

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2019

Public Authority: Department for Work and Pensions
Address: 4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested particular reports believed to be held by the Department for Work and Pensions.
2. The Commissioner's decision is that the Department for Work and Pensions held requested information at the time of the request but one requested report was latterly routinely destroyed, in accordance with its Information Management Policy.
3. The Commissioner finds that the Council breached section 10(1) of the FOIA by failing to disclose the information which was held within the statutory time for compliance.
4. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

Request and response

5. On 30 May 2018, the complainant requested from the DWP information by saying as follows:

"Please send me any reports written by any of your Community Partners while working for DWP in London Jobcentre Plus districts and which were submitted to those districts in 2017 and 2018."

6. The DWP responded on 20 August 2018. It denied holding the requested information. The complainant requested an internal review of that decision. DWP sent him the outcome of its internal review on 5 September 2018. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner 6 September 2018 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation the DWP reviewed again its handling of the complainant's request for information.
9. As a result of this further review the DWP wrote to the Commissioner, saying as follows:

"Upon receiving your letter we decided to carry out a thorough review of the request and conducted an investigation into whether the reports requested by the complainant were held by this Department. We repeated detailed searches of our files and found that there are some documents which were originally overlooked as we took too narrow a view of the original request and we now consider should have been provided to the complainant. I would like to pass over my sincerest apologies that we incorrectly advised the complainant that the information was not held. We have discovered as part of this thorough investigation that some documents which had previously deemed not to be reports and had not been widely shared by our Community Partners should have been considered to be in scope of the request. This was administration error on our part and we are sorry for any inconvenience or confusion this has caused."

10. As a result of this further review the following documents were now considered to be requested information and copies thereof were provided to the complainant :
 - South London Community Partner Work Plan Oct - Dec 2017
 - ESO Community Partner Update 5th – 16th Feb
 - The North London Disability Roadshow Report - November 2017
 - Drugs and Alcohol Community Partner, Weeks 5-12 Summary (1st December up to end Jan 2018)
11. Notwithstanding the above release of information the complainant informed the Commissioner that he believed there was a further report ("Report Y") that was in scope of his request which the DWP held but had not been released to him.

12. The Commissioner considers she has to primarily determine whether the DWP held Report Y at the time of the request.

Reasons for decision

13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or the information was held at the time of the request).

Report Y

15. Regarding Report Y the complainant said to the Commissioner as follows:

"This report was written by Community Partners including (*named individual A*) and other Community Partners, including (*named individual B*) (who I have not spoken to). It raised concerns about DWP safeguarding procedures. The report was sent to a senior manager in the South London area called (*named individual C*), and I believe was passed to her superior. I believe it will also have been seen by the lead community partner in South London, (*named individual D*). I believe it was sent to managers in about September 2017, although I cannot be 100 per cent sure about this date. I would be grateful if you could go back to DWP and ask them to provide me with a copy of this report, and any other reports written by more junior CPs during the timeframe requested.

16. The above assertions of the complainant were put to the DWP which replied as follows:

- "The document was held but the date we ceased to retain this information is not known.
- As stated by the complainant the report was written by two Community Partners and it raised concerns about the DWP safe guarding procedures. This report was apparently sent to a Senior Manager in South London and to their superior in September 2017.

- We approached the Senior Manager mentioned by the complainant but they confirmed they had no knowledge of any report and did not hold any documents to provide. It is worth noting the Senior Manager has since changed job role and even if they did have knowledge of the document they would not be required to retain the information as it would no longer be applicable to their job role.
 - We approached the two Community Partners the complainant referred to in his submission to your office. Unfortunately, one of the Community Partners mentioned no longer works for the Department therefore we were unable to seek any information from them. The other Community Partner confirmed they never wrote a "report" but did help their colleague (who no longer works for the Department) pull together a document about safeguarding procedures in South London.
 - The Community Partner checked their documentation but confirmed they were unable to find the safeguarding document. A check of their emails was also carried out but they confirmed old emails were deleted and there was no way to recover them due to the amount of time passed. Our investigations concluded that the report did exist but was no longer held by the Department due to the amount of time passed.
 - As we have been unable to locate the document, the date in which it was created is not known but from our investigations it was likely to have been created between the months of August to September 2017.
 - Our Information Management policy only requires us to keep a corporate document of an internal briefing for a period of 12 months.
 - As previously explained we incorrectly took a narrow view of the original request at our first response and review. We incorrectly advised the complainant that Community Partners were not required to write reports for the Department. We are only required to keep hold of a document like this for a period of 12 months. The document was created around August/September 2017, by the time we carried out a reinvestigation in November/December 2018 the document would have already been destroyed".
17. The Commissioner queried with the DWP why Report Y had been allegedly destroyed when the documents referred to in paragraph 10 above had not. The DWP replied that Report Y would have been created around August to September 2017 and destroyed in line with its Information Management Policy ("IMP"). The other documents did not

date back to August 2017. The East London additional document was regarding safeguarding which was created in July 2018. The South London document was a feedback document around customer accessibility which was created in September 2018.

18. The DWP went on to say that unfortunately it was unable to confirm how the report was destroyed or by whom. However it had made every effort to locate the report. It further explained to the Commissioner that its IMP ensures it;

- Retains only those documents and data which support business objectives;
- Saves money by reducing information storage costs;
- Protects against allegations of selective document destruction and;
- Manages its information risks

The guidance states information is recorded under the following categories:

- Corporate records – this includes all documents and data created in day-to-day business.
- Customer records – this includes all claimant or customer-related documents and data.
- HR records – this includes all HR or staff related documents and data.

As Report Y would fall into the category of corporate record it would have been destroyed after 12 months of its creation.

19. Given the DWP's own view that it did hold Report Y, at the time of the request, the Commissioner so finds that Report Y was held by the DWP at the time of the request. On the balance of probabilities the Commissioner further accepts the explanation of the DWP that Report Y was destroyed prior to the DWP re-considering this matter. In reaching this decision the Commissioner takes cognisance that the DWP did latterly provide information that it initially considered it did not hold and of the DWP's IMP.

Section 10 – time for compliance

20. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt.”
21. As the DWP failed to disclose the in-scope information it held within the required timescale it breached section 10(1) of the FOIA.

Section 77 -Offence of altering etc. records with intent to prevent disclosure.

22. Section 77 mean that it is an offence to intentionally prevent the disclosure of requested information to which the applicant is entitled. Despite her extensive enquires of the DWP the Commissioner cannot discern evidence that Report Y was intentionally destroyed with the intention to prevent its disclosure. As there are no substantive evidential grounds showing an intention to prevent disclosure the Commissioner would not commence summary proceedings seeking a criminal conviction as permitted by section 77.

Right of appeal

23. 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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

24. 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.
25. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF