

Freedom of Information Act 2000

Decision notice

Date: 15 November 2017

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

Decision (including any steps ordered)

1. The complainant requested information from the Department for Work and Pensions (DWP) relating to its Unacceptable Customer Behaviour policy. The DWP refused the requests under section 12(1) of the Freedom of Information Act 2000 (the Act) as compliance with the requests would exceed the appropriate limit.
2. The Commissioner's decision is that the DWP is entitled to refuse the requests under section 12(1) of the Act. No steps are required.

Request and response

3. The complainant submitted three pieces of correspondence to the DWP over the course of a week which contained a series of requests. The Commissioner has placed the correspondence in full in Annex A attached to this notice.
4. The Commissioner has determined the following excerpts from the complainant's three emails can be considered requests under the Act:
 - 28 February 2017 –
 - 1) *Can you please state how many people who have had a UCB [Unacceptable Customer Behaviour Policy] ruling have been told of the opportunity of having a tribunal?*

- 3 March 2017 –
 - 2) *I have requested copies of both Unacceptable Behaviour (including reference to retaining CCTV) and UCB protocols/guidance and etc. what is their projected release date?*
 - 3) *Also can you please give full reasoning - including legal advice re. why the DWP stopped banning orders for UCB being sent out by solicitors e.g. Field Fisher Waterhouse?*
 - 4) *What legal advice has the DWP in framing its UCB?*
 - 5) *I did/am requesting the details of what these changes are and what were the grounds for implementing the changes?*
 - 6 March 2017 –
 - 6) *I would also like the details of any changes made to the UCB since this response was made - including reasons and legal advice received - I emphasize that public interest in these matters over-rides legal privilege.*
5. The DWP responded on 23 March 2017. It aggregated its response to all three emails and refused the series of requests under section 12(1) of the Act, as compliance would exceed the appropriate limit.
 6. The DWP issued its internal review on 19 April 2017. This upheld the decision taken in the refusal notice and maintained the section 12(1) refusal of the requests.

Scope of the case

7. The complainant contacted the Commissioner on 19 April 2017 to complain about the way his requests for information had been handled. Specifically that the DWP has refused his requests, which he considered should have been responded to as it was in the public interest to do so.
8. The Commissioner considers the scope of the case to be whether the DWP is entitled to refuse the complainant's requests under section 12(1) of the Act. The Commissioner shall also consider whether the DWP provided sufficient advice and assistance to the complainant, as required under section 16(1) of the Act.
9. The Commissioner shall not consider whether the balance of the public interest for the requests. The public interest test only applies to qualified exemptions that come within Part II of the Act. Section 12(1) comes

within Part I of the Act and so any consideration of public interest does not come into the Commissioner's decision.

Reasons for decision

Section 8(1) – definition of a request

10. Section 8(1) of the Act states that:

"(1) In this Act any reference to a "request for information" is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested."

11. The complainant submitted a number of questions that the Commissioner does not consider to be requests for information as defined by the Act. Whilst the questions were made in writing and contained the complainant's name and address for correspondence, they did not describe the information requested as per section 8(1)(c).
12. Section 84 of the Act states that information is defined as (Commissioner's emphasis) "information **recorded** in any form". Therefore, in order for a question to be a request under the provisions of the Act it must ask for information that would be held in a public authority's records.
13. As an example, in the complainant's correspondence of 3 March 2017 he states the following:
- "I am also requesting explanations as to the differences between what information the DWP has provided me with regards to UCB and what was referred to in the FOI incorporated in my emails i.e. your ref: VTR 4143.*
14. The Act can capture an "explanation" if it has already been committed to record. However, this is not what the complainant is asking for. Instead, he wants the DWP to explain to him the difference between two sets of information. This is not a request for recorded information and the DWP does not have to handle that under the provisions of the Act.

Section 12(1) - cost of compliance exceeds the appropriate limit

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

(1) 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.

16. Section 12(1) of the Act states that:

(1) 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.

17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments such as the DWP. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours (or 1,440 minutes).

18. 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:

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

19. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers

that any estimate must be "sensible, realistic and supported by cogent evidence".¹

20. In the DWP's submissions it made it clear that not all parts of the requests would exceed the appropriate limit by themselves, and that it was aggregating the requests as per regulation 5 of the Fees Regulations. This provides that a collective estimate can be applied to a series of requests providing that they are:
- 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.
21. The Commissioner's view is that the DWP is entitled to aggregate its response to the requests: the requests were all made by the same person; they all concern the DWP's UCB policy; and they were made within a week of each other, which is less than 60 consecutive working days.
22. Therefore, the DWP only needs to demonstrate that its aggregate estimate for compliance with all six requests would exceed the appropriate limit. At the Commissioner's request the DWP provided a breakdown for the tasks required with each of the requests. The Commissioner shall address each in turn.

First request

1) Can you please state how many people who have had a UCB ruling have been told of the opportunity of having a tribunal?

