

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 19 July 2021

Public Authority: Department for Work and Pensions
Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested a breakdown of the number of child maintenance cases in which a specific scenario occurred.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) is entitled to rely on section 12(2) to refuse to confirm or deny whether it holds the requested information as to do so would exceed the appropriate limit.
3. The Commissioner finds, however, that DWP has breached section 17(5) of the Act as it did not issue its section 12 refusal notice within the statutory timeframe of 20 working days.
4. The Commissioner does not require DWP to take any steps in relation to this request.

Request and response

5. On 1 February 2020, the complainant wrote to DWP and requested information in the following terms:

"With reference to 2nd tier caselaw CCS/706/2017 which confirmed making a spouse a company shareholder as diversion of income, please could you provide the number of cases where the CMS has deemed a diversion of income has been made by making a spouse a shareholder, and amended the maintenance payment accordingly? Please could you provide a breakdown by year. So for example:

2012: x cases
2013: x cases
2014: x cases
etc"

6. On 27 February 2020, DWP provided its response and stated that it does not record or hold any data in relation to the diversion of income made by making a spouse a shareholder.
7. The complainant requested an internal review on 27 February 2020 and disputed that DWP did not hold the requested information. In particular, they disputed that the requested information is not held within the Child Maintenance Service's centralised system. The complainant considered that it should only take a "*simple database or spreadsheet query*" to locate the requested information.
8. DWP provided the outcome of its internal review on 19 March 2020. DWP upheld its original response and stated that it cannot record such specific scenarios in its system. DWP stated that it had advised in response to five subsequent requests that variations in maintenance payments are recorded as "additional income" or "special expenses" only. DWP also confirmed that it had previously provided the volumes of "additional income" variations which were recorded as cleared and had advised that this is the only count available from its system. DWP confirmed that it had previously confirmed that the "additional income" category encompasses any type of variation, diversion of income or any other additional income scenario.

Scope of the case

9. The complainant wrote to the Commissioner on 17 May 2020 to complain about the handling of their request for information. The complainant disputed that DWP did not hold the requested information.
10. The request is one of a series of requests made by the complainant to DWP seeking information regarding very specific scenarios that may occur as part of the Child Maintenance Service's assessment of paying parent liability.
11. During the course of the investigation, DWP amended its position and provided a fresh response to the complainant on 22 December 2020. DWP relied on section 12 of the Act to refuse to comply with the request as to do so would exceed the appropriate limit. DWP explained that it would need to examine the individual cases categorised as "*variation – additional income*" and there were approximately 79,000 cases marked as such.

12. DWP explained that information may be held in the individual case files' notes screens but there is no requirement to record such low level detail and it had no means of extracting the information from the notes screen apart from reviewing the case. DWP also explained that while many of these cases are actioned by the Financial Investigation Unit (FIU), not all cases of this type would be and there is no means for identifying all cases reviewed by FIU.
13. DWP acknowledged its obligations under section 16 to provide advice and assistance. However, it considered that as the request is for such specific detail, it was unable to advise the complainant further. DWP reiterated that it had already provided general information on the volumes of cases categorised as "variation – additional income".
14. The complainant confirmed to the Commissioner that they disputed DWP's position that it cannot comply with the request within the appropriate limit. The complainant provided screenshots of the online portal on which parents can update their details. These screenshots include options to declare diversion of incomes, including making a third party a shareholder. The complainant considers that as this information is specifically requested, DWP should be able to filter cases by the information submitted. The complainant also disputed that DWP had provided adequate advice and assistance in accordance with its obligations under section 16.
15. DWP confirmed to the Commissioner that it was specifically relying on section 12(2).
16. The Commissioner therefore considers that the scope of this case is to determine whether DWP is entitled to rely on section 12(2) to refuse to comply with this request. She will also consider whether DWP had complied with its obligation to provide advice and assistance in accordance with section 16.

Reasons for decision

Section 12: Cost of compliance exceeds the appropriate limit

17. Section 1(1) of the Act states:

"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”.*

18. Section 12(2) of the Act states:

“Subsection (1) [of section 12] does not exempt that public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit”.

19. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (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 with a request for information if it estimates that it will take longer than 24 hours to comply.

20. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in;

- a. Determining whether it holds the information;
- b. Locating the information, or a document holding it;
- c. Retrieving the information; or a document holding it; and
- d. Extracting the information or a document holding it.

21. As DWP is relying on section 12(2) of the Act, only the first of these activities is relevant in this case.

22. Section 12 explicitly states that public authorities are only required to estimate whether the cost of complying with a request would exceed the appropriate limit, 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

23. DWP confirmed that the only way to identify cases which involved variations due to the transfer of shares would be to examine individual

¹ <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

cases. DWP explained that details relating to specific decisions on a case may be recorded on the system in a notes facility, however, this is not a data source from which variables could be extracted.

