

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

### **Decision notice**

**Date:** 21 August 2019

**Public Authority:** Department for Work and Pensions (DWP)

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

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

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1. The complainant has requested information regarding the Universal Credit Programme.
2. The DWP relies on section 12 (estimated cost), read together with Regulation 5 (2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Fees Regulations') not to comply with the complainant's requests.
3. The Commissioner's decision is that DWP correctly relied on section 12, when read together with Regulation 5(2) of the Fees Regulations, not to comply with the complainant's requests for information.
4. The Commissioner requires no steps to be taken.

### **Request and response**

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5. On 30 July 2018, the complainant requested information from the DWP by saying as follows;

"I know that the Department documents the issues and risk for its Universal Credit Programme ("UC") but I do not know if formal logs or registers exist for assumptions and dependencies.

RFI1 – Please confirm if assumptions and dependencies are documented for UC and the type of document employed to record them (e.g. a separate log/register for each, combined with other information etc).

RFI2 – If logs/registers exist for UC assumptions and dependencies in their own right please disclose them (this must include open and closed assumptions and dependencies) in electronic format (MS Office applications or PDF are acceptable formats).

RFI3 – Please disclose the UC risk register (this must include open and closed risks) in electronic format (MS Office applications or PDF are acceptable formats).

RFI4 – Please disclose the UC issues log (this must include open and closed issues) in electronic format (MS Office applications or PDF are acceptable formats).

If it is helpful to the Department the scope of RFI2, RFI3 and RFI4 may be limited to mean information held that is dated between 01 June 2013 and the 30 July 2018.

“Electronic format” – I am aware that emailing large files on WDTK is problematic for the Department. Therefore I am happy for the requested information to be disclosed to me using CD/DVD media. A postal address can be supplied upon request outside of the WDTK website.

I am content that personal information exempt under S.40 FOIA be redacted by the Department prior to disclosure”.

6. On 23 August 2018 DWP responded. It refused to provide the requested information by relying on the following provision ;
  - Section 12 (costs)
7. The complainant requested an internal review on 10 October 2018. The DWP sent him the outcome of its internal review on 23 October 2018. It upheld its original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner 29 October 2018 to complain about the way his request for information had been handled.
9. During the course of her investigation the DWP clarified with the Commissioner that it was relying on section 12 of the FOIA, read together with Regulation 5(2) of the Fees Regulations, not to provide the complainant with the information he had requested.

10. The Commissioner considers that she has to determine whether the DWP correctly relied upon section 12, read together with Regulation 5(2) of the Fees Regulations, not to provide the complainant with the requested information.

## **Reasons for decision**

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11. Section 1(1) of the FOIA states 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.

12. 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.

13. The appropriate limit is prescribed in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>1</sup> ("the Fee 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.

14. Regulation 5 of the Fees Regulations states that two or more requests can be aggregated for the purpose of calculating costs if they are:

- by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign
- for the same or similar information; and
- the subsequent request is received by the public authority within 60 working days of the previous request.

15. The Commissioner has issued guidance on compliance with section 12 FOIA ("the guidance"):
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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

([https://ico.org.uk/media/fororganisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/fororganisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)).

16. 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.

17. 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.

18. The DWP submitted to the Commissioner that in accordance with Regulation 5 of the Fees Regulations, the separate elements of the request were considered appropriate to aggregate for the purpose of calculating costs because they related to the same or similar information; the requestor has expressly linked the requests and also there is an overarching theme or common thread running between the elements of the request in terms of the nature of the information that has been requested, specifically Universal Credit project planning documents.

19. 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 in a single item of correspondence dated 30 July 2018.

20. The Commissioner has been persuaded that it is appropriate to aggregate the requests for information for the purpose of calculating costs because they are related to the same or similar information. In that there is an overarching theme or common thread running between the elements of the requests in terms of the nature of the information that has been requested, specifically Universal Credit project planning documents

21. As part of her investigation of this complaint the Commissioner asked<sup>2</sup> probing questions of the DWP regarding its reliance on section 12. A

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<sup>2</sup> Letter dated 14 November 2018.

precis of the DWP's replies, regarding RFI1 - Assumption log and RFI3 - Risk log are given in paragraphs 22 to 23 below.

