

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

### **Decision notice**

**Date:** 20 July 2021

**Public Authority:** Department for Work and Pensions

**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

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

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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 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 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**

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5. On 11 February 2020, the complainant wrote to the Department for Work and Pensions (DWP) and requested information in the following terms:

*"Further to my FOI request entitled "Arrears Amendment" sent on 2nd February 2020, please could you provide a breakdown of the number of cases where the CMS has allowed a reduction in monthly payment of*

*arrears without first requesting evidence from the NRP<sup>1</sup> that they are unable to afford the payments due. Please could you provide a breakdown by year.*

*So for example:*

*2012: x cases  
2013: x cases  
2014: x cases  
etc*

*Secondly, please could you provide a year-by-year breakdown of the number of cases where the resident parent has complained about a reduction in arrears payments negotiated between the CMS and the NRP?*

*Thirdly, please could you provide a year-by-year breakdown of the number of cases where the negotiated reduction in arrears payments was later overturned due to the NRP lying about their inability to pay."*

6. DWP provided its response on 25 February 2020. It stated that it does not record or hold data regarding the requested information.
7. The complainant requested an internal review on 25 February 2020 stating the following as their reason for disputing DWP's position:

*"I find it incomprehensible that you do not hold any information in relation to my request. As per my other FOI requests, if you continue to withhold data instead of complying with your duties under the FOIA, I will not hesitate to escalate my case to the ICO".*

8. DWP provided the outcome of its internal review on 11 March 2020 and upheld its original response. It explained that the Child Maintenance Service bases its assessments on historical income and this income is provided by HMRC. DWP set out that there is no allowance for outgoings within the calculation. DWP explained that a paying parent could request a variation for special expenses which may reduce their assessment, if successful, and the paying parent would be required to provide evidence of expenses incurred for the variation to be considered.
9. DWP confirmed that it does record the number of complaints received and this information is available on GOV.UK<sup>2</sup>. However, it explained that

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<sup>1</sup> Non-resident parent

this information does not provide details of the issue each complaint relates to.

10. DWP also confirmed that it does not have the ability to record data regarding a specific scenario on the Child Maintenance Systems.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 22 May 2020 to complain about the way their request for information had been handled. The complainant disputed that DWP did not hold the requested information.
  12. The request is one of a series of requests made to DWP by the complainant seeking information regarding very specific scenarios that may occur as part of the Child Maintenance Service's assessment of paying parent liability.
  13. During the course of the investigation, DWP amended its position and provided a fresh response on 4 March 2021. DWP relied on section 12(2) of the Act to neither confirm nor deny whether it held the requested information as to do so would exceed the appropriate limit.
  14. DWP explained that whilst it does record when a change of circumstances has occurred on a case, it is unable to link a change of circumstances directly to the scenarios set out in the request. DWP explained that it would need to conduct a case by case examination of approximately 79,000 cases to determine if the information is held.
  15. DWP explained that complaints are responded to and logged on a separate case management system and maintained by a DWP team in the Customer Experience Directorate. DWP confirmed that the team log complaints using customer information (name/reference), benefit type, as well as root cause. DWP explained that the team would need to examine each case to identify the reason for a complaint.
  16. 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 on refining their request.
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<sup>2</sup> <https://www.gov.uk/government/statistics/child-maintenance-service-statistics-data-to-september-2019-experimental>

17. The complainant confirmed that they disputed DWP's amended position as they considered that DWP holds more information in its centralised electronic system than it claims. The complainant provided screenshots of the information that parents are able to provide via the online self-service portal. They consider that DWP can use this information to locate the requested information. They also disputed that DWP had provided adequate advice and assistance in accordance with its obligations under section 16.
18. The Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on section 12(2) to refuse to confirm or deny whether it holds the requested information and whether DWP has provided adequate advice and assistance in accordance with section 16.

## Reasons for decision

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### Section 12: Cost of compliance exceed the appropriate limit

19. 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".*

20. 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".*

21. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>3</sup> (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

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<sup>3</sup> <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

refuse to comply with a request for information if it estimates that it will take longer than 24 hours to comply.