23. The DWP stated that since April 2013 it had sent out 5,369 such letters. The DWP confirmed that its standard text for the letter did not contain any reference to an "opportunity of having a tribunal", but if the complainant wanted the DWP to be certain that there have not been any such references it would need to manually inspect the letters.

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<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf> - see paragraph 12

24. The appropriate limit equates to 1,440 minutes, so the time required to scan through 5,369 letters would clearly breach this limit even if only 20 seconds was afforded to the locating the letter and extracting the relevant information. The Commissioner considers that it is realistic that these tasks would likely take such time: the letters would first need to be located within the DWP's records; each letter would need to be opened; the letter would have to be searched for any mention of tribunals; and any positive results would need to be recorded.
25. The Commissioner considers that this request by itself would likely exceed the appropriate limit. She notes that the DWP only went back to April 2013, whilst the complainant did not stipulate a time limit, and the DWP confirmed that UCB has been in effect prior to 2003.

Second request

2) I have requested copies of both Unacceptable Behaviour (including reference to retaining CCTV) and UCB protocols/guidance and etc. what is their projected release date?

26. The DWP stated that its Unacceptable Customer Behaviour Policy has now been disclosed to the complainant, and that no document called "Unacceptable Behaviour" policy/protocol etc. is held.
27. The DWP did not provide any estimate for how long compliance with this request would take or indicate that the information was held at the time of the request. The Commissioner's view is that the time would likely be negligible, and in the absence of any argument from the DWP she has not added any further time to the aggregated estimate for the requests.

Third request

3) Also can you please give full reasoning - including legal advice re. why the DWP stopped banning orders for UCB being sent out by solicitors e.g. Field Fisher Waterhouse?

28. Similarly to the second request, the DWP did not provide much detail on how long compliance with this request would take. It stated that it "would require a trawl of documentary records held in computer folders by the Health, Safety & Wellbeing team, using the name above as a search term" and that a "similar exercise would need to be undertaken by Commercial and legal staff."
29. The Commissioner considers that this would unlikely be a particularly lengthy process. Whilst the staff involved might identify a number of letters relating to Field Fisher Waterhouse it should be simple to determine which letter was responsible for the cessation of its service for the DWP.

30. In the Commissioner's view this request would likely be complied within inside the appropriate limit were it not aggregated. However, given the time required to comply with the first request the Commissioner considers that the DWP would be entitled to refuse to comply with this request under section 12(1) of the Act.

Fourth request

4) What legal advice has the DWP in framing its UCB?

31. The DWP confirmed that the earliest version of its UCB policy it can identify is from 2003, but that this might not be the earliest version in existence. The DWP stated that any relevant information about the legal advice provided for that policy – or one prior to it - would have been placed in document storage some time ago.
32. The DWP stated that it was not possible to work out the scope of this exercise due to the amount of work involved. Whilst the Commissioner can envisage that the task is likely to be onerous, she is not compelled by the DWP's evidence that determining whether relevant information is impossible. Although she would like to remind the DWP that this would constitute a section 12(2) refusal, which is where to confirm or deny whether relevant information held would exceed the appropriate limit. A section 12(1) is for situations where a public authority knows relevant information is held but to comply with the request would exceed the appropriate limit.

Fifth request

5) I did/am requesting the details of what these changes are and what were the grounds for implementing the changes?

33. The DWP stated that the summary of changes provided in IR208 (to which this request refers to) contained 14 changes from over the past four years. The DWP stated that to locate the grounds for these changes it would need to identify the text of the previous version, as this would help it identify with searches of the documentation which might contain the reasons for the amendments.
34. The DWP's estimate for this request does not contain much detail in terms of time. It states that it would take 10 minutes to identify each amended section in a previous document for each change, and then a further 10 minutes for each change to cross-reference the difference in text – a total of 280 minutes.
35. The Commissioner considers that this is likely to be far in excess of the work required. However, she considers that the task of identifying the justification for the 14 changes is unlikely to be a straightforward task. Without a detailed audit trail which explains every single amendment

made to every Unacceptable Customer Behaviour policy the request would need to encompass searches for any supporting documents/emails in order to identify any potentially relevant information.

Sixth request

6) I would also like the details of any changes made to the UCB since this response was made - including reasons and legal advice received - I emphasize that public interest in these matters over-rides legal privilege.

36. The DWP states that this information was provided to the complainant in a future response. It did not provide any estimate for how long the request took to comply with, and so the Commissioner has not considered it as part of her decision.

Commissioner's decision on section 12(1)

37. The Commissioner's decision is that compliance with the requests would exceed the appropriate limit. She does not consider that compliance with requests two, three, and six is especially difficult, and notes that two and six have already been complied with. However, the Commissioner is satisfied that compliance with the first request alone would exceed the appropriate limit; and in addition to this, it is clear that the work involved in complying with requests four and five would take some time. Even if the calculations for request one are not entirely correct then the time required to comply with requests four and five make it seem almost certain.
38. Whilst the Commissioner does consider that the DWP could have done more to illustrate the difficulties of complying with requests four and five, she nonetheless considers that the DWP has illustrated that complying with the requests would exceed the appropriate limit.

