

To John Slater

request-463092-b18d2b6a@whatdotheyknow.com
request-462530-4892533b@whatdotheyknow.com
request-463913-b2e8306c@whatdotheyknow.com
request-463621-35a53118@whatdotheyknow.com
request-464543-bf51cda2@whatdotheyknow.com
request-464367-7da7c7e5@whatdotheyknow.com
request-465530-1eaf1de2@whatdotheyknow.com

DWP Central Freedom of Information Team

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

Our Ref: IR's128, 129, 130, 131, 132, 133 & 134

29 March 2018

Dear Mr Slater,

Thank you for your email requesting a review of the Department for Work and Pensions (DWP) Freedom of Information (FOI) decisions dated 1 March 2018, reference FOI 479, 495, 522, 553, 586, 599 and 653.

You asked

'I am writing to request an internal review of Department for Work and Pensions's handling of my FOI request 'ESA & PIP Mandatory Reconsideration Data'.

The Department has aggregated the following requests for information (RFI") using the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

THE REQUESTS FOR INFORMATION

1. PIP Contract Meetings - Minutes and Change Requests for 2016 Date submitted: 4th February 2018

URL:

https://www.whatdotheyknow.com/request/pip_contract_meetings_minutes_an#incoming-1120431

2. ESA & PIP Mandatory Reconsideration Data Date submitted: 6th February 2018

URL:

https://www.whatdotheyknow.com/request/esa_pip_mandatory_reconsideratio#incoming-1120432

3. PIP Contracts - Management Information 2017 Date submitted: 8th February 2018

URL:

https://www.whatdotheyknow.com/request/pip_contracts_management_informa_2#incoming-1120433

4. ESA - Info created during Re-referral, Pre-board checks.

Date submitted: 9th February 2018

URL:

https://www.whatdotheyknow.com/request/esa_info_created_during_re_refer#incoming-1120434

5. ESA - Contractual Performance Monitoring of CHDA Ltd Date submitted: 12th February 2018

URL:

https://www.whatdotheyknow.com/request/esa_contractual_performance_moni#incoming-1120435

6. ESA - ESA113 form fees & monitoring

Date submitted: 13th February 2018

URL:

https://www.whatdotheyknow.com/request/esa_esa113_form_fees_monitoring#incoming-1120436

7. ESA - Contract with CHDA Ltd - Quality Assurance Date submitted: 18th February 2018

URL:

https://www.whatdotheyknow.com/request/esa_contract_with_chda_ltd_quali#incoming-1120437

DWP REASONS FOR REFUSAL

The Department has justified citing S.12 by claiming “We consider each of the seven requests to be of a similar nature as they all relate to either decision making or performance delivery of disability assessments on behalf of the Department for Work and Pensions. In particular, all of the requests would be allocated to the same team for response as it falls within their specialised area.”

THE LAW

Before I explain why the Department’s reliance on aggregation is unlawful it may be helpful to explain what the law actually say.

So far as it applies to these requests Regulation 5 states:

“5.—(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which—

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and (b) those requests are received by the public authority within any period of sixty consecutive working days.”

WHY DEPARTMENT CANNOT RELY ON AGGREGATION *The FOIA and Regulation 5 refer to requests covering the same or similar information. Whilst it does not define ‘same’ and ‘similar’, most reputable dictionaries offer definitions of both words as:*

Same: *“Identical; not different”*

Similar: “Having a resemblance in appearance, character, or quantity, without being identical”

This clearly means that any similarity was relate to the contents of the information requested. This is entirely consistent with other aspects of the FOIA such as assessing the public interest test. Therefore for the Department to lawfully aggregate the RFIs the specific content of the information requested must be the same or similar according.

However this is not what the Department has done. Its justification is that the requests relate to:

- 1. “decision making or performance delivery of disability assessments”; and*
- 2. “would be allocated to the same team for response as it falls within their specialised area.”*

Point 1 is clearly an attempt to suggest that the requested information falls within a particular theme or thread. This is often raised as justification for aggregation and is flawed. This was addressed in Benson v IC and the Governing Body of Buckinghamshire New University (EA20110016) at [29]:

“Whilst the Tribunal understood the Commissioner’s analysis the Tribunal felt that it was not compelling and relied on concepts that were not actually within the legislation – e.g. ‘overarching theme’. The Tribunal felt that any consequent uncertainty should, on balance, be resolved in the Appellant’s favour.”

The Department is clearly making the same mistake of attempting to rely on concepts that are not within the legislation.

Point 2 is irrelevant. It matters not which team within an organisation RFIs are dealt with. There is no statutory exemption to refuse a RFI purely because it falls to be dealt with by a particular team.

For the avoidance of doubt I list the information being requested by each RFI and then explain why the RFIs refused by the DWP cannot lawfully be aggregated.

RFI1: PIP Contract Meetings - Minutes and Change Requests for 2016
Information: Minutes of meetings and change requests.

RFI2: ESA & PIP Mandatory Reconsideration Data
Information: Datasets held by the Department about Mandatory Reconsiderations (“MR”).
Questions about the type of data held by the DWP in respect of MR for ESA & PIP and how it can be interrogated using the DWP standard IT systems.

RFI3: PIP Contracts - Management Information 2017
Information: Management information submitted to the DWP each month by its two contractors for 2017.

RFI4: ESA - Info created during Re-referral, Pre-board checks.
Information: Information created/recorded by a healthcare professional when deciding to call a person to attend a face to face assessment.

RFI5: ESA - Contractual Performance Monitoring of CHDA Ltd

Information: The performance monitoring report” and “Balanced Scorecard report” supplied to the DWP by CHDA Ltd each month for the period 2016.

RFI6: ESA - ESA113 form fees & monitoring

Information: Fees paid to GPs to complete the form ESA113 required by the DWP and various questions about the process.

RFI7 - ESA - Contract with CHDA Ltd - Quality Assurance

Information: Audit reports that relate to quality assurance.

No reasonable person can conclude that the information being requested in the RFIs listed above is the “same” or “similar”.

I trust the common sense will prevail and the Department will reconsider what I believe is a genuine mistake and deal with each of the RFIs separately and on their own merits. I note that the Department has suggested that at least one of the RFIs would breach S12 on costs. If this is the case I expect the Department to provide a detailed estimate of its costs and an explanation why it is not possible to provide the requested information within the statutory limits.

However, should the Department persist with this flawed approach and it ends up before a Tribunal I will seek an order for costs to be made against the Department.’

DWP Response

Please be assured that your request has been given our full consideration and that all aspects of your review were taken fully into account.

As explained in our original response and in relation to aggregating costs, the Freedom of Information (FOI) Act allows for the following:

- two or more requests for information must have been made to the same public authority;
- they must be either from the same person, or from ‘different persons who appear to the public authority to be acting in concert or in pursuance of a campaign’ (section 12(4)(b) of the FOI Act);
- the requests must relate to the same or similar information; and
- they must have been received by the public authority within a space of 60 consecutive working days.

I have considered whether for aggregation purposes your requests ask for the same or similar information.

As all of the requests relate to contracted health assessments, the performance of those assessments and the benefit outcome from those assessments, I agree with the original decision, in that it is a same or similar area; particularly as the same team, with a particular area of responsibility within the whole of DWP would be required to answer six out of seven of

the requests; the seventh being a statistical one on the same subject, which would require information from DWP statisticians.

With regard to FOI 653 which would singularly exceed the cost limit; this is due to the fact that you have requested all audit reports for 2016 and 2017 which would amount to at least 17,000 reports.

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.

If you have any queries about this letter please contact us 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 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
www.ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745