

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2012

Public Authority: Department for Work and Pensions
Address: Caxton House
4th Floor
6 -12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information relating to Work Programme Prime Providers and subcontractors. The Department for Work and Pensions (DWP) refused to comply with the request as it said it would exceed the cost limit under section 12 of the Freedom of Information Act (FOIA) to do so.
2. The Commissioner's decision is that the DWP has correctly applied section 12 FOIA in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 31 May 2012, the complainant wrote to the DWP and requested information in the following terms:

"Please provide a copy of any Jobsearch recording logs/forms, including print outs of electronic versions, together with paper template Jobsearch forms that may or may not need signing by participants, in use by all of your Work Programme (WP) Prime Providers.

Also provide information held by the DWP that shows that WP Prime Providers and Subcontractors must obtain the Informed Consent before a WP participant on Jobseekers Allowance can be required to give them true copies of actual Job applications and correspondence with employers (including electronic version), for these WP Prime Providers

and Subcontractors to retain paper or electronic copies of such personal correspondence with employers.

Personal correspondence refers to the same meaning given in the Human Rights Act (1998) Schedule 1 Article 8.

Right to respect for private and family life.

Everyone has the right to respect for his private and family life, his home and his correspondence."

5. The DWP responded on 18 June 2012. It refused to comply with the request as it said it would exceed the cost limit under section 12 of the FOIA to do so.
6. Following an internal review the DWP wrote to the complainant on 27 June 2012. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner has considered whether or not section 12 of the FOIA was correctly applied in this case.

Background

9. The DWP explained that the Work Programme is a contracted payment for results employment programme which was launched in June 2011. Its aim is to support individuals who are at risk of being long term unemployed. It said that the programme allows providers the freedom to deliver their support without undue prescription from the government. It explained that each provider can innovate and focus resources where they feel is best. Providers receive payments for helping people into work, and further payments for helping people to stay in work; these sustainment payments can last for up to 2 years, depending on how far the individual was from the labour market.
10. DWP went on to explain that the Work Programme is delivered across England, Scotland and Wales by 18 different prime providers, delivering 40 contracts across 18 Contract Package Areas (CPAs). In their contracts, prime providers are allowed, with the prior approval of the DWP, to employ sub-contractors to deliver elements of the contract, which allows for the local expertise needed to identify the most effective

way of helping individuals into work; local expertise is needed to fully understand the local labour market and explore and support local, individual needs.

11. DWP said that at March 2012, across the 18 CPAs and in addition to the 18 prime providers, there were 848 organisations within the Work Programme supply chain. It said that these are a mix of private, public, and voluntary or community service organisations, delivering as either tier 1 or tier 2 sub-contractors. The definitions of what these tiers incorporate vary from provider to provider. Generally, tier 1 means sub-contractors deliver a specific element of the service such as job-broking and these partners are usually paid by results, so sharing some of the risk with the provider. Tier 2 organisations work on a call-off basis and are only required to deliver services when/if contracted providers refer individuals, needing help to get into or stay in a job, to them. Given the flexibility offered to the Work Programme providers, the supply chain is expected to change and evolve as local labour markets and individuals' needs vary, over time.
12. The DWP explained that whilst on the Work Programme, individuals, or participants as they are known, are expected to seek employment and providers and sub-contractors, in their role, will determine with the participant, how best to focus this search; this may involve a widening of the type of work sought, the locality of the work, and whether any training or other support is needed prior to any movement into work. It said that those participants receiving Jobseeker's Allowance, for example, need to demonstrate that they are actively seeking, and are available for, employment to the provider, at the risk of being referred to Jobcentre Plus for a sanction if there is any doubt. Work Programme providers, and their sub-contractors, are expected to provide the support and tools that a participant needs in order to move into work; this may include the availability of a tool or stencil available for a participant to record their jobsearch, in much the same way as the Record of Jobsearch form is offered by Jobcentre Plus to JSA claimants to demonstrate that they are actively seeking employment.

