

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2012

Public Authority: Department for Work and Pensions

Address: 2nd Floor
The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Decision (including any steps ordered)

1. The complainant requested information concerning a complaint about the Child Support Agency (CSA) and a subsequent complaint about the Independent Case Examiner (ICE).
2. The Commissioner's decision is that on the balance of probabilities the Department for Work and Pensions (DWP) does not hold some of the information within the scope of the request. However, in relation to the Child Support Guide (Volume 7 revised edition) (Child Support Guide) he does not consider that the DWP has adequately complied with its duty under section 1(1)(a) of the FOIA. This is because the DWP informed the complainant that the information contained within the Child Support Guide was not held without taking reasonable steps to determine whether it held the information.
3. The Commissioner requires the DWP to take the following steps to ensure compliance with the legislation.
 - Either carry out reasonable searches to determine whether it holds the Child Support Guide or issue a valid refusal notice explaining why the DWP cannot confirm or deny whether the information is held.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 February 2012, the complainant wrote to ICE and requested the following information:

"In your letter you make reference to the Child Support Guide Volume 7 (revised edition). I ask to be provided with a copy of this guidance together with copies of all guidance, policies and any other documents and material referred to (by which I mean used to determine your decision) in the course of your investigation into my original complaint about the CSA and your subsequent investigation into my complaint about your report."

6. ICE responded on 22 February 2012 referring the complainant to the Child Maintenance and Enforcement Commission as they 'owned' the Child Support Guide.
7. The complainant asked for an internal review on 26 February 2012. He stated that the response did not adequately address his request and he considered that ICE did hold the Child Support Guide.
8. Following an internal review ICE wrote to the complainant on 19 March 2012. It reiterated that ICE does not own the guidance but stated that to avoid inconvenience to the complainant it was providing him with a copy of chapter 4 of the Child Support Guide which it used in determining his complaint. It also stated that all of the papers provided by the CSA to assist with ICE's investigation were returned to the CSA and that this was confirmed by ICE's report into the complaint which had already been provided to the complainant.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the DWP had complied with its duties under section 1 of the FOIA and section 17 of the FOIA.
10. ICE is part of the DWP. Any reference to ICE within this decision notice should be taken as reference to the DWP.
11. In the course of his investigation the Commissioner has considered all of the arguments made by the complainant and the DWP including those not specifically referenced within this decision notice.

Reasons for decision

Objective reading of the request

12. The DWP and the complainant disagree on part of the scope of the request. The DWP has explained its position as follows:

'DWP's position is that [the complainant's] request specifically says 'by which I mean used to determine your decision'. ICE sent a copy of all of the guidance used to determine its decision, to [the complainant]. To confirm the point already made, ICE sent a copy of the relevant guidance on the basis that this would be good Customer Service. ICE maintains that the correct process for [the complainant], would have been to approach the [Child Maintenance and Enforcement Commission] CMEC with his request.'

13. In later correspondence with the Commissioner it upheld this position:

'The Department maintains that it correctly sent [the complainant] what he asked for. He specifically requested copies of the guidance, in which he stated 'by which I mean used to determine your decision'. This section of his request, is after the sentence which contained the phrase "together with" therefore the phrase 'by which I mean used to determine your decision's was clarifying what he was asking for.'

14. The complainant states that he did not intend for his request to be interpreted in this way. He intended his request to include within its scope the full version of the Child Support Guide rather than the request being restricted to Chapter 4 of that guidance.

15. The Commissioner is satisfied that when he made his request the complainant intended for it to be read to include all of the information contained within the Child Support Guide. The Commissioner considers that the complainant's request is in two parts. The first part of the complainant's request, outlined in paragraph 5 above, was for a full copy of the Child Support Guide. In the second part of his request the complainant then goes on to ask for further information by stating *"together with copies of all guidance, policies and any other documents and material referred to (by which I mean used to determine your decision)..."*. The Commissioner does not consider that the qualification of the later part of the request which only asks for guidance, documents and material used to determine ICE's decision was intended to apply to the first part of the request. The Commissioner considers that it is clear from the plain wording of the request that the complainant's use of *'together with'* to link the two parts of the request means that the later

use of *'(by which I mean used to determine your decision)'* only applies to the second part of the request.

16. In short, the Commissioner considers that a plain reading of the complainant's request includes within its scope all of the information contained within the Child Support Guide. He is satisfied that the complainant intended his request to be interpreted in this way when he submitted his request.

