

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2019

Public Authority: Department for Work and Pensions (DWP)
Address: 4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information, in multiple requests, from the DWP, in February 2018.
2. The Commissioner's decision is that DWP correctly relied on section 12 (aggregated costs) not to provide the majority of the requested information but not all that was requested.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

Issue a fresh response to the below requests by confirming whether the information is held and then (where held) either disclose the information or issue a refusal notice citing a reason to withhold information.

- RFI 12 – Please disclose if the GP is paid a fee by CHDA/DWP for completing ESA113 forms.
 - RFI 13 – If a fee is payable please disclose the amount paid?
 - RFI 14 – Are GPs obliged by law or contract to provide completed ESA113 forms? If so please disclose where the obligation derives from (i.e. which contract or piece of legislation).
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

5. The Framework for the provision of Health and Disability Assessment Services was awarded in April 2012. It supports DWP and other contracting authorities, in undertaking a range of functions including, but not limited to, supporting decisions on entitlement to social security benefits and wider requirements which may involve health assessments as part of business delivery¹.
6. DWP provides certain benefits for people due to long-term illness or as a result of a disability or health condition. As part of the claim process, the claimant is required to have an assessment of eligibility through an independent health assessment.
7. The Assessment Providers conduct the independent health assessments to assist DWP Decision Makers in determining a claimant's entitlement to Personal Independence Payment (PIP) and/or Employment and Support Allowance (ESA).
8. There are three separate contracts for the delivery of PIP. Independent Assessment Services (IAS) delivers two of the contracts and Capita deliver the third:

Lot 1 – IAS (Scotland, North East and North West England)

Lot 2 – Capita Business Services Ltd (Wales and Central England)

Lot 3 – IAS (London and Southern England)

Request and response

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/261977/health-and_disability-assessment-services-framework.pdf

9. The complainant wrote² to DWP, on various dates, and requested information in the following précised terms³:

Sent and received on 04/02/18

- RFI 1 – Please disclose the meeting minutes for the meetings specified in 47.1.1, 47.2.2, 47.2.3 and 47.2.4 in respect of the 3 PIP contracts with Capita and Atos (2 contracts) that took place in 2016. Any disclosure would be subject to redaction required to satisfy S.40 FOIA.
- RFI 2 – Please disclose the change requests in respect of the 3 PIP contracts with Capita and Atos (2 contracts) that were created by any of the 3 parties in 2016. Any disclosure would be subject to redaction required to satisfy S.40 FOIA.
- RFI 3 – Have any changes been agreed with Capita or Atos that amend the contractual requirements set out in Annex 8 to the PIP Service Specification FINAL v2.0? If so please disclose the agreed changes.'

Sent and received on 06/02/18

- RFI 4 – What type of data does the DWP currently hold about MR in respect of ESA and PIP? Please specify which IT systems the data is held on and if data is only held as part of the claimant's record.
- RFI 5– What are the most current datasets held by the DWP about MR in respect of ESA & PIP. To clarify by "dataset" i.e. a collection of data resulting from querying/extracting data from IT systems and/or analysis by a human being.
- RFI 6 – How frequently does the DWP extract data about MR from its IT systems for the purposes of managing and controlling the MR process?
- RFI 7 – What query/extraction capabilities does the DWP have in respect of the IT systems that hold MR data? What is the process for interrogating IT systems that hold MR data?'

² Via <https://www.whatdotheyknow.com/>

³ The requests are laid out in full in the attached annex to this Decision Notice.

Sent and received 08/02/18

- RFI 8 - Please disclose the MI provided to the Department by Capita (Lot 2) and Atos (Lots 1 and 3) that covers the period January 2017 to December 2017. If any disclosure does not mirror the contractual requirements in Service Specification FINAL v2.0 and its 11 annexes he expects the Department to cite the relevant exemption or explain why this information is not held (e.g. changes to contract have been agreed).

Sent and received 09/02/18

- RFI 9 - Please disclose the type of information that is created/recorded by the healthcare professional who decides if a person is called to attend a WCA, or not, where this information is stored (i.e. which DWP IT System and against which record, e.g. claimant) and if a specific form is used (i.e. one with a specific code like the LT54) to record the decision.