22. RFI1 - Assumption log

Open

To locate and retrieve the information from the open Assumptions logs, pulling each strand log into one document and ensure that it is complete at the time that the requested information is being supplied. 5 hours

Closed

Due to the period of time covered by the FOI DWP would need to conduct a look-up each fortnightly back up of the UC Risk Hub where the closed logs are saved. DWP will need to cross-reference each version to identify closed assumptions and copy these into an aggregated master log (from the several different formats held) of all assumptions for the period requested (2013 to Jul 2018). DWP estimate it would take a minimum of 30 minutes per log to do this and therefore a conservative estimate is it would take 65 hours (0.5 hours x 26 logs x 5 years). If the period of the FOI were to be reduced to a period of 18 months (Jan 2017 to Jul 2018) DWP could do this within an acceptable cost to the crown (i.e. under 24hrs). 65 hours

23. RFI3 -Risk log

To locate and retrieve the information from open risk logs from the UC Risk Hub, pulling each strand log into one document and ensure that it is complete at the time that the requested information is being supplied.

Due to the period of time covered by the FOI DWP would need to conduct a look-up each fortnightly back up of the UC Risk Hub where the closed logs are saved. DWP will need to cross-reference each version to identify closed risks and copy these into an aggregated master log (from the several different formats held) of all risks for the period requested (2013 to Jul 2018). DWP estimate it would take a minimum of 30 minutes per log to do this and therefore a conservative estimate is it would take 65 hours (0.5 hours x 26 logs x 5 years). If the period of the FOI were to be reduced to a period of 18 months (Jan 2017 to Jul 2018) DWP could do this within an acceptable cost to the crown (i.e. under 24hrs). 65 hours

24. After considering the above replies the Commissioner sought further explanations from the DWP. These new queries were put to the DWP; the queries and answers thereto are give below.

Query 1:

The DWP has provided an estimated time to check each log, but there is a paucity of detail as to why it would, for example, take 60 or 30 minutes. Please provide the queried detail.

#### Reply

The nature of Risk, Assumption, Issue or Dependency management is that any given Risk, Assumption, Issue or Dependency is likely to be under management and/or monitoring for a period of time. The information requested in this Freedom of Information Request is for a specified period (01/06/13 – 30/07/18) and therefore the information and entries contained within the logs DWP hold may not pertain to the period specified; i.e. the information held on the logs may be outside or span the start date, end date, or both of the period specified. In order to ensure that DWP wholly and fully provide only the information requested it will need to ensure that it locates and interrogate multiple live and archived logs, ensuring that it removes information not relevant to the request made.

#### Query 2:

The Commissioner questions whether DWP has demonstrated that all of the work its described is actually necessary to comply with the request, such as the time organising and checking the information before disclosing it. Collating information into one document and then ensuring that it is complete seems excessive, especially since DWP hasn't explained why it suspects the information might be incomplete. Similarly, the Commissioner does not think it is clear why DWP would need to cross-reference each version of each log and copy them all into one log. Please provide the queried detail.

#### Reply

It is of course possible to provide information without checking for and removing duplicate entries, or to amalgamate the information into single logs from the open and closed (archived) logs held. With this in mind DWP revised its estimates to reflect this. It should be noted however that the activity described in response to Query 1 above would still need to be undertaken and therefore the estimated time it would take to provide the information requested would still exceed 24 hours.

#### Query 3:

The DWP needs to extract relevant information from a document containing it, but there's no requirement to reformat all the information into one consistent format. The complainant has asked for all the data, he hasn't asked DWP to collate it into one log or to put it in one format. Why not just disclose the information as it is held and let the complainant format/analyse the data? Is DWP saying that the rest of the

data in each log is not relevant to the request? If DWP has included activities or steps that are not necessary, then its cost estimate will be inaccurate and in theory could fall under 24 hours.

