

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

### **Decision notice**

**Date:** 16 May 2016

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

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

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1. The complainant has requested information regarding the amount and subject matter of emails sent and received by the Secretary of State for Work and Pensions or his office between June 2013 and June 2015.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) correctly relied on section 12 (cost limit) not to provide the requested information to the complainant. However, the Commissioner has concluded that the DWP breached section 16 by failing to provide adequate advice and assistance to the complainant when refusing his request.
3. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

#### **Request and response**

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4. On 24 June 2015, the complainant wrote to the DWP and requested information in the following terms:

"Could you please advise how many emails the Secretary of State for Work and Pensions (SSWP) or his office received or sent since June 2013 (until today/June2015)?

Could you break this down by: sent, received? Could you break this further down by: topic, month-and-year (starting with June 2013), SSWP/office-staff.

Where this does not breach individual privacy rights, could you also add a column for the department/agency/office/organisation who this correspondence was with?

And if this is still within the cost-limit, could you give the same breakdown for the Minister of State for Employment (MSE) and her office (also since June 2013)?

(If any part of the above exceeds the cost-limit, please advise for how many months you can provide this information for without exceeding the limit.)

5. The DWP responded by refusing to meet the "information request" on the grounds that it did not accord with the requirements of section 8.
6. The complainant requested an internal review on 21 August 2015. The DWP sent him the outcome of its internal review on 21 Sept 2015. It altered its position. It now no longer relied on section 8, but rather section 12 (costs), not to provide the requested information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 27 August 2015 to complain about the way his request for information had been handled.

### **Reasons for decision**

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8. Section 1(1) of the FOIA provides that:

"Any person making a request for information to a public authority is entitled:

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

9. Section 12(1) of 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."

10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("fees regulations") at £600 for central government departments and £450 for

all other public authorities. The fees regulations provide that the cost of a request must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours.

11. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- determining whether it holds the information;
- locating the information, or a document which may contain the information;
- retrieving the information, or a document which may contain the information; and
- extracting the information from a document containing it.

#### The DWP's position

12. The DWP provided the Commissioner with the relevant background to this matter and this is laid out in paragraphs 13 to 21 below.
13. The request seeks the number of emails which were received and sent by the Secretary of State for Work and Pensions. The information sought relates to the Coalition Government's period of government.
14. It is an established convention that incumbent ministers should not have access to any documents written by a predecessor of a different Party other than those which were published or put in the public domain by their predecessors. Nor should incumbent ministers have access to departmental papers which would inform them, either directly or indirectly of their predecessors' views. Information which constitutes papers of a previous administration is still subject to the FOI regime but is subject to special handling procedures to comply with this convention.
15. Following the normal convention all the shared folders and email accounts for each Ministerial Private Office were archived into a special area.
16. The relevance of this convention, the DWP explained, was that the information sought is held in different locations. Some is archived in a secure electronic folder and the remainder is held in email folders located in the respective Private Offices (current government emails). While this archived information is held in one place, it contains multiple subfolders created by the various private office staff and will include all archived electronic files which include more than just emails.

17. Ministers' Private Offices receive and send large volumes of correspondence from within the DWP, its arm length bodies, other government departments and key stake holders.
18. To manage email traffic effectively each Private Office uses a team email account. These mail boxes should capture all DWP emails received by Ministers or on their behalf. The mail boxes are managed on a day to day basis by a team of private secretaries on behalf of their respective ministers.
19. Responses to these Ministerial communications are handled by the private secretaries and related sent emails will be retained in the personal email accounts of the Private Office staff of those sending them.
20. Recreating a historic correspondence log for these busy private offices is therefore not straight forward; the provision of the information requested would not be a simple matter of collation. This is because of the way in which the information is processed in the normal course of the operation of each Private Office.
21. For example emails received in the team "inbox" changes on a minute by minute basis as emails are moved onto their appropriate organisational filing folder by members of the Ministers' Private Office. It is difficult to gauge an accurate figure of the number of emails received and sent during the period in question. However, the DWP estimated that on a typical working day over 200 emails are received in the Secretary of State's inbox alone. The related sent items are not held centrally within the private office during this period.
22. The DWP provided the Commissioner with its breakdown and estimate of providing the requested information. This is laid out in paragraphs 23 to 25 below.
23. For the period 1 June 2013 to 7 May 2015 any search would involve searching the restricted area described above. The archive is isolated on a secure non compatible system and searches would be from a remote server (which means connection speeds are slow). For the period 8 May 2015 to 30 June 2015 the Secretary of State's current team in-boxes and the Ministry would need to be searched.
24. The DWP explained that this 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. The DWP argued that out of scope emails will include personal emails, information relating to special advisors political activities and spam. As there are two teams this equates to an

estimated 2000 emails per week. This extrapolates to an estimated 104,000 emails for the period June 2013 to June 2014 and a similar number of emails for the period 1 June 2014 to 30 June 2015. The total emails for both terms in respect of identifying all emails received are an estimated 208,000 over the two year span.

