of the case**

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8. The complainant contacted the Commissioner, on 2 December 2016, to complain about the way his requests for information had been handled. In particular he said (all errors as in the original);  
  
"I raised a number of request for information with DWP originally ref FOI-4064.

DWP made an illusive and nonspecific reply with outdated references, in response.

I asked for an internal review but DWP has responded with snob ( vtr-Ref IR485). DWP handling of this request has been appalling lacking due regard for statutory obligations at stake, including duty to admit or deny holding certain information specified.

I request a formal condemnation by ICO and securing DWP disclosure of the requested information or DWP admitting or denying holding of those item of information by lawful means at ICO disposal”.

9. During the course of the Commissioner’s investigation the DWP informed her (on 15 November 2017) as follows;

Reply to Question 1

“We have interpreted this question to refer to the degree of knowledge the relevant Minister had of DWP’s fraud, error and debt procedures.

I apologise for the omission in answering this initial question. Lord Freud had responsibility for Fraud and Error Service (FES) from 11/05/2010 – November 2016 and Lord Henley from November 2016 – June 2017. The Minister with current responsibility for CFCD from June 2017 is Baroness Buscombe. Each Minister on taking up their post is briefed by senior policy leads, has regular ongoing dialogue and considers the way in which we tackle fraud error and debt.

However in hindsight, in order to provide/confirm all of the information that a minister knew and their direct knowledge of how compliance interviews are conducted, would require the examination of individual correspondence records (e.g. emails) and there is no central repository for this type of dialogue and briefing.

In order to provide this information we estimate that the cost of complying fully with this request would exceed the appropriate limit of £600.

At the time of the original FOI request which was received in November 2016, this was a transitional period between two Ministers, Lord Freud and Lord Henley. In order to fully ascertain the level of knowledge of Lord Freud this would involve the examination of all correspondence e.g. emails and minutes taken during meetings and briefings from May 2010 to November 2016 and likewise the same for the handover period to Lord Henley when he took up post.

A previous ICO reference number FS50595166, asked a similar question regarding the emails received during the period 1st June 2013 to 7th May 2015 and DWP provided the Commissioner with its breakdown and estimate of complying with the request.

At that time it was estimated approximately 2000 emails per week for the period of that request would need to be examined i.e. 218,000 emails for the 2 year period.

As the period in the complainant's request is substantially longer e.g. 288 weeks this would potentially involve the examination of 576,000 emails. This would then increase any estimated costs given at that time and would not include any minutes or notes taken at meetings and briefings all of which would also potentially have to be examined.

We accept that the ICO had reservations regarding the figures quoted however, DWP is of the opinion that even if only half of this number is a relevant figure it would still substantially exceed the appropriate limit of £600".

#### Reply to Questions 2 and 3

"These questions are interlinked. There is no fraud and error legislation or policy in relation to compliance interviewing as these cases are not a criminal investigations, not prosecuted and therefore not subject to any legal review or amendment.

There is however, internal guidance on how compliance interviews are to be conducted that DWP does not, as a matter of course, publish on its external website for a number of different reasons, not least of which is the frequency of change required to that guidance in order to address varying issues. These may arise as a result of changes to legislation or representation from regulatory bodies, ombudsman or customer representative groups".

#### Reply to Question 4

"When a benefit claimant is invited to attend a LSC interview instructions are contained within the body of the appointment letter which is currently a FES L2 and, as previously noted DWP does not as a matter of course, publish details of internal operational guidance. However, please see annex 1 for a copy of the appointment letter which should have been included in our original response.

The current response to question 2 provided the relevant details of a compliance interview and the structure therein".

#### Replies to Question 5 and 6

Claimants are asked to attend a LSC interview for a variety of reasons often to ensure:

- Correct benefit entitlement
- All information is obtained to enable any potential overpayment or underpayment to be calculated
- The causes of any overpayment or underpayment
- How to stop it happening again
- The claimant understands the possible consequences of not complying in the future

As previously mentioned there is no fraud and error legislation or policy in relation to compliance interviewing. There is however, internal guidance on how compliance interviews are conducted and this was covered in the answers provided in question 2.

The High Court ruling to which the complainant referred was with regard to Sector Based Work Academies. All referrals and interviews with regard to this fall within the remit of the Jobcentre work coaches/advisors and are not dealt with by CFCD and LSC would have no occasion to interview these customers and are not involved in this area of DWP work.

Whilst we may provide non-exempt material in response to an FOI request, DWP recognises that whilst we may not be able to justify withholding all of the information under FOI, any information in this area has the potential to weaken processes and supply intelligence to those wishing to commit fraud and we keep that in mind when deciding what we voluntarily choose to publish.

We feel that the complainant has the necessary access to the previous hyperlinks we have provided and based on subsequent questions he has raised, that he understands their content however, if the complainant feels that we have misinterpreted his questions and still remains unhappy with our responses I would like to take this opportunity to

apologise and suggest that he may wish to re-phrase his questions so that we can consider them again”.