Section 1 of the FOIA

17. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing whether the public authority holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
18. The Commissioner has considered the two parts of the request outlined above separately. Firstly, he has considered whether ICE holds any information within the scope of the request excluding the Child Support Guide. Secondly, he has considered whether ICE dealt appropriately with the complainant's request for the information contained within the Child Support Guide.

Does ICE hold any information within the scope of the request excluding the Child Support Guide?

19. ICE has informed the complainant that the manager of the original investigation into his complaint has confirmed that the only guidance referred to during the investigation was the Child Support Guide and no other guidance was used. It has also confirmed that all of the papers provided to ICE by the CSA to assist with the investigation were returned to the CSA as is normal practice. The complainant was informed of this in the report ICE sent to him regarding his complaint.
20. The Commissioner considers that ICE made sufficient enquiries to determine whether it held any information within the scope of the request excluding the Child Support Guide. He considers that, on the balance of probabilities, ICE does not hold any information within the scope of the request excluding the Child Support Guide which is addressed separately below.

Does ICE hold the Child Support Guide?

21. ICE does not consider that it holds the Child Support Guide. Whilst it provided the complainant with a copy of Chapter 4 of the Child Support Guide it did so as it considered that this would be good customer service. It does not consider that it was obliged to do so under the FOIA.

22. ICE has explained that some ICE staff have online read only access to Child Maintenance and Enforcement Commission (CMEC) staff guidance on CMEC's intranet so they can deal effectively with complaints from CMEC clients. It has explained that the information is maintained on part of the government secure intranet which is owned and operated by CMEC. It has further stated that neither ICE nor DWP staff keep paper copies of CMEC staff guidance as the current updated version is always available to view on CMEC's intranet site. As ICE staff have the functionality to access the guidance at will ICE has argued that they have no need to go through the expense of holding and maintaining up to date copies themselves.

23. ICE has also argued the following:

'As such and considering the document is constantly updated by CMEC on their intranet site, the balance of probabilities is that this information is not held in paper format.

Any request for information which an organisation has no business need to hold and no record of doing so is often dealt with by an 'information not held' decision.

There is of course a slim possibility that it may exist somewhere in a very large customer facing organisation like DWP. The ICO appears to suggest that if there is any possibility that the disputed information may be held by one of over 100,000 staff we should adopt the s12 position and refrain from saying that the "information is not held". We consider this approach to be impractical.

However, beyond the fact that there is simply no business reason for DWP to hold a paper copy of another public authority's guidance to its own staff, in this case we confirm that it would involve extensive searching across a huge geographical estate of many hundreds of DWP central and local offices on the off chance. A contact and collation exercise of this scale would of course automatically engage the Fol cost threshold.'

24. ICE's response does not address whether the Child Support Guide is held by ICE or the DWP in an electronic format. For example, if a copy had been saved to an individual's computer or personal drive. However, it is clear from its response that no searches for an electronic copy of the Child Support Guide on DWP systems have been carried out.

25. The Commissioner does not consider that ICE holds the Child Support Guide as a result of having read only access to CMEC's intranet pages. However, he considers that if information had been identified, selected, downloaded and saved or printed from CMEC's intranet by a member of

staff at ICE or any of part of the DWP then the information would be held by the DWP for the purposes of the FOIA.

26. ICE considers that as there is no business need for a member of staff to print or save a copy of the Child Support Guide, on the balance of probabilities, the information is not held. The Commissioner disagrees that ICE can make a determination that, on the balance of probabilities, information is not held solely on the basis of there being no business need to hold the information. It has not carried out any manual or electronic searches for the Child Support Guide. The Commissioner considers that it is quite possible that a member of ICE staff has either saved an electronic copy of the Child Support Guide or printed a copy.
27. Although ICE has stated that it does not hold the Child Support Guide the Commissioner is not satisfied that it has taken reasonable steps to determine whether the information is held. The Commissioner therefore requires ICE to either carry out reasonable searches to determine whether it holds the Child Support Guide or issue a refusal notice in accordance with section 17 of the FOIA refusing to confirm or deny whether the information is held.

Section 17 of the FOIA

28. The complainant asked the Commissioner to consider whether ICE breached section 17 of the FOIA by not including details of its internal review procedure in its initial response to his request. A public authority is only required to issue a refusal notice where it is relying on an exemption in part II, section 12