

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2012

Public Authority: Department of the Environment for Northern Ireland

Address: Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Decision (including any steps ordered)

The complainant has requested information relating to the decision a number of years ago to set aside the findings of the Vehicle and Operator Services Agency (VOSA) in relation to the pay and grading of certain jobs within the Driver and Vehicle Agency (DVA), an agency within the Department of the Environment ("the Department") to whom the request was made. The complainant states that he has not been provided with all of the information he requested. The Commissioner's decision is that the Department, on the balance of probabilities, does not hold any further information within the scope of the complainant's request which has not already been provided to the complainant. The Commissioner also finds that the Department breached section 10(1) of the Act as it did not make the information it disclosed available within the statutory time for compliance.

Background

The information requested by the complainant relates to an assessment made within the DVA a number of years ago. The DVA is part of the Department of the Environment. The assessment was a JEGS assessment (Job Evaluate Grading Support) carried out on certain posts within the DVA. That assessment was carried out by VOSA, however VOSA's findings were set aside as VOSA were not authorised by the Northern Ireland Civil Service (NICS) to perform JEGS assessments. The complainant seeks to understand the reasoning behind this "setting aside".

Request and response

1. On 12 January 2011, the complainant wrote to the DOE and requested information in the following terms:

"I would be very grateful if you could provide me with full detail of the advices provided by DOEHR to David Wilson in relation to the finding of the VOSA/JEGS assessment of the STE/TE posts and which led to the "set aside" decision."
2. The Department wrote to the complainant (following a chaser letter) on 17 February 2011, informing him that the issue was complex and that it required further time in which to consider the information before it could respond to the complainant's request.
3. The Department provided a response to the complainant's request on 1 March 2011, providing him with some information.
4. The complainant wrote to the Department on 14 March 2011, stating that he had not received all the information within the scope of his request and that he had been provided with information in a format which he could not understand. He requested an internal review of the Department's handling of his request. Having received a complaint from the complainant, the Commissioner wrote to him on 26 April 2011, informing him that the recommended time for the Department to carry out an internal review (40 calendar days) had not been exhausted. The complainant, still not having received any response to his request for internal review, complained again to the Commissioner on 16 December 2011.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. The Commissioner spoke to the Department and agreed that, in this instance, in view of the delays incurred to date, it would be appropriate for him to investigate the complaint without an internal review having been carried out.
7. The Commissioner notes that the complainant states that he was provided with information in a format which he could not understand. However, during his investigation, the Commissioner ascertained that the information which the complainant could not understand (guidelines relating to job evaluation policy and procedures) was provided to him through the internal complaints procedure within the NICS and not as

part of a response to an FOI request. It was not within the scope of the request which is the subject of this notice. Therefore, it is outside of the scope of the Commissioner's investigation.

8. The Commissioner has therefore considered solely whether or not the complainant has been provided with all information held by the Department within the scope of his request.

Reasons for decision

Does the Department hold any further information relevant to the complainant's request?

Section 1

9. Section 1(1) of FOIA states that any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
10. The Commissioner has considered whether the Department has complied with section 1 of FOIA.
11. On 25 September 2012, the Commissioner asked the Department the following questions to determine what information it held that was relevant to the scope of the request:
 - Was any further recorded information ever held, relevant to the requested information, by the Department or anyone on behalf of the Department?
 - If so, what was this information? What was the date of its creation and deletion? Can the Department provide a record of its deletion/destruction and a copy of the Department's records management policy in relation to such deletion/destruction? If there is no relevant policy, can the Department describe the way in which it has handled comparable records of a similar age?
 - Is there a reason why such information (if held or ever held) may be concealed?
 - What steps were taken to determine what recorded information is held relevant to the scope of the request? Please provide a detailed account of the searches that you have conducted to determine this.

- If the information were held would it be held as manual or electronic records?
 - Is there a business purpose for which the requested information should be held? If so what is this purpose?
 - Are there any statutory requirements upon the Department to retain the requested information?
 - Is there information held that is similar to that requested and has the Department given appropriate advice and assistance to the applicant?
12. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency*¹ in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is the test the Commissioner will apply in this case.
13. In discussing the application of the balance of probabilities test, the Tribunal clarified that test required consideration of a number of factors:
- the quality of the public authority's initial analysis of the request;
 - the scope of the search that it decided to make on the basis of that analysis and the thoroughness of the search which was then conducted; and
 - the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light.
14. The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.
15. The Commissioner is also mindful of *Ames v the Information Commissioner and the Cabinet Office*². In this case Mr Ames had

¹ EA/2006/0072

² EA/2007/0110

requested information relating to the "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the dossier was *"...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what..."* However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not *"...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one..."* Therefore the Commissioner is mindful that even where the public may reasonably expect that information should be held this does not necessitate that information is held.

16. On 12 October 2012 the Department responded to the questions detailed at paragraph 11 above. It explained that the complainant had made several requests to the Department and had received all recorded information held by the Department within the scope of those requests. No relevant recorded information was withheld by the Department.
17. The Department explained to the Commissioner that all records held by the Department which were within the scope of the complainant's request were accessible to the officials who were involved in responding to the request. Since the information relates to an employment issue, which has been ongoing for 6 years, any information relevant to the issue, and therefore relevant to the request, has been gathered and collated over that period. Since the complainant has made a number of requests over the years, both under FOIA and as part of an internal process, all recorded relevant information has been searched for, retrieved and provided to the complainant. In relation to this particular request, the Department also questioned DVA and HR officers, who searched their records in order to ensure that no further relevant records were held by them.
18. The Department also informed the Commissioner that it had provided the complainant with all relevant information it held, both in response to his FOI requests and to other requests made relating to the "set aside" decision referred to in paragraph 5.
19. The Commissioner has considered the Department's explanation of its search procedures and has concluded that these were thorough and that the Department took all reasonable steps to ascertain what recorded information, if any, it held which was relevant to the complainant's request. The Commissioner has considered the fact that the information requested relates to employment records, which there is a statutory requirement on the Department to keep for 100 years from an employee's date of birth. This applies to both manual and electronic records. The Commissioner is therefore satisfied that there was no further information within the scope of the complainant's

request held by the Department at any time, which was subsequently destroyed, as this would be in breach of that statutory requirement.

20. In reaching a conclusion in this case, the Commissioner has taken into account the responses provided by the Department to the questions posed by him during the course of his investigation. The Commissioner is also mindful of the Tribunal decisions highlighted at paragraphs 12 and 15 above. The Commissioner considers that on the balance of probabilities the Department holds no further recorded information relevant to the scope of the complainant's request. However, he has concluded that the Department failed to comply with section 10(1) of FOIA in relation to the information it did hold, as it did not provide this to the complainant within the statutory time limit.

Procedural Requirements

Section 10 – statutory time for compliance with request

21. The complainant made his initial request on 12 January 2011. The Department provided the complainant with information on 1 March 2011. This was outside the statutory 20 working day time limit for compliance as set out in section 10(1) of the Act above. Therefore the Commissioner finds that the Department breached section 10(1) of the Act.

Other matters

22. The Commissioner's guidance states that an internal review should be carried out within 20 working days unless the circumstances are exceptional, in which case it should be carried out no later than within 40 working days. In this case, the complainant drew the Commissioner's attention to the fact that the Department had exceeded the 40 working day time limit in which to provide him with the results of its internal review, which indeed was not carried out in the end. The Commissioner would remind the Department that he considers it to be good practice to provide a complainant with the results of an internal review within the appropriate time limit.

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: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm
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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire