

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2023

Public Authority: Department for Work and Pensions

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the job titles of staff responsible for preparing materials for review by death inquiries.
2. The Department for Work and Pensions ("DWP") relied on section 12 (cost limit) of FOIA to refuse the request.
3. The Commissioner's decision is that DWP was entitled to refuse to comply with the request in accordance with section 12(1).
4. The Commissioner finds that DWP has complied with its obligations under section 16 of FOIA to offer advice and assistance.
5. The Commissioner does not require further steps.

Request and response

6. On 20 May 2023, the complainant submitted the following request to DWP:

"From documentation please kindly provide the job titles of those responsible for preparing material for death inquiries to review. For example, if independent consultants from Nottingham City Safeguarding Adults Board need to review how an individual came to die and DWP was

somehow relevant to such an investigation what are the job titles of those who would prepare the files of such an individual for those independent consultants to check over.

7. DWP responded on 16 June 2023, withholding the information requested pursuant to section 40(2) of FOIA (personal information), stating that:

“by releasing specific job titles in this instance, individual members of staff could be identified.”

8. The complainant made a request for an internal review on 16 June 2023 and specifically stated that they believed that DWP had misinterpreted their request.

9. DWP provided an internal review on 10 July 2023 upholding its original position, in which it stated:

“You highlighted that your request was for the job titles of those responsible for preparing material for Safeguarding Adults Boards (SAB), without any personal or identifying information.”

“In both your original FOI request and internal review request you seek job titles of those individuals involved in the preparation of material for “death inquiries.” DWP does not conduct any process that can be described as a death inquiry therefore, we responded to your request in the context of the example you provided which was Safeguarding Adults Boards.”

10. Following the intervention of the ICO as regards the scope of the request, on 28 September 2023, DWP provided the complainant with a fresh response citing section 1 of FOIA.
11. On 25 October, DWP provided an internal review of their fresh response, citing section 12(1) of FOIA as the basis upon which it was refusing the request.

Scope of the case

12. The complainant contacted the Commissioner on 10 July 2023 to complain about the way their request for information had been handled.
13. Following the intervention of the Commissioner, on 25 October 2023, DWP changed its stance to reliance on section 12(1) to refuse the request and the Commissioner then wrote to DWP for its submissions in respect of section 12(1).

14. Therefore, the Commissioner considers the scope of this case to be to determine if DWP has correctly cited section 12(1) of FOIA. The Commissioner has also considered whether DWP met its obligations to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

15. Section 12 of FOIA states that that a public 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" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
16. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. DWP relied on section 12(1) in this case.
17. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for DWP is £600.
18. 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 Home Office.
19. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the

First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

21. The Commissioner notes the complainant’s detailed arguments as regards the public interest in disclosure. However, section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information. It is worth noting that if one part of a request triggers the section 12 exemption, then that will apply to the entirety of the request and there is no requirement for the Commissioner to consider any other exemptions cited by the public authority.
22. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

23. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner expects the public authority to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
24. In its submissions to the Commissioner, DWP explained that because there is not a specific department responsible for preparing information for review by death inquiries, this made the search for information complex. DWP explained that when there is an allegation that DWP’s actions may have led to the suicide of a customer, each allegation is dealt with on a case by case basis by members of staff best placed to support the inquiry and, therefore, the role, team and location of the details of each death inquiry case varies.
25. Furthermore, due to the broad nature of the request (no time period is specified by the complainant) searches would have to be made going back as far as records go, which would clearly involve searches of both digital and paper records, with the searches of paper records being manual.

26. DWP explained that it has a full-time-equivalent payroll of over 76,000 employees and that determining all of the job titles of employees who have been involved in working on death inquiries would not be straightforward. The process would entail identifying every death inquiry and the personnel involved. Furthermore, the DWP explained that as death inquiries may have a customer at their centre, it is possible that the job titles of operational colleagues representing any benefit-related information could also be in scope.
27. On the basis that the request does not specify a time period, would involve lengthy manual searches of multiple teams, and would include paper as well as digital records, it is the Commissioner's view that DWP estimated reasonably that it would take more than the 24 hours / £600 limit to provide the information requested. DWP was therefore correct to apply section 12(1) of FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

28. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
29. The Commissioner notes that in its internal review response dated 25 October 2023, DWP advised the complainant that as the request was quite broad, DWP was unable to provide more specific advice as to how the complainant could revise the request to enable DWP to comply with the request within the cost limit and that, even if the complainant did so, other exemptions may apply, in particular section 40(2).
30. In its response to the Commissioner dated 27 November 2023, DWP suggested further advice and assistance in respect of the request which could be provided to the complainant. The Commissioner directed DWP to provide the advice and assistance to the complainant without delay.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

31. The Commissioner is satisfied that DWP has now met its obligations under section 16 of FOIA as regards the request.

Other matters

32. The Commissioner notes that DWP initially misinterpreted the scope of the request which resulted in DWP having to carry out an additional internal review in this case and changing the exemptions on which it relied three times, finally relying on the section 12 exemption on 25 October 2023. If the request had been correctly interpreted at the outset, the section 12 exemption could have been correctly applied in June 2023.

Right of appeal

33. 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

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

34. 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.
35. 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

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF