

e-mail: freedom-of-information-request@dwp.gov.uk

Our Ref: FOI2020/06207

Date: 19 February 2020

Dear Mark Abraham,

Thank you for your Freedom of Information request received on received on 30 January 2020.
You asked for:

Our Ref: IR2020/00120

Thank you for your letter of the 24th January. I do have a query and would be grateful for clarification.

It's to do with my letter to you of the 3rd January 2020 I said:

"As to your statement in your reply:

"You may be interested to note that county court/small claims, do not apply to government departments only Tribunals and Appeals".

I am interested, thank you.

A reputable law firm, have recently stated in a Supreme Court case, that the government argued in the Appeals court level that appropriate remedies are available to citizens in the civil courts for compensation, and that these should be used instead of the Tribunal and Appeals path. My understanding is the Law firm felt that the Appeals route was the way to bring actions, in certain cases, but not all. So there appear to be other routes.

I would be interested therefore in knowing from where you draw your information from, as this appears to contradict my understanding, and I'd be obliged for your clarification of your source."

You had a source to be able to provide the information:

"You may be interested to note that county court/small claims, do not apply to government departments only Tribunals and Appeals".

I am asking for information that gives rise to that statement. Why haven't you supplied that information please?

DWP Response

You have asked us to explain the information that gives rise to the following statement *"You may be interested to note that county court/small claims, do not apply to government departments only Tribunals and Appeals"*. We regret that this statement in our initial response to your FOI request (FOI2019/42619) was not clearer. The vast majority of litigation that the Department deals with are appeals in the Social Entitlement Chamber of the First-tier Tribunal. However, some claims may be lodged against the Secretary of State and the Department in other courts.

In many cases, usually after a mandatory reconsideration, where an individual is dissatisfied with a decision taken by the Secretary of State for Work and Pensions, their route to appeal against this decision is through making an appeal to the Social Entitlement Chamber of the First-tier Tribunal.

The County Court and High Court have no jurisdiction to hear claims where jurisdiction for such matters has expressly been given to a tribunal.

It may be possible to challenge other decisions and actions of the Secretary of State or the Department for Work and Pensions where the First Tier Tribunal does not have jurisdiction in the High Court or County Court (or in such other court is applicable), in respect of matters such as breach of contract, personal injury or applying for permission to bring judicial review proceedings. However, as explained above, the vast majority of litigation that the Department is involved with will be with defending appeals against the Secretary of State in the First Tier Tribunal.

We therefore do not hold the information you have requested as the statement you have extracted from our original response was not sufficiently clear. We apologise for any confusion that this may have caused you.

Your original request and request for internal review

We have looked again at our original response to your earlier request and your application for internal review (copies are enclosed for your reference). You requested;

Please can you let me know how many 'pre-action protocols' have been received by the DWP.

To help, if you are unclear of the term, I, (being of an older generation) used to call these 'solicitor's letters'.

This means communications which would have been referred to the DWP legal department about the possibility of legal action being taken. I'd suggest a period of a year (or less, if the cost to reply is onerous), or alternatively the last easily available information. I'm looking for information at this stage.

We apologise that our response that this information was not held is incorrect.

I can confirm that we do hold information falling within the description specified in your request. However, we have estimated that the cost of meeting your request would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. This represents the estimated cost of one person spending 3½ working days (equivalent to 24 staff-hours) in determining whether the Department holds the information, and locating, retrieving and extracting it.

The reason it would take this long is that there is no centrally compiled record of such correspondence. In order to give you an accurate figure for how many of these types of letters have been received, it would mean physically locating and counting such correspondence. It would be very hard to ensure we captured all of this information as threats of legal action against the Department or the Secretary of State may be made formally in a letter before action or informally in another format. They may be sent by email, post or delivered by hand. The Department has many thousands of employees and numerous different sites where such correspondence may be sent and in the absence of a central record it would be very difficult to obtain an accurate figure for the information that you have requested.

As under section 12 of the Freedom of Information Act the Department is not obliged to comply with your request we will not be processing it further.

However, under section 16 of the Act we should help you narrow your request so that it may fall beneath the cost limit. We would be able to provide you with a figure for the 2019 calendar year for the number of letters before action that pass through the Legal Liaison Focal Point for example, but this will not necessarily include all that have been received by the Department.

Additionally, if you make an FOI request to the Government Legal Department, they may be able to give you further information about the number of claims they were instructed on by the Department, but this will not include all legal action that has been threatened against the Department or Secretary of State.

We will consider afresh any revised request however we cannot guarantee that any revised request will fall within the cost limit.

If you have any queries about this letter, please contact the Department quoting the reference number above.

Yours sincerely,
DWP Central FOI Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwpgov.uk or by writing to DWP, Central FOI Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF

Web: ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745