

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

### **Decision notice**

**Date:** 28 March 2024

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1 9NA

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

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1. The complainant has requested information from the Department for Work and Pensions (DWP) for the numbers of compensation payments made in each of the last two five-year periods which relate to the death of a benefit claimant for alleged or agreed failings. DWP initially refused the entire request under section 40(5B), however, during the Commissioner's investigation it revised its position and relied instead on section 12(2) of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that DWP was entitled to rely on section 12(2) of FOIA to refuse the request. The Commissioner also finds that the public authority complied with its section 16 obligation to offer advice and assistance.

#### **Request and response**

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3. On 21 September 2023, the complainant wrote to DWP and requested information in the following terms:  

"How many complaints relating to the death of a benefit claimant has involved DWP making a payment by way of compensation for alleged or agreed failings by DWP, in each of the last two five-year periods."
4. On 18 October 2023, DWP responded and refused to confirm or deny that the requested information was held. It stated:

"DWP is not obliged to confirm or deny that it holds the personal information you seek but, in any event, even if it was held, the Department would not disclose it to you and would cite an exemption from disclosure under section 40(5B) of the FoI Act."

5. On 18 October 2023, the complainant requested an internal review. DWP responded on 7 November 2023 and upheld its original position.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 9 November 2023 to complain about the way their request for information had been handled.
7. On 13 March 2024, following contact from the Commissioner, DWP revised its position and refused to comply with the request on the basis of section 12(2) of FOI as determining whether it held the information would exceed the appropriate limit.
8. The Commissioner therefore considers the scope of this case to be the determination of whether DWP is entitled to rely on section 12(2) of FOIA to comply with the request.

### **Reasons for decision**

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#### **Section 12 – cost of compliance**

9. This reasoning covers whether DWP is entitled to rely on section 12(2) of FOIA to refuse to comply with the request.
10. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
11. In other words, if the cost of establishing whether information of the description specified in the request is held would exceed this limit, the public authority is not required to do so.
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 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.

13. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively imposing a time limit of 24 hours for the public authority.
14. A public authority does not have to make a precise calculation of the cost of establishing whether information is held; instead, only an estimate is required. However, it must be a reasonable estimate. 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 costs incurred in determining what, if any, information is held.
15. Section 12(2) 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.
16. Where a public authority claims that section 12(2) 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.
17. In its responses to the complainant, DWP stated that:
18. "we estimate the cost of checking if we hold the requested information or not would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. This represents the estimated cost of at least one person spending 3½ working days (equivalent to 24 staff-hours) in determining whether the Department holds the information, and locating, retrieving and extracting it."
19. DWP explained to the Commissioner that the relevant information within the scope of the complainant's request, if held, would not be easily extractable using the DWP IT systems and business reporting tools as they use a variety of both modern and legacy systems stating:

"customer records and associated data are complex to source and there is no central index that allows DWP to know where every data record may be located. Many IT systems do not interconnect."
20. DWP stated that it does not routinely record or categorise complaints relating to the death of a benefit claimant, nor does it make any related payments by way of compensation for alleged or agreed failings. However, it makes some "Special payments" categorised as "Consolatory".

21. DWP considered that the complainant's term of "compensation" best aligned with the "Consolatory and Complaints Payments data", also categorised as maladministration, and concentrated searches using these terms.
22. DWP confirmed it held a total of 15,186 financial records or case files where Special payments were made between 3 April 2017 and 21 September 2023 and relevant information may be held in free text in large multiple document e-files. All systems would need to be interrogated to determine if any relevant information and case files within scope are held. Information would then need further analysis to identify the specific reason for a consolatory payment, which is not always recorded and most likely made to a third party. Additionally, any information dating back 6 years or more will likely not be held.
23. DWP explained that it had conducted a sampling exercise of 10 special or consolatory payment cases and estimated that it required between 10 and 20 minutes to examine each file and free text field to determine details of who and why payments were made totalling 125 minutes for all 10 files (average of 12.5 minutes per file).
24. DWP determined that to check all payments files would take 12.5 minutes per file x 15,186 files, totalling 189,825 minutes; requiring over 3,163 hours staff time to conduct this exercise alone.
25. DWP additionally confirmed it held complaint files for 14 months only as per its UK GDPR guidelines, and that in the last 12-month accounting period 1 April 2022 to 31 March 2023 that it had handled 22,055 complaints. These files were not examined or subject to a sampling exercise as DWP determined they would also require manual examination to determine the reason for the payment.
26. The Commissioner accepts that in any case, the cost limit is met due to the volume of records that need to be reviewed and the fact that a lengthy manual review would also be required of the 'Complaints' files which was not factored into the sampling exercise cost and time estimates.
27. The Commissioner notes that the 24 hours' time limits applicable to DWP equates to 1440 minutes and accepts that it is not possible to manually review both the Consolatory payments and Complaints files in this time (minimum of 37,00 files). Even if the time required to locate, retrieve and extract information was reduced to 30 seconds per case, it would still exceed the time and cost limit.

28. The Commissioner is satisfied that determining whether the information is held would exceed the appropriate limit and that DWP is entitled to rely on section 12(2) of FOIA to refuse the request.

## **Procedural matters**

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### **Section 16 – advice and assistance**

29. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section, it will be taken to have complied with its obligations.
30. In its initial response to the complainant on 13 March 2024, DWP stated.
- “we have been unable to identify any realistic refinements you could make that may enable us to identify any cases relevant to this enquiry. For example, we cannot say the specific requirement for limiting the timeframe or scope of cases to check without conducting a full search. It is simply an all or nothing approach as without conducting all necessary searches we cannot say where and how to limit the request and conducting these searches would always take us over the cost limit. We are therefore unable to provide more specific advice under Section 16 of the FoI Act.”
31. DWP did however provide a link to its staff guidance on maladministration in its responses to the complainant of 8 March 2024<sup>1</sup>.
32. The Commissioner accepts that due to the nature of the request, and due to the length of time it would take to search and manually review each record, the requests could not be meaningfully refined to allow the information to be provided within the cost limit. As such, the Commissioner is satisfied that there was no breach of section 16(1) of FOIA.

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<sup>1</sup> <https://www.gov.uk/government/publications/compensation-for-poor-service-a-guide-for-dwp-staff/financial-redress-for-maladministration-staff-guide>

## Right of appeal

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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](mailto:grc@justice.gov.uk)

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

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