

DWP Central Freedom of Information Team

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

Our Ref: 2016-IR134

29 April 2016

Dear John Slater

Freedom of Information ref: 2016-IR134

Thank you for your request for an internal review of your Freedom of Information request 2015 – 4038 to which you received a revised response on 29 March 2016.

You asked:

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

If I have understood the Department's response correctly:

DWP Statement 1: Mandatory Reconsideration (“MR”) is held on the Decision Making and Appeals Recording System (“DMARC”) for 14 months following the date of the decision.

Slater Response 1: This means that for the purposes of the FOIA the Department holds the information I requested.

DWP Statement 2: The extraction of the data I requested requires the creation and use of a new bespoke extract from the DMARC system.

Slater Response 2: According to the Department's own figures in its Annex A this would take 0.5 days. Given that the Department has previously confirmed to me which operational data it is collecting in respect of ESA MRs this should not be an arduous task (see DWP response at link below).

<https://www.whatdotheyknow.com/request/219663/response/550180/attach/html/3/IR387%20Response.pdf.html>

DWP Statement 3: The Department claims that it has experienced difficulties using data taken from the DMARC due to it containing more information than just MRs.

Slater Response 3: Given that my request requires the production of a “new bespoke extract from the DMARC system” I suggest that the inclusion of problems related to previous extracts would, on the face of it, be irrelevant. However, if this is not the case

and as it helps the Department I am happy to expand my request for information to include the additional information that the Department referred to as “more information than just MRs”. It would then be a matter for me to sort through and make sense of the data.

DWP Statement 4: The Department discusses the need to make sure that the data provided would be correct:

“To ensure the correct information is provided this has meant extensive investigations and further validation has been required.”

“However, due to the considerable additional work needed to ensure that the collected data is correct and giving only the information for MRs and also to provide data for the time period in your request ...”

Slater Response 4: The Department’s concerns are irrelevant to the FOIA and are not recognised as one of the statutory exemptions. To cite the Information Commissioner directly:

“You cannot refuse a request for information simply because you know the information is out of date, incomplete or inaccurate. To avoid misleading the requester, you should normally be able to explain to them the nature of the information, or provide extra information to help put the information into context.

When considering complaints against a public authority, the ICO will normally reject arguments that inaccurate information should not be disclosed.”

As such the inclusion of any time to check the accuracy of the data in the Department’s cost estimate is incorrect. Therefore the cost estimate included as Annex A is incompatible with the FOIA.

I will now address each line of the table provided in Annex A in turn:

Line 1

Given that the DWP has previously published the operational data that it is collecting in respect of ESA MRs this seems to be excess and possibly irrelevant. However, I will concede that some work might be required in this area and included it in the cost calculation below.

Line 2

Accepted and included in the cost calculation below.

Line 3

This is irrelevant as the FOIA entitles me to the data that is held. The matters described by the Department are incompatible with the FOIA and therefore cannot be included in the cost estimate.

Line 4

I accept that the data needs to be extracted but allowing a full day to do this is excessive. However, I have included in the cost calculation below.

Line 5

This is irrelevant to my request for information. I am entitled to the information held by the department regardless of it being out of date, incomplete or inaccurate. In fact the Commissioner frowns on data being ‘amended’ prior to disclosure as that means the public authority hasn’t actually provided the data it holds. The costs for this cannot be included in the Department’s cost estimate.

Line 6

This appears to be a duplicate of line 2 and therefore its inclusion appears to be dubious. However, I have included in the cost calculation below.

Line 7

This is clearly post processing of held data prior to disclosure and is not allowed under the FOIA. Therefore costs for it cannot be included.

Cost Summary

Line 1	1.0
Line 2	0.5
Line 4	1.0
Line 6	1.0
Total	3.5 days

Even allowing for costs that appear to be inflated it is clear that the Department, based on its own estimates, can provide the requested data within S12 limits.

Given that I have shown the Department’s response is incompatible with the FOIA I look forward to receiving the requested information without further delay.”

In your original request you asked:

“Since October 2013 ESA Reconsiderations have been mandatory before a claimant can lodge an appeal with the Tribunal.

In its response FOI IR387 of 14 August 2014 the DWP stated that it was “gathering the list of information published on 29th May 2013 as part of the operational delivery of Mandatory Reconsiderations (MR) for all benefits. This will include ESA.”

The “list of information” referred to is data related to the operation of Mandatory Reconsideration (“MR”).