Sent and received 12/02/18

- RFI 10 – Please disclose the performance monitoring report (as defined in Part B section 1.1 (a) Performance Monitoring and Performance Review HDAS - Schedule 2.2 (Performance Levels) of the contract) supplied to the Department by CHDA Ltd each month for the period January to December 2016 and January to December 2017.
- RFI 11 - Please disclose the “Balanced Scorecard” report (as defined in Part B section 1.1 (b) Performance Monitoring and Performance Review HDAS - Schedule 2.2 (Performance Levels) of the contract) supplied to the Department by CHDA Ltd each month for the period January to December 2016 and January to December 2017.’

Sent and received 13/02/18

- RFI 12 – Please disclose if the GP is paid a fee by CHDA/DWP for completing ESA113 forms.
- RFI 13 – If a fee is payable please disclose the amount paid?
- RFI 14 – Are GPs obliged by law or contract to provide completed ESA113 forms? If so please disclose where the obligation derives from (i.e. which contract or piece of legislation).
- RFI 15 – Does the DWP or CHDA monitor the quality of evidence provided by GPs via the ESA113? For example GPs that fail to return the forms or those that do not provide complete evidence

(missing out relevant medication, conditions etc.).If so what monitoring is carried out and how is it documented?’

Sent and received 18/02/18

- RFI1 16 – Please disclose all the reports arising out of the regular audits carried out by the internal assessment assurance team (including the raw data upon which the reports are based) for the 2016 and 2017.
 - RFI 17 – Please disclose the “audit records” reference above in Section 40.5 for 2016 and 2017.
10. The Commissioner has made her decision based on considering the full requests and not the précised requests laid out above.
11. The DWP response (in its letter dated 1 March 2018) to the complainant stated ,

“The Freedom of Information (FOI) Act provides that requests can be aggregated for the purpose of estimating whether the cost limits apply. This is where more than one request has been made within 60 consecutive working days relating to the same or similar information and the requests have been made by the same person. This includes adding to the estimated costs of complying with a later request, the cost of complying with a request that has already been answered.

In this instance the Department has decided to aggregate the above requests for cost purposes.

We consider each of the seven requests to be of a similar nature as they all relate to either decision making or performance delivery of disability assessments on behalf of the Department for Work and Pensions. In particular, all of the requests would be allocated to the same team for response as it falls within their specialised area.

Under Section 12 of the FOI Act the Department is not therefore obliged to comply with your request and we will not be processing it further”.

12. The DWP provided an internal review of its decision on 29 March 2018 in which it maintained its original position.

Scope of the case

13. The complainant contacted the Commissioner on 30 March 2018 to complain about the way his requests for information had been handled.

Reasons for decision

14. Section 12 of the FOIA provides that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate cost limit prescribed by the Secretary of State in the Fees Regulations.
15. The appropriate limit is prescribed in the Fees Regulations as £600 for public authorities listed in Part 1 of Schedule 1 to the FOIA. This is estimated at £25 an hour. As it is listed in Part 1, the appropriate cost limit for the DWP is £600.
16. 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:
 - made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.
17. The Commissioner has therefore considered each of the requests in this case to determine whether the DWP was correct to aggregate the complainant's requests in accordance with regulation 5 of the Fees Regulations and to subsequently refuse them on the basis of section 12(1) of the FOIA.
18. The Commissioner is satisfied that the requests are from the same person and were received by the DWP within a period of 60 consecutive working days. In that they originate from the complainant between the 4 and 18 February 2018.
19. The Commissioner has issued guidance on compliance with section 12 FOIA ("the guidance"):

(https://ico.org.uk/media/fororganisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf).