Section 16(1) – duty to provide advice and assistance

39. Section 16(1) of the Act states:

"(1) 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."

40. The Commissioner's view is that where a public authority refuses a request under section 12(1) of the Act, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be reduced so that the request might be complied with.

41. The Commissioner's guidance states that 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; or
 - 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.
42. The DWP's refusal notice of 23 March 2017 stated the following with regards to section 16(1):
- "In this instance your requests cover numerous questions in relation to Unacceptable Customer Behaviour and to respond fully would require us to examine multiple previous requests from you and our responses to them together with a considerable number of policy documents.*
- We therefore considered that we are unable to offer any guidance in line with s16 of the Act."*
43. The DWP's internal review advised the complainant that he should limit the scope and number of his requests, and later stated that the subject should focus on much more specific information. The DWP's submissions showed that the complainant was able to follow this information and resubmitted requests similar to numbers two and six from this decision.
44. The Commissioner wrote to the complainant with her findings following receipt of the DWP's submissions. She advised that the scope of requests one, four, and five were such that the aggregated response exceeded the appropriate limit. The complainant responded to the Commissioner's correspondence and stated that the DWP were guilty of several criminal acts. The Commissioner has informed the complainant that such allegations were beyond her remit, but he has continued to repeat them in spite of the Commissioner's advice as he considered it shows the DWP is disingenuous and is lying about the time required to comply with the requests.
45. The complainant also went further and stated that the DWP should be reviewing the letters within the scope of the first request, as any letter without a reference to a tribunal is illegal. As the Commissioner's findings showed that the bulk of the time for compliance rested with the first request, the complainant argued this should now be discounted and the DWP should comply with the requests.

46. The Commissioner considers that the DWP could have provided further and more specific advice to the complainant, but in her view the advice provided did meet the minimum requirement for the DWP's obligations under section 16(1) of the Act. It has provided an indication of what could be provided by asking the complainant to severely reduce the number of questions he asks in his correspondence, and to be more focussed in the scope of his requests. The Commissioner has also provided the complainant with advice on how to reduce the scope of the requests, and gave details on which questions were problematic for compliance inside the cost limit and why this was the case. The complainant has instead elected to make allegations of criminal offences and not take any of the assistance into consideration.
47. The Commissioner's decision is that the complainant has had sufficient information to form more focussed requests. Whether he chooses to do so is a matter for him.

Right of appeal

48. 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

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

49. 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.
50. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

51. Below is the full text of the complainant's correspondence sent to the DWP. The Commissioner has highlighted the sections in bold that she considers are requests under the Act.

On 28 February 2017 the complainant sent a request to the DWP for the following information:

Can you please explain why none of my appeals re. determinations of UCB have been referred for a tribunal or equivalent?

Can you please explain why I have never been given an indication/notice that my complaints/appeals against UCB could have been referred to a tribunal? - Or why that option been identified to me in previous UCB FOI requests?

*Can you **please state how many people who have had a UCB ruling have been told of the opportunity of having a tribunal?***

On 3 March 2017 the complainant submitted a request for the following:

I have requested copies of both Unacceptable Behaviour (including reference to retaining CCTV) and UCB protocols/guidance and etc. what is their projected release date?

Also can you please give full reasoning - including legal advice re. why the DWP stopped banning orders for UCB being sent out by solicitors e.g. Field Fisher Waterhouse?

VTR IR57 (I point out that this a continuum from my initial requests and continued obstruction and evasion by the DWP). Refer to my initial requests not just selecting the appeal in isolation which is how you have responded.

*Re. your response: I refer to my initial points - are you saying that the DWP has had no legal advice in framing its UCB? That lacks credibility. **What legal advice has the DWP in framing its UCB?***

*You have previously only given summary areas of what changes there have been in recent years re. UCB - **I did/am requesting the details of what these changes are and what were the grounds for implementing the changes?***

I am also requesting explanations as to the differences between what information the DWP has provided me with regards to UCB and what

was referred to in the FOI incorporated in my emails i.e. your ref: VTR 4143.

On 6 March 2017 the complainant submitted a request for the following:

*Re. the email of 03/03/2017 below - I emphasize that the information has still not been released despite an appeal being made as long ago as 07/05/2016 and it taking until the 07/07/2016 for a response to be made (your ref: IR208 FOI 1680) which only released a summary of changes for key areas and no minimal reasons given for these changes and no details of what legal advice the DWP had received to prompt any of these changes. **I would also like the details of any changes made to the UCB since this response was made - including reasons and legal advice received** - I emphasize that public interest in these matters over-rides legal privilege.*