Reasons for decision

13. Section 12(1) of the 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."

14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at

£450 for the public authority in question. A public authority can charge a maximum of £25 per hour for work undertaken to comply with a request which amounts to 18 hours work in accordance with the appropriate limit set out above. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:

- (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
15. To determine whether the DWP applied section 12 of the FOIA correctly the Commissioner has considered the submissions provided by the DWP on 31 October 2012.
16. The DWP said that the scope of the complainant's request was determined as including any electronic and paper-based jobsearch-related forms and would include, due to the flexible delivery nature of the Work Programme, any such forms in sole use by the prime provider; any forms used in partnership with a sub-contractor; any forms used by a sub-contractor in their role in delivering an aspect of the Work Programme which may involve jobsearch; and any 'regional' variations of such forms (forms may be tailored to reflect the labour market within a CPA and therefore, a provider's forms within one CPA may differ from the same provider's forms in another). Furthermore, the Department, at the time of request, was fully aware that at least one prime provider sub-contracted their entire job-broking service, including jobsearch, to one or more sub-contractors.
17. The DWP clarified that the determination of the breadth of this scope to include sub-contractors was also influenced by the possibility that the prime provider could use the 'jobsearch log' to support other aspects of the Work Programme delivery, for example, as evidence for a submission to Jobcentre Plus concerning a Jobseeker's Allowance entitlement doubt; sub-contractors asked to provide jobsearch support to a participant may 'refer' any concerns back to the prime provider to action.
18. The DWP explained that a total of 24 working hours (based on the central government departments' limit of £600 and a flat rate of £25 per hour of staff time) equates to a total of 1,440 minutes. It said that the

time available, 1,440 minutes, was divided by the 40 CPAs to cover any prime provider 'regional' variation – this allowed for 36 minutes per CPA. It went on to explain that on average, there are 20 plus sub-contractors per CPA (848 organisations in the supply chain across 40 CPAs), any or all of whom may be involved to varying extents in Work Programme delivery and which may include 'jobsearch' support. It said that to be certain each of the sub-contractors would need to be contacted to locate, identify and extract the relevant information. It explained that even if, for example, only 10% of these sub-contractors were involved in jobsearch provision, then this low estimate would still be likely to breach the cost limit. This approach would make the time available, per contact per CPA to be an average of 12 minutes (this estimate comes from a 36 minute total per CPA, 12 minutes for the CPA and 12 minutes for each of the two subcontractors which reflects 10% of subcontractors per CPA).

19. Within this time frame, the DWP explained that the following work would need to be undertaken;

- each prime provider would be expected to read any request;
- each prime provider to undertake the four 'activities' (to service the complainant's request, both paper-based and electronic-based information must be identified);
- the prime provider to send the same request on to any involved sub-contractor (which may be more than the two used for this estimate);
- the sub-contractor to receive the request, evaluate it, and undertake the four 'activities';
- the sub-contractor to return any applicable documentation to the prime provider or to respond in the negative to the prime provider;
- the prime provider to collate all appropriate information; and
- the prime provider to return the information to the DWP.

20. The DWP said that not included within the average available time but would also have to be factored in, is the time it would take the DWP to construct the request to the prime providers; collate each response from the prime provider; and to provide a full reply to the complainant.

21. To this end, it was estimated that to comply with the request, in full, would exceed the appropriate limit. The DWP said that it had asked the complainant if he would consider narrowing the request for information

to enable the DWP to provide, at least, some of the information within the scope of this request. The DWP said the complainant did submit a refined request and this was responded to in full. However as the complainant remained dissatisfied with the DWP's response to the full request, this is what the Commissioner has considered in this case.

22. The Commissioner considers that based upon the DWP's arguments the requested information could potentially be held by a variety of different contractors and subcontractors. The Commissioner considers that based upon the DWP's low estimate, involving just 10% of the subcontractors, this would only allow a very short 12 minutes to conduct searches, collate, extract and provide relevant information. The Commissioner considers that it is highly likely it would take longer than 12 minutes to do this work. Furthermore the DWP has explained that 10% of contractors being involved in jobsearch provision is a very low estimation and therefore this would again substantially increase the time it would take to comply with the request. The Commissioner therefore considers it would exceed the £600 cost limit for the DWP to comply with the request and therefore section 12 of the FOIA was correctly applied in this case.

Right of appeal

23. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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

Pamela Clements
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