This states that:

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. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

20. A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.

DWP Submissions

21. Between 4 February 2018 and 18 February 2018, the complainant submitted seven pieces of correspondence which contained a total of seventeen FOI requests, some of which requested a substantial amount of information.
22. All of the requests have an overarching theme as they all relate to the performance and benefit outcomes of the Health Assessment Services Contracts. To re-enforce this, six of the seven requests would fall under the remit of a single team which has responsibility within the whole of DWP for responding to FOI requests relating to the Health Services Contracts. The seventh (FOI 495 Annex B) being a statistical one on the same subject, which would require information from DWP statisticians.
23. One request in particular (RFI 16) would exceed the cost limit:
- RFI1 16 – Please disclose all the reports arising out of the regular audits carried out by the internal assessment assurance team (including the raw data upon which the reports are based) for the 2016 and 2017.
24. In order to comply with RFI 16 it has been determined that there are approximately 700 audit reports per month, which for the period requested would equate to approximately 17,000 audit reports to be issued to the complainant.
25. In order to identify, retrieve and extract the audit reports it has been estimated to take a minimum of five working days.
- Identify the reports
 - Create folders
 - Apply and arrange for shared access to relevant folders
 - Extract and place the reports into shared folder. As the volume of reports would be considerably large this could affect server performance (this step of the process would be at least 5 working days in itself)

26. Due to the vast quantity of information, all data would need to be transferred to a format suitable for release, in this case transfer to disc. The burden on one team to comply with this would be highly excessive, to the point that consideration would need to be given to purchasing the service, which would be extremely costly.
27. In addition to the above, the complainant has also requested the raw data upon which the reports are based. The 'raw data' would be the information that the auditors use to perform the review. This may consist of but not limited to the; ESA 50 (claimant questionnaire); medical evidence supplied by the claimant; further medical evidence obtained by the Provider and the Health Professional (HCP) report. All of this documentation contains personal and highly sensitive information pertinent to the benefit claimant and would be withheld under Section 40(2) of the FOI Act.
28. In addition to this and within the same request, RFI 17 requested the Supplier audit reports for the same two years.
29. The Supplier, CHDA has advised that for the stated two year period there has been 270, 674 audit reports produced. Each report is held on the relevant HCP file therefore each file would need to be identified, then retrieved from storage and the relevant report extracted. As the report is in hard copy each of the reports would need to be photocopied or scanned to be placed on disc. It must also be highlighted that as well as the time aspect which would be months of work, the Department would likely be responsible for associated costs, such as paying for the information to be transferred to disc.
30. In order to comply with this request (RFI 16) alone would vastly exceed the cost limit stipulated under Section 12 of the FOI Act.

Complaint's Submissions

31. It is clear from the DWP original response and subsequent reply to his internal review requests that its justification for aggregation is predicated on the requests being related to a specific area of its operations, namely contracted health assessments, the same team would be required to answer most of them and one would require information from DWP statisticians.
32. The complainant suggests that the DWP is attempting to build a picture of an overarching theme or common thread running through all 7 requests for information rather than address the actual information requested.
33. The DWP must be able to show that the actual information requested is the "same" or "similar". It cannot rely on the spurious reasons it has cited in order to justify aggregating the requests for information. The

complainant uses the term "spurious" as there is no such part of the DWP organisation with the name "contracted health assessments". He suggests that the DWP has looked at the wording "same or similar" and then gone searching for reasons to justify engaging Regulation 5(2) (a) (e.g. the same team).

Analysis

34. The Commissioner reminds herself, as re-iterated by the Upper Tribunal (Reuben Kirkham v Information Commissioner [2018] UKUT 126 (AAC)), that,

"The issue is whether or not the appropriate limit would be reached. The estimate need only be made with that level of precision. If it appears from a quick calculation that the result will be clearly above or below the limit, the public authority need not go further to show exactly how far above or below the threshold the case falls".

35. Given the large volume of information sought (via RFI 16) – the reports and their source – raw data, the Commissioner does not doubt that to do so would take in excess of the regulation cost limit.
36. The Commissioner is therefore satisfied, on the balance of probabilities that the above estimate (as submitted by the DWP) is sufficiently reasonable enough to persuade her that section 12 was properly relied on as regards RFI 16.
37. Having reached her decision that RFI 16 would exceed the cost limit the Commissioner next sought determine which of the other requests (if any) would be "caught" by the application of Regulation 5(2) of the Fees Regulations.