25. The DWP estimates that it will take a minimum of one minute to pull up on screen, scan each email to check the information falls within the scope of the request and where appropriate count and note the topic, month and year. Converting the time taken to scan and analyse (as laid out above) 208,000 emails into hours gives a figure of  $(208,000/60)$  3,444.6 hours. At £25 per hour this gives a cost estimate of £86,666.67.

#### The Commissioner's position

26. The Commissioner has some reservations about the accepting the DWP's cost estimate of £86,666.67. Firstly, this is on the basis that it includes emails received by both the Secretary of State **and** the Minister of State for Employment. However, as the complainant's request explained, he only wanted his request to include the latter's emails if the former could be provided within the cost limit. Thus it could be argued that the Minister of State for Employment's emails fall outside the scope of the request. Consequently, if only the Secretary of State's emails were considered to be in scope of the request the cost estimate would essentially be halved. Secondly, the Commissioner notes that the request is not restricted to emails sent or received that relate to DWP business, rather it simply seeks emails sent or received by the Minister's office. Consequently, the Commissioner is not persuaded that the process of determining whether an email is in scope of the Act is actually necessary. Thirdly, although 200 emails a day are received, it seems reasonable to the Commissioner that not all of these emails were retained and thus the volumes which would have to be analysed would potentially be lower than that estimated by the DWP.
27. However, the Commissioner also notes that the estimate provided to him by the DWP only includes received emails. The request clearly included both sent and received emails. The DWP estimated that sent email volumes were broadly similar to the volumes which were received, ie approximately 200 per day. Therefore, the time taken to search the sent emails also needs to be factored into the DWP's estimates which would clearly significantly increase any estimate.
28. Taking all of the above into account, the Commissioner is persuaded that complying with the complainant's request would exceed the appropriate cost limit. Even though he has concerns with some aspects of the estimate, he accepts that majority of the activities which the DWP has included in its estimate are appropriate. Moreover, given the very

significant extent to which the DWP believes that the cost limit will be exceeded, even if there are some flaws in its estimate of £86,666.67, it is reasonable to conclude that complying with the request would still exceed £600.

## **Section 16**

29. Section 16 of the FOIA states that public authorities have an obligation to provide advice and assistance to requesters where it is reasonable to do so. In relation to section 12 refusals, the Commissioner considers that this obligation means a public authority should provide a requester with recommendations on how to reduce the scope of their request so that some relevant information of interest can be provided.
30. The DWP informed the complainant that he may wish to refine his request by narrowing the time frame or dates for the information sought, albeit that it noted that it could not guarantee that any revised request could be answered within the cost limit.
31. In its submissions to the Commissioner the DWP noted that the complainant did not refine his request. However it explained that, given the volumes of emails which were involved, even if the request was refined to a single month for one minister this would still comfortably breach the cost limit.
32. In the circumstances of this case, the Commissioner is not persuaded that the DWP provided the complainant with adequate advice and assistance to meet the requirements of section 16. Given the significant margin by which complying with the request would exceed the cost limit the Commissioner finds it hard to accept that the DWP's suggestion that the complainant should refine the timeframe of his request to be particularly useful. The Commissioner appreciates that the DWP indicated to the complainant that even following such a suggestion, section 12 could still apply. However, in the Commissioner's opinion such a caveat would not have proved particularly useful to the complainant should he have submitted a refined request because, as the DWP itself noted, even a request for one month's worth of emails would have been refused on the basis of section 12. Rather, in the circumstances of this case, the Commissioner would have expected the DWP to indicate to the complainant that based upon its estimates of the time taken to provide the requested information, it was likely that any refinement to the request would still have resulted in the cost limit being met. In doing so, it should have given consideration to explaining the details of the costs estimate upon which it concluded that section 12 applied.

## 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: 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)

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 .....**

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