

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to a safeguarding review. The Department for Work and Pensions (DWP) relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that DWP was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that the public authority complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps to be taken.

Background

4. The Commissioner issued a decision notice case on 3 March 2022 (ref IC-113450-B1Z0) upholding a complaint against DWP but also found that it did not hold any further information. The First Tier Tribunal issued a substituted decision notice relating (appeal ref EA/2022/0078) finding that DWP was likely to hold further information and ordered it to issue fresh response. This decision notice is with regard to that fresh response.

Request and response

5. The complainant originally made the following request in January 2020:

"This FOI refers to reporting here:

<https://www.disabilitynewsservice.com/the-deathof-errol-graham-man-starved-to-death-after-dwp-wrongly-stopped-his-benefits/>

The story reports various comments by an assistant coroner, including the following: The assistant coroner said: "There simply is not sufficient evidence as to how he was functioning, however, it is likely that his mental health was poor at this time - he does not appear to be having contact with other people, and he did not seek help from his GP or support agencies as he had done previously." [...] But she decided not to write a regulation 28 report demanding changes to DWP's safeguarding procedures to "prevent future deaths" because the department insisted that it was already completing a review of its safeguarding, which was supposed to finish last autumn.

Please send me: a) The terms of reference or any similar document setting out the scope of the review referred to in that news story
b) The results of the review referred to in that news story".

6. Following the First Tier Tribunal decision, on 7 December 2023 DWP provided its response citing section 12 FOIA. It provided an internal review on 11 January 2024 maintaining its position.

Reasons for decision

Section 12 – cost of compliance

7. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
8. Section 12(1) of the FOIA 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" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations")
9. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450

for all other public authorities. The appropriate limit for the DWP is £600.

10. 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 24 hours for DWP.
11. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
12. 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. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
13. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
14. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

The public authority's position

15. DWP explained to the Commissioner that in both determining whether any information in the scope of the request was held and locating that information it asked colleagues to undertake further searches and identified 261 documents which are potentially within the scope of the request.
16. Of these, 196 are emails, some of which also have associated attachments. The remaining 65 are documents only, for example

reports, spreadsheets, and presentations. Based on a random sample of 30 documents, DWP estimate that emails would take on average, 4 minutes to review and documents, 20 minutes to review. DWP says that if it were to complete a full review of all 261 documents, taking into consideration the average times, it will take somebody a minimum of 34 hours to consider all the documents that may fall within the scope of this request. This would exceed the cost limit of £600 pounds.

17. DWP says that the work consists of reading all the emails and documents to determine which fall within the scope of the request and also to identify any duplicates.
18. Receiving information from different people and the common usage of some of the key terms in a range of work settings has led to documents potentially containing relevant information being identified.
19. Since the original request in January 2020, some staff have left the department or changed roles. As a result of this a number of staff who responded to the request were not directly involved in the work that was carried out.
20. DWP considers it has been reasonable in assessing the cost of this exercise as it has not included time that was taken by the central team in requesting the files, carrying out the sampling exercise, or the time of the people who carried out the searches, all of which could be classified as determining whether the information is held.
21. DWP confirmed that a sampling exercise was undertaken to determine the estimate. The sampling exercise concentrated on reviewing the information from 30 emails and documents which were randomly chosen to sample and details of this exercise are outlined above.
22. The safeguarding review at the centre of this risk request was led by the former Chief Psychologist as part of his role rather than a formal project and ceased without being completed when a new directorate was formed. Due to the passage of time since the request was originally made, people who worked on this have either changed roles or left DWP (including the Chief Psychologist) and some files will have been deleted. Therefore the personal knowledge of this work has reduced.
23. DWP says it contacted 54 staff members and it received responses from 27 staff members, 16 of which provided documents or emails that were held which potentially fell within the scope of the request. Eleven staff members responded explaining they did not hold any information. Much the information received came from people who were peripheral or inherited files from people who have left. While responses from 16

people is not large in itself, the number of potential documents identified was.

24. Relevant staff members within the department were asked to check both physical and electronic files, folders and emails to identify any documents or emails that related to the safeguarding policy review that took place. Also, to look for any notes made in preparation for the meetings, notes of matters discussed in the meetings, minutes of the meetings, copies of their own notes they may have made following the meetings, emails that may have been sent to other colleagues concerning the review, or versions of the draught safeguarding policy review.
25. People were also asked to conduct word searches, such as "safeguarding" and the phrase "safeguarding policy review" against their folders and file stores.
26. As such DWP consider that it had adopted the best approach to this fresh response to locate any information, which included suggesting electronic word searches to colleagues.

The Commissioner's view

27. The Commissioner is satisfied that DWP has provided a reasonable estimate complying with this request would exceed the appropriate limit and so the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.

Procedural matters

28. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
29. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain to the requester how the request could be refined their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
30. In this case, in its response of 7 December 2023 DWP suggested the complainant limit the scope of their request and ask for the draft "Safeguarding Framework" documents completed from 2019 to the date of the original request, 24 January 2020. In its internal review of 11 January 2024 DWP provided further details to the requestor and

suggesting an alternative request that would examine a shorter span of time but is less specific in terms of the material.

31. In both instances DWP advised that these are only guides and it would consider any revised request on its merits. The complainant has not yet made any alternative request and DWP still consider the suggestions it made represent reasonable possibilities it would undertake if requested.
32. The Commissioner is therefore satisfied that the public authority complied with section 16 of FOIA when dealing with this request.

Right of appeal

33. 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

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

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

[Signatory Name]

[Signatory Title]

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