10. On 9 July 2018, as requested, by the Commissioner, DWP provided further clarification on its use of section 12. It explained that the breakdown and estimate of email volumes from the previous ICO case FS50595166, related to a similar request received August 2015 concerning emails received/sent by the Secretary of State during the period 1 June 2015 to 7 May 2015. At that time it was established that on a typical day over 200 emails are received in to the Secretary of State's inbox alone. Based on 2 team inboxes DWP then estimated costs based on the volume of 2,000 emails per week or 104,000 annually. As this data was already available and unlikely to have changed dramatically it was used as a relevant reference.
11. In relation to emails received, correspondence is stored by date and then by theme, with different areas for each Minister and even multiple subfolders. This means that sorting through them is not a practical exercise and no simple keyword search can be applied. Secondly the archive is isolated on a secure non compatible system and searches would be from a remote server (which means connection speeds are slow).
12. Any search process would involve locating, identifying, retrieving and extracting the relevant emails, including scrutiny to ensure that any emails out of scope of the Act are identified and extracted. Out of scope emails will include personal emails, information relating to special advisors political activities and spam.

## **Reasons for decision**

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13. The Commissioner considers that the scope of the request is to determine whether DWP was correct to rely on section 12 in respect of question/request 1. It is her position that if section 12 applies to one element of a request then it applies to the request in its entirety.
14. Public authorities can aggregate two or more separate requests. Multiple requests within a single item of correspondence are separate requests for the purpose of section 12. This was confirmed by the Information Tribunal in the case of Ian Fitzsimmons v ICO & Department for Culture, Media and Sport (EA/2007/0124, 17 June 2008).

15. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate "to any extent" to the same or similar information.
16. The Commissioner is satisfied that there is a sufficient nexus the complainant's requests for information for the aggregation provided by regulation 5(2) of the Fees Regulations. The nexus being that the requests are seeking information concerned with the compliance interviews undertaking by the DWP

### Question 1

17. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".

18. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fee 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 in this case.

Would complying with the request exceed the appropriate limit?

19. 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:
  - determining whether it holds the information;
  - 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.
20. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be, amongst other things, made by one person, made for the same or similar information and received by the public authority within any period of 60 consecutive working days. The complainant is seeking

similar information regarding the DWP compliance interviews. The costs are therefore to be aggregated

21. The Commissioner accepts the DWP explanation (as laid out in paragraph 9 to 12 above) that to determine whether it holds the requested information and then locating it, would exceed the statutory cost limit. The complainant, whether advertently or inadvertently, casts his net too wide. He is seeking a list of all the material that shows the relevant minister had direct knowledge of compliance interviews.
22. The Commissioner accepts that to meet this request would entail the DWP interrogating a very substantial amount of correspondence and notes over a substantial period of time. This has been as estimated to be as many as 576,000 emails and any minutes or notes taken at numerous meetings and briefing. The DWP has informed the Commissioner that it was not possible to conduct pertinent electronic word searches due to their Outlook functionality being unable to narrow down the parameters of a search sufficiently to bring the request within the cost limit. In that the relevant emails received are stored by date and then by theme, with different areas for each Minister and even multiple subfolders. This means that sorting through them is not a practical exercise and no simple keyword search can be applied. Secondly the archive is isolated on a secure non compatible system and searches would be from a remote server (which means connection speeds are slow).
23. Any search process will involve locating, identifying, retrieving and extracting the relevant emails, including scrutiny to ensure that any emails out of scope of the Act are identified and extracted. Out of scope emails will include personal emails, information relating to special advisors political activities and spam.
24. Given the amount of material that would need to be interrogated the Commissioner has no reservation in concluding that the same could not be done within the statutory imposed cost limits. Accordingly the Commissioner upholds the DWP reliance on section 12 not to provide this requested information.

#### Section 16 – advice and assistance

25. Under section 16 FOIA the DWP is obliged to provide the complainant with advice and assistance to help the complainant refine the request to fall within the cost limit or explain why this would not be possible.

26. The DWP first relied upon section 12 in its correspondence with the Commissioner dated 15 November 2017. It did not subsequently correspond with the complainant on how to refine his request to fall within the cost limit or explain why this would not be possible.
27. The DWP has not therefore provided the complainant with any advice and assistance in this case regarding the application of section 12.
28. The Commissioner therefore considers that the DWP has not complied with its obligations under section 16 FOIA in this case.

#### Other Matters

29. The Commissioner notes that nearly a year elapsed between complainant's complaint to her and the DWP revised position of relying on section 12 not to meet the complainant's request for information.
30. By way of explanation it took some time for the Commissioner to liaise with the complainant to determine the nature and scope of his complaint. Once this was determined the Commissioner was able to commence her substantive investigation. The DWP then, in hindsight, came to the view that in order to provide all of the information that a minister knew about, and their direct knowledge of how, compliance interviews were conducted, would require the examination of individual correspondence records (e.g. emails) and that there is no central repository for this type of dialogue and briefing. Hence its new reliance on section 12.

## Right of appeal

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31. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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 .....**

**[Name of signatory]**  
**[Job title of signatory]**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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