The DWP has received a number of requests to publish the data it holds about the operation of MR and it has consistently claimed the S.22 exemption “Information intended for future publication”.

Given that the DWP started collecting MR data in 2013 it means that it has been intending to publish said data for nearly 2 years. A reasonable person might suspect that the DWP is using S.22 as an excuse to avoid disclosing the MR data and that would be an abuse of the exemption.

RFI1: Please disclose the data that the DWP has been collection for ESA mandatory reconsiderations since October 2013.

If the DWP still intends to engage S.22 please:

RFI2.1: provide an approximate date when it intends to publish the data (e.g. 4th quarter 2015).

RFI2.2: confirm that it has settled on the data it intends to publish (i.e. decided which data will be disclosed, redacted or withheld).

RFI2.3: as S.22 is a qualified exemption, please provide the public interest that it carried out when considering the engagement of S.22 to show that it is reasonable, in all the circumstances, to withhold the information prior to publication. This should include the fact that the DWP has been collecting said data since 2013.”

I am of a senior grade to the person who dealt with your request previously, and can confirm that I have carried out an internal review. I confirm that I have considered your request afresh. In conducting my review, I have discussed the original reply, the handling and the decisions on what can be provided with the officer who drafted it.

In the link you provided in your review request it details the following information:

The list of operational information DWP is collecting on MR for all benefits including ESA is as follows:

Number of MR's Received, Cleared, Outstanding and the time taken to process;

Number of Appeals Received, Cleared, Outstanding and time taken to process both pre and post appeals reform;

Customer Service (Telephony) Call Backs Received and cleared, Priority Handovers Received and cleared, and Escalations Received and cleared; Outbound Call Success rates;

I have reviewed the availability of this information and concluded that the full information requested on Employment and Support Allowance (ESA) mandatory reconsiderations since October 2013 is not available within cost.

Whilst you believe some of the cost estimates are inapplicable to this request without lines 3, 5 and 7 you would not be producing a complete record of the data held and so we would not be fulfilling our obligations under the terms of the Freedom of Information Act (FOIA) to provide all

the information held. However I do agree that the cost estimate for line 3 is too high and have reduced this to 0.5 day.

I have also discovered that the cost estimate provided did not include the information on telephony. Therefore this needs adding to the cost estimate increasing it by a further half a day. I have provided an updated table of estimated costs (See Annex A for further details)

Therefore I uphold the decision to withhold the specific information requested under section 12 of the FOIA as I believe the time it would take for one person to locate and retrieve all the specific information you requested would exceed 3.5 working days (24 hours).

I am also satisfied that you were given suitable advice in how to narrow your request under section 16; information on mandatory reconsiderations in relation to ESA sanction decisions is readily available as noted in the response.

However as we did not consider all the items specified in the list under section 16 I believe we can offer you some additional advice in helping you narrow your request so that it may fall beneath the cost limit. In this case in addition to the advice already given about mandatory reconsiderations on ESA sanction decisions, you might like to restrict your request to just the telephony information. We will consider afresh any revised request however we cannot guarantee that any revised request will fall within the cost limit.

In conclusion I agree that the cost exemption was applied correctly at the time of request but failed to include all the items requested. Obligations under section 16 were met, and have now been updated. I therefore uphold the original response.

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

Yours sincerely,

DWP Central Fol 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@dwpgsi.gov.uk or by writing to DWP, Central Fol 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 <https://ico.org.uk/>

Annex A

The following table gives the details of the time it would take to provide the information:

	Task	Days
1	Read relevant documentation and consult ESA policy and operational experts to ensure we are capturing relevant data relating to all ESA decisions	1.0
2	Write and check necessary code to extract cases from DWP monthly datasets which relate to all ESA MR decisions.	0.5
3	Read relevant documentation and consult DMACR data experts and IT security experts to find out exact dates and further details of the data retention policy and consider the implications of such	0.5
4	Identify and ensure we have extracted all the relevant data from DMACR which we will need to provide a full historic data series from 28 to October 2013 to 22 September 2015	1.0
5	Estimate how many decisions are incorrect or missing and develop methodology to provide suitable estimates or adjustments if necessary. This is an iterative process so can take additional time.	0.5
6	Write necessary code to extract cases from all datasets identified. This is an iterative process so can take additional time.	1.0
7	Perform data merge with at least 13 different datasets to capture all cases and ensure duplicate cases are removed.	0.5
8	Extract the relevant telephony information from the appropriate system	0.5
	Total number of days	5.5