Relating to the same or similar information

38. RFI 16 requested the information in all the reports arising out of the regular audits carried out by the internal assessment assurance team (including the raw data upon which the reports are based) for 2016 and 2017.
39. The Commissioner notes that RFI 16 was seeking "managerial information" contained in the reports generated by a particular named team and the information (raw data) upon which those reports were based.
40. The Commissioner considers that managerial information is data or statistics which are collected and used to measure performance in given areas of a business or an organisation - and drive change for improvement where needed.

41. The Commissioner is of the view that the following information requests are seeking the same or similar type of information i.e. managerial or organisational information collected and used to measure performance in given areas of a business or an organisation.

- RFI 1 – The meeting minutes for the meetings specified in 47.1.1, 47.2.2, 47.2.3 and 47.2.4 in respect of the 3 PIP contracts with Capita and Atos (2 contracts) that took place in 2016
- RFI 2 – Please disclose the change requests in respect of the 3 PIP contracts with Capita and Atos (2 contracts) that were created by any of the 3 parties in 2016.
- RFI 3 – Have any changes been agreed with Capita or Atos that amend the contractual requirements set out in Annex 8 to the PIP Service Specification FINAL v2.0? If so please disclose the agreed changes.'
- RFI 4 – What type of data does the DWP currently hold about MR in respect of ESA and PIP? Specify which IT systems the data is held on and if data is only held as part of the claimant's record.
- RFI 5– What are the most current datasets held by the DWP about MR in respect of ESA & PIP i.e. collection of data resulting from querying/extracting data from IT systems and/or analysis by a human being.
- RFI 6 – How frequently does the DWP extract data about MR from its IT systems for the purposes of managing and controlling the MR process?
- RFI 7 – What query/extraction capabilities does the DWP have in respect of the IT systems that hold MR data? What is the process for interrogating IT systems that hold MR data?'
- RFI 8 - The MI provided to the Department by Capita (Lot 2) and Atos (Lots 1 and 3) that covers the period January 2017 to December 2017. Please note that if any disclosure does not mirror the contractual requirements in Service Specification FINAL v2.0 and its 11 annexes.
- RFI 9 - Please disclose the type of information that is created/recorded by the healthcare professional who decides if a person is called to attend a WCA,
- RFI 10 – Please disclose the performance monitoring report (as defined in Part B section 1.1 (a) Performance Monitoring and Performance Review HDAS - Schedule 2.2 (Performance Levels) of the contract) supplied to the Department by CHDA Ltd each month

for the period January to December 2016 and January to December 2017.

- RFI 11 - Please disclose the "Balanced Scorecard" report (as defined in Part B section 1.1 (b) Performance Monitoring and Performance Review HDAS - Schedule 2.2 (Performance Levels) of the contract) supplied to the Department by CHDA Ltd each month for the period January to December 2016 and January to December 2017.'
- RFI 15 – Does the DWP or CHDA monitor the quality of evidence provided by GPs via the ESA113? For example GPs that fail to return the forms or those that do not provide complete evidence (missing out relevant medication, conditions etc.).If so what monitoring is carried out and how is it documented?'
- RFI 17 – Please disclose the "audit records" reference above in Section 40.5 for 2016 and 2017.

42. The following appear not to be requests for MI. That is, the requests are not seeking data or statistics which are collected and used to measure performance in given areas of a business or an organisation

- RFI 12 – Please disclose if the GP is paid a fee by CHDA/DWP for completing ESA113 forms.
- RFI 13 – If a fee is payable please disclose the amount paid?
- RFI 14 – Are GPs obliged by law or contract to provide completed ESA113 forms? If so please disclose where the obligation derives from (i.e. which contract or piece of legislation).

43. As the DWP has not formally confirmed whether it holds this requested information the Commissioner directs that the DWP issues a fresh response to these requests by confirming whether the information is held and then (where held) either disclose the information or issue a refusal notice citing a reason to withhold information.

Right of appeal

44. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

45. 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.
46. 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

Gerrard Tracey
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SK9 5AF