24. DWP explained that caseworkers record the relevant information for the case in the freetext fields of individual cases. DWP explained that caseworkers only record relevant details, ie type of variation (income/expenses), amounts, frequency. DWP confirmed that the detail recorded is at the caseworker's discretion and could include details falling within the specified scenario in the request.
25. DWP confirmed that variations to maintenance payments are categorised at a high level, relating either to 'income' or 'expenses'.
26. DWP confirmed that in order to determine whether it held the requested information, it would need to review the individual cases categorised as "additional income" as set out in its amended response to the complainant. DWP confirmed that it holds approximately 79,000 cases of this type.
27. DWP confirmed that it could not extract the requested information from the freetext notes section of the individual cases and it would need to review the contents of the individual notes to determine whether each case fell within the scope of the request.
28. DWP confirmed that it could not filter the cases that need to be reviewed by using the information submitted via the online portal. DWP explained that the portal is a gateway to enable customers to update their information, however, it is not the Child Maintenance system. DWP explained that in order to extract information of this nature from the portal, new programmes or code would need to be written to identify and extract information from the portal and new datasets and reports would then need to be produced by digital colleagues.
29. DWP explained that parents can use the online portal to update their information themselves, otherwise they would need to call or write to the child maintenance service. DWP explained that a work item would be raised for the action required on the Child Maintenance service and freetext notes may be added when this is actioned.
30. DWP confirmed that it could not filter cases using the information from the portal questions as it has no dataset in existence from which it could identify cases.
31. DWP also explained that filtering cases using the information provided via the portal may not be an effective method of determining whether the information is held as there could be cases where the paying parents

had not declared a diversion of income but the Child Maintenance Service had determined that one had taken place.

The Commissioner's position

32. The Commissioner accepts that DWP is unable to determine whether it holds any cases falling within the very specific scenario set out in the request without exceeding the appropriate limit. The Commissioner acknowledges that the complainant believes that the information is held on the system and could be found by filtering the cases using the information submitted via the online portal. However, the Commissioner accepts DWP's explanation that the online portal does not contain the outcome of the caseworker's assessment. She also accepts that as not all information is submitted via the portal and not all paying parents will declare a diversion of income, filtering cases using this information will not cover all cases that may need to be searched to determine whether the information is held. The Commissioner is satisfied that DWP would be required to review individual cases to determine whether the specific scenario was identified by CMS and the maintenance amount amended.
33. It is at DWP's discretion how it records the information it holds to meet its business and statutory requirements. The Commissioner cannot require DWP to hold child maintenance cases in formats that can be searched by specific scenario.
34. The Commissioner accepts that in order to determine whether DWP holds the requested information, it would be required to review up to 79,000.
35. As set out above, the appropriate limit for central government departments is 24 hours, or 1440 minutes. The Commissioner accepts that it would not be possible to conduct the required search within the appropriate limit as DWP. DWP is not required to work up to the cost limit and is only required to provide an estimate for the purposes of section 12.
36. The Commissioner's decision is that DWP is entitled to rely on section 12(2) of the Act to refuse to comply with the request.

Section 16: Duty to provide advice and assistance

37. 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".

38. The Commissioner has published guidance on providing advice and assistance when refusing to comply with a request on the basis of section 12. Paragraph 59 of the guidance² 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".*

39. DWP explained to the complainant that due to the very specific nature of the request, it was unable to provide adequate advice on how to refine the request.
40. DWP explained to the Commissioner that even if it were to reduce the timeframe of its searches to one day of incoming information, it would need to review 300 cases to determine whether the subsequent assessments fell within the scope of the request.
41. In light of DWP's explanation regarding how information is recorded on cases and the fact that individual case files would need to be scrutinised in order to ascertain the circumstances of each case and whether it falls within the scope of the request, the Commissioner accepts that in the specific circumstances of this case, DWP has complied with section 16 by advising that it cannot aid the complainant in refining the request.

Section 17: Refusal notice

42. Section 1(1) of the Act states that:

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

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

- (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”.*

43. Section 10(1) of the Act states:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

44. Section 17(5) states that:

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact”.

45. As DWP confirmed that it was relying on section 12(2) outside of the statutory time for compliance, it has breached section 17(5) of the Act.

Other matters

- 46. The Commissioner wishes to place on record her understanding of the immense pressure placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the Act.
- 47. However, the Commissioner has concerns regarding the handling of this request. The Commissioner would expect a public authority with DWP’s resources and expertise to understand the basic principles of the Act, particularly that information does not have to be held in discrete documents in order to be held for the purposes of the Act.
- 48. The Commissioner expects DWP to take steps to ensure that it is not disadvantaging requesters by misapplying the procedural sections of the Act. Specifically, DWP should ensure that its staff are familiar with her guidance on determining whether information is held³.

³ <https://ico.org.uk/media/for-organisations/documents/1169/determining-whether-information-is-held-foi-eir.pdf>

46. The Commissioner considers that the DWP FOI team has the experience and knowledge to ensure that requests are handled correctly. Where appropriate she expects the wider DWP to use this resource, and her published guidance, to improve its request handling in future.

Right of appeal

47. 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

48. 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.
49. 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

Victoria Parkinson
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