

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

### **Decision notice**

**Date:** 26 September 2018

**Public Authority:** Department for Work and Pensions

**Address:** 4<sup>th</sup> Floor  
Caxton House  
Tothill Street  
London  
SW1A 9NA

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

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1. The complainant has requested information regarding Jobcentre managers visiting 10 Downing Street. The Department for Work and Pensions (DWP) initially informed the complainant that it did not hold the information, however, it subsequently relied on section 12 of the Act as collating the information would exceed the appropriate limit.
2. The Commissioner's decision is that DWP is entitled to rely on section 12(1) of the Act to refuse to comply with the request, however, she considers that DWP did not provide adequate advice and assistance as required under section 16.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with appropriate advice and assistance to aid him in making a refined request that falls within the appropriate limit.
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.

## Request and response

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5. On 14 January 2017, the complainant wrote to DWP and requested information in the following terms:

*"Managers of Jobcentres have been rewarded for their obedience with at least one visit to 10 Downing Street.*

*Please provide the minutes of the meeting(s), Emails arranging and discussing the meeting(s), state the purpose of the visit(s), and explain the reasons for lowly Jobcentre managers to be visiting 10 Downing Street when legitimate DWP business can be carried out at Caxton House."*

6. DWP responded on 26 January 2017 and stated that it did not have any processes for rewarding obedience with visits to 10 Downing Street and, therefore, it held no information falling within the scope of the request.
7. DWP also explained that Jobcentre managers, along with all DWP staff, could attend 10 Downing Street as part of meeting official duties or in a personal capacity. DWP set out that if a visit was made in a personal capacity, information would not be held by DWP regarding this.
8. DWP explained that, where a visit to 10 Downing Street is made as part of a manager's official duties in dealing with the Prime Minister's Office, this information is not recorded centrally as it is part of normal business and it would breach the cost limit to identify who has attended 10 Downing Street.
9. On 25 February 2017, the complainant contacted DWP to request an internal review. The complainant disputed that managers were not rewarded for their obedience as they were eligible for in-year bonuses. The complainant provided arguments regarding why he considered managers were offered visits to 10 Downing Street. The complainant also disputed DWP's arguments relating to the cost limit.
10. On 31 March 2017, DWP provided the outcome of its internal review and upheld its original response.

## Scope of the case

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11. The complainant contacted the Commissioner on 17 May 2017 to complain about DWP's request handling in general. The Commissioner confirmed that under section 50, she could only consider specific requests for investigation and asked the complainant to set out which requests he wished to proceed to investigation. On 28 September 2017, the complainant confirmed that he wished to complain about the request made on 17 January 2017.
12. The Commissioner notes that DWP initially stated that it did not hold information of the description specified in the request. The Commissioner has commented on DWP's interpretation of the request in the Other Matters section below, but considers that DWP's interpretation was incorrect and, therefore, the focus of her investigation is DWP's reliance on the cost limit.
13. The Commissioner will, therefore, consider whether DWP is entitled to refuse to comply with the request under section 12(1) of the Act. She will also consider whether DWP has provided adequate advice and assistance under section 16.

## Reasons for decision

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### Section 12(1) – Cost of compliance exceeds the appropriate limit

14. Section 12(1) of the Act states:

*"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."*

15. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>1</sup> (the Fees Regulations) at £600 for central government departments. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that DWP may refuse to comply

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

with a request for information if it estimates that it will take longer than 24 hours to comply.

16. In estimating whether complying with a request would exceed the appropriate limit, or cost 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, or a document containing it.
17. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. In the Commissioner's view, an estimate for the purposes of section 12 has to be 'reasonable'; she expects it to be sensible, realistic and supported by cogent evidence.

### **DWP's position**

18. DWP explained to the Commissioner that the request was wide in scope as it included all management grades within the DWP hierarchy and had an unlimited timeframe.
19. DWP confirmed that invitations to visit 10 Downing Street would be issued directly to the individual staff member and that there was no single liaison point within DWP for these visits. DWP explained that it did not record staff visits to 10 Downing Street centrally and it would need to, as a minimum, ascertain which staff members were within the scope of the request and contact their managers to determine whether information regarding visits to 10 Downing Street was held.
20. DWP explained that, currently, there are approximately 700 Jobcentres across the UK but, historically, there have been many more. Therefore if DWP only considered managers based in current Jobcentres, it would be required to contact approximately 700 managers to ascertain whether the information was held. DWP estimated that the cost limit of 24 hours would only allow two minutes for each Jobcentre to perform all of its searches. This estimate was based on one manager per Jobcentre, and DWP noted that if there was more than one manager then the time allowed per search would decrease further.

21. DWP also explained that it would also need to identify former employees of Jobcentres who still work for DWP to ascertain if they held relevant information. Such an activity would also require considerable time and would not necessarily return all relevant information.