22. 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 holding it;
  - Retrieving the information; or a document holding it; and
  - Extracting the information or a document holding it.
23. As DWP is relying on section 12(2) of the Act, only the first of these activities is relevant in this case.
24. Section 12 explicitly states that public authorities are only required to estimate whether the cost of complying with a request exceeds 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**

25. DWP explained that there are no specific instructions advising caseworkers how to document a decision to allow a reduction in arrears payments. DWP explained that caseworkers will make a freetext note on the case.
26. DWP confirmed that it may be able to determine whether it holds cases in which a reduction was allowed before receiving evidence by reviewing individual case files, but only where information is held in the freetext notes. DWP explained that if no specific information was recorded, it would not be able to determine whether a case falls within the scope of the request.
27. DWP emphasised that whilst DWP generally makes decisions based on evidence, whether supplied by the customer or from other sources, it can also make discretionary decisions and these would be noted in the freetext notes.
28. DWP explained that the figure of 79,000 cases which it estimated would need to be reviewed individually was just one group of cases that could be examined.

29. DWP explained that the 79,000 cases marked as "*variation-additional income*" would be the most likely starting point in identifying cases where a parent has stated that they cannot afford a payment due to changing income. DWP explained that cases marked as "*special expenses variation*" or actioned outside of the variation process may also need to be reviewed. DWP confirmed that that if it needed to review all cases on its Collect and Pay Service which have arrears, this could be in the region of 180,000 cases.
30. DWP explained that as the information would be contained in the freetext field of the case, it could not extract the information easily as each freetext note would need to be reviewed to determine whether it falls within the criteria set out in the request.
31. The Commissioner asked DWP to confirm whether it could use the information submitted via its online portal to filter the cases that would need to be reviewed.
32. DWP explained that the portal is the gateway to enable parents to provide information. However, it is not the Child Maintenance System. DWP explained that in order to extract information 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. DWP confirmed that it had consulted with its digital colleagues and they were not aware of a way to identify cases where an amendment was made without evidence.
33. DWP explained that it does not have a dataset for the portal which would enable a search. It further explained that information submitted via the portal would present as a work item that caseworkers would need to open and action. DWP confirmed that it had received 140,000 work items in February 2021.
34. DWP explained that the portal allows customers to update their details themselves, otherwise they would need to call or write to the Child Maintenance Service.

### **The Commissioner's position**

35. The Commissioner accepts that DWP is unable to determine whether it holds any cases falling within the very specific scenarios set out in the request without reviewing individual cases as set out by DWP. The Commissioner acknowledges that the complainant believes that the information is held on the system in an easily extractable format; however, DWP has explained that it does not have a method for identifying this information within the appropriate limit.

36. 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 case information in formats that can be searched by specific scenario.
37. The Commissioner accepts that in order to determine whether DWP holds the requested information, it would be required to review the freetext fields of up to 79,000, potentially 180,000 cases.
38. 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. 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.
39. 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**

40. 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".*

41. 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 guidance<sup>4</sup> 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*

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)



- *provide advice and assistance to enable the requestor to make a refined request”.*
42. 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.
43. DWP explained to the Commissioner that it was unable to provide advice on refining the request as it related to cases which have scenarios or criteria that are not captured in any data item that DWP could perform a system search for.
44. The Commissioner notes that DWP has provided the complainant with links to information regarding DWP complaints figures and that in order to provide the requested information, it would need to review individual cases. 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**

45. Section 1(1) of the Act 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”.*

46. 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”.*

47. 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**

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48. 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.

49. 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 basis 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.
50. The Commissioner expects DWP to take steps to ensure that it is not disadvantaging requesters by misapplying the procedural sections of the Act. In particular, DWP should ensure that its staff are familiar with her guidance on determining whether information is held<sup>5</sup>.
51. 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.

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<sup>5</sup> [https://ico.org.uk/media/for-organisations/documents/1169/determining\\_whether\\_information\\_is\\_held\\_foi\\_eir.pdf](https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf)

## Right of appeal

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52. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

53. 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.
54. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**