

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 8 July 2020

Public Authority: Department of Health and Social Care
Address: 39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant has requested information on pay allowances granted to staff at the Department of Health and Social Care (DHSC), broken down by directorate. The DHSC refused the request as to comply would exceed the cost limit under section 12(1) of the FOIA.
2. The Commissioner's decision is that the DHSC has correctly applied the provisions of section 12 to refuse the request and in providing advice and assistance to the complainant has also complied with section 16 of the FOIA.

Request and response

3. On 2 February 2018 the complainant made a request to the DHSC in the following terms:

"I am requesting the following information under the Freedom of Information Act.

1) What is the total number of staff in receipt of 'additional pay allowance', broken down by directorate to date?

2) Are there any other allowances that staff are getting and if so what are they?

3) What is the total number of staff in receipt of 'market pay supplement', broken down by directorate to date?"

4. The DHSC initially refused this request on 2 March 2018 citing section 14 of the FOIA and aggregating it with two other requests received at similar times. In October 2019, following an investigation, the Commissioner issued a decision notice regarding this response finding that section 14 had not been correctly applied and requiring the DHSC to issue a fresh response.
5. A new response was provided to the complainant on 14 November 2019 refusing the request under section 12(1) of the FOIA.
6. Due to the ongoing nature of the issues, the Commissioner agreed to proceed with the complaint without requiring the complainant to go through the internal review process.

Scope of the case

7. The complainant contacted the Commissioner following the refusal notice on 21 November 2019 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of her investigation to be to determine if the DHSC has correctly refused the request on the basis of section 12 of the FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

9. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
10. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). These are:
 - (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.

11. The appropriate limit is set in 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 a public authority may refuse to comply with a request for information if it estimates that it will take longer than 24 hours to comply.
12. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the DHSC was reasonable; whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £600, that section 12(1) therefore applied and that it was not obliged to comply with the request.
13. In its refusal to the complainant, the DHSC advised it was not able to comply with the request because it would be required to search through a large number of files to establish if information was held and then to locate, extract and retrieve it. The DHSC explained that if the request was refined to remove the need for the information to be broken down by directorate it may reduce the time required.
14. In responding to the Commissioner's enquiries the DHSC explained that the first thing it did was establish whether the requested information would be held and, if so, where it would be held. In doing so, the DHSC Freedom of Information Team spent 30 minutes consulting with the DHSC's HR Operations team to ascertain where the information would be located.
15. The DHSC explained that at the time of the request in February 2018 it had 1641 employees. It would appear that information on pay allowances is not held centrally and the DHSC would be required to check each individual employee record to identify which employees were in receipt of an additional pay allowance and to extract the information.
16. The DHSC provided what it considered to be a conservative estimate of one minutes per record being required to check, identify and extract the relevant information. DHSC therefore considered it would take a minimum of 27 hours at a cost of £638.75 to identify and extract the relevant information.

17. The DHSC also pointed out that this only related to the first part of the request and even within that it would be required to break the information down by directorate, requiring additional cross-referencing and time.
18. Adding to this the time needed to also establish if any staff are getting any additional allowances and what they might be and calculating the total number of staff in receipt of 'market pay supplement' with a breakdown by directorate the DHSC argues this would far exceed the cost limit set out in the Fees Regulations.
19. The complainant is of the view the information should be easily retrievable and that the DHSC is deliberately obstructing him accessing the information given the previous decision to refuse the request as vexatious and now the current response that the information cannot be provided within the cost limit.
20. However, when dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way.
21. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate cost limit.
22. With that in mind, the Commissioner considers the cost estimate, albeit limited, provided to her by the DHSC to be cogent, in terms of the time it has estimated for carrying out its tasks. Although it has not provided an actual time estimation, based on the submissions above, the fact the information is not held in a central location and the fact that it would require manually checking each employee record to locate and retrieve the information, the Commissioner considers that the DHSC has demonstrated that its cost estimate was reasonable and thus it was not required to comply with the request by virtue of section 12(1) of the FOIA.

Section 16 – advice and assistance

23. Section 16(1) of the FOIA provides that –

"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."

24. In order to comply with this duty, a public authority should advise the requester as to how their request could be refined to bring it within the appropriate cost limit.
25. In its refusal notice, the DHSC said that *"You may wish to refine your request for information by removing your request to have the information broken down by directorate."*
26. Whilst the Commissioner is unclear whether this advice would genuinely bring the request under the cost limit, it is clear the DHSC did provide some advice and assistance to the complainant to enable him to reframe his request. Accordingly, the Commissioner find that the DHSC complied with section 16(1) of the FOIA in providing advice and assistance to the complainant.

Right of appeal

27. 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: 0870 739 5836

Email: grc@justice.gov.uk

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

28. 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.
29. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
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