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

22. The Commissioner is disappointed at the quality of DWP's submission. She considers that a public authority of DWP's size and experience with section 12(1) cases should be aware of the Commissioner's expectations and requirements when providing a submission.
23. The Commissioner is not persuaded that DWP's approach as described is a sensible one. It is not apparent why every individual staff member falling within the scope would need to be identified and their managers also contacted. The Commissioner considers that for current Jobcentres, it would be logical for the request handler to simply contact its liaison point at each Jobcentre, rather than all individual managers within each Jobcentre.
24. However, she does accept that as DWP would have to, as a minimum, contact each of its currently open Jobcentres. This would require approximately 700 members of staff to conduct thorough and adequate searches for information. As set out in paragraph 15 of this notice, the Fees Regulations set the appropriate limit at 24 hours, or 1440 minutes, for DWP. The Commissioner considers that it is clear that an adequate search of 700 Jobcentres could not be conducted within the cost limit since it would only allow two minutes per Jobcentre.
25. The Commissioner also accepts that, as there is no timeframe given with the request, consideration would have to be given to Jobcentres that have closed, whether local records were kept, etc. Although DWP did not provide an estimate of the time required, the Commissioner is satisfied that it would exceed the appropriate limit, especially in light of her findings about the 700 Jobcentres.
26. The Commissioner therefore finds that DWP was entitled to rely on section 12(1) of the Act to refuse to comply with the request. DWP referred to the cost limit in its refusal notice, but did not specifically cite that it was relying on section 12(1). Therefore the Commissioner finds that DWP failed to meet the requirements of section 17(5) of the Act.

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

27. Section 16(1) of the Act states:

*"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do*

*so, to persons who propose to make, or have made, requests for information to it."*

28. The Commissioner has published guidance on providing advice and assistance when refusing to comply with a request on the basis of section 12.<sup>2</sup> Paragraph 59 of the guidance states:

*"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:*

- either indicate if it is not able to provide any information at all within the appropriate limit;*
  - provide an indication of what information could be provided within the appropriate limit; and*
  - provide advice and assistance to enable the requestor to make a refined request."*
29. The Commissioner is disappointed that no advice or assistance was provided to the complainant at either the point of its refusal notice or internal review. DWP acknowledged that help and advice should have been provided under section 16 and apologised to the Commissioner for the oversight. Again, the Commissioner expects that a public authority of DWP's size and experience with section 12(1) cases should be able to offer advice and assistance as appropriate.
30. DWP acknowledged that it should have advised the complainant that he may wish to consider limiting the time frame, the geographical region, or grade of staff. It also set out that it should have advised the complainant to consider making a request under the Act to 10 Downing Street for information held in its visitors log book.
31. The Commissioner therefore considers that DWP has failed to comply with section 16 of the Act. She requires DWP to provide the complainant with adequate advice and assistance to help him refine his request such that it can be complied with within the appropriate limit.

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<sup>2</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)

## Other matters

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32. As set out in the 'scope of the case' section above, the Commissioner considers that DWP initially misinterpreted the complainant's request. The Commissioner is of the view that where an authority disagrees with the premise of a request, it should interpret the request as objectively as possible. In this case, DWP ought to have disregarded the claim regarding rewarding obedience and considered the request as being for information on Jobcentre managers' visits to 10 Downing Street only. If DWP felt that the request was ambiguous or unclear, it ought to have contacted the complainant as soon as possible to clarify the scope of his request.
33. The Commissioner therefore expects DWP to bear her guidance<sup>3</sup> in mind when responding to future requests. It is important to ensure that the complainant and the public authority are clear about the interpretation of a request at the outset. This will help reduce the risk of spending time and resources refusing a request that was not interpreted properly.
34. The Commissioner is also concerned at the quality of the internal review. An internal review should comprise a genuine reassessment of the request and response and is an opportunity for the public authority to ensure that it is satisfied with its position.
35. In this case, DWP appears to have provided a standard response which states "*We provided you with the recorded information that best answered your request*" despite no recorded information being provided in response to the request.
36. The Commissioner has issued guidance on conducting internal reviews<sup>4</sup> which states that when undertaking an internal review a public authority should:

*"make a fresh decision based on all the available evidence that is relevant to the date of the request, not just a review of the first decision".*

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

<sup>4</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

37. In this case, DWP did not appear to address the points made by the complainant or undertake a genuine review of the handling of this request.
38. The Commissioner considers that had DWP undertaken a thorough internal review, the interpretation issue may have been addressed at the time and prevented a complaint to the Commissioner.
39. The Commissioner expects DWP to take appropriate steps to improve the quality of its internal reviews in future.
40. Finally, the Commissioner observes that the complainant has, in this request and others, used an unhelpful tone and made unsubstantiated accusations against DWP and its staff. Whilst the Commissioner appreciates that the complainant is clearly frustrated at how DWP conducts itself, she asks the complainant to moderate his language and refrain from making accusations in his requests for information. The Commissioner recommends the complainant focus any future requests to ensure that they clearly describe the information sought.

## Right of appeal

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41. 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)

42. 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.
43. 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**