#### Reply

To ensure that all information requested is supplied, and that any 'out of scope' information is not, DWP must ensure that all sources of information are identified and accessed, and that the information is interrogated and information not pertaining to the request is removed. It is this activity which forms the vast majority of the time estimates previously supplied, and not the time it would take to remove duplicate information or collate the information into standardised logs. As stated above however, DWP have revised our estimate to remove any time it would take to remove duplicate information or the time it would take to provide the required information in a consistent format.

25. Due to the above the DWP revised its estimation of the time it would take to meet the complainant's request for information. Its revised estimates are as follows, its original estimates (as above) are in parenthesis.

- RFI1 - Assumption log – Open – 4 hours (previously 5)
- RFI1 - Assumption log – Closed – 50 hours (previously 65)
- RFI3 -Risk log – Open – 9
- RFI3 -Risk log – Closed- 50 (previously a total of 65)

26. In addition to the above the DWP also provided answers to specific queries raised or asserted by the complainant:

#### Query

Normally RAID information would be held in separate formal logs or registers to allow for ease of access and updating. This could be MS Office documents (e.g. Word or Excel) held on a shared computer drive or in specific IT applications that allow access for people working on the programme or project.

#### Reply

"I can confirm that separate excel spreadsheets are used to log issues risks issues and dependencies"

#### Query

The DWP has, following a lengthy legal fight (see FS0448587, FS0460988, EA/2013/0145, 0148 & 0149), disclosed earlier versions of



the risk register and issues log for Universal Credit. At no point in these earlier cases was S.12 raised as an issue.

### Reply

The decision on FS0448587 refers to Project Assessment Reviews. The decision FS0460988 relates to the risk register and the issues register. This decision considered the use of the section 36 public interest exemption. Section 12 cost was not raised at the time as the scope of the request was narrower and the requirement to interrogate archived data was minimal.

27. 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".
28. The Commissioner notes that the DWP estimate to provide the assumption log is 54 hours which equates to an estimated cost of £1350. This is well in excess of the prescribed £600 as laid out in paragraph 13 above. The Commissioner cannot discern how the said estimate is so grossly exaggerated so as to find that the £600 threshold would not be exceeded. Accordingly she has been persuaded that the DWP correctly relied upon section 12 not to provide the requested information.
29. Similarly the Commissioner notes that the DWP estimate to provide the risk log is 59 hours which equates to an estimated cost of £1475. This is in excess of the prescribed £600 as laid out in paragraph 13 above. The Commissioner cannot discern that the said estimate is so exaggerated so as to find that the £600 threshold would not be exceeded. Accordingly she has been persuaded that the DWP correctly relied upon section 12 not to provide the requested information.
30. As stated above the Commissioner considers that regulation 5 of the Fees Regulations is applicable to the complainant's multiple information requests. That is that two or more requests can be aggregated for the purpose of calculating costs. As the Commissioner has determined that at least two of the requests, would each cost in excess of £600 to meet, then accordingly the DWP is not required to provide any of the requested information.

Section 16 – advice and assistance



31. Section 16 of FOIA provides that a public authority is under a duty to provide advice and assistance, so far as it is reasonable to expect the authority to do so, to persons who have made a request.
32. This duty arises in certain situations. These are broadly: before an applicant has submitted a request for information and is clarifying with the public authority what information it holds; if a request for information is not clear to the public authority; and if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority may offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit.
33. The Commissioner notes that the DWP advised the complainant (at the internal review stage<sup>3</sup>) to revise his request so as to bring his request under the section 12 limits. In particular it suggested that for RFI2, RFI3 and RFI4 information for a shorter time period be requested.
34. Section 16 does not require public authorities to provide in depth calculations or detailed estimates of what information could be provided within the appropriate limit. It requires public authorities to provide such advice and assistance as is reasonable to expect. The Commissioner considers that DWP has provided reasonable advice and assistance by explaining how the request may be refined.
35. The Commissioner therefore considers that DWP has complied with section 16 of FOIA.

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<sup>3</sup> Review letter dated 23 October 2018

## **Right of appeal**

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36. 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@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)

37. 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.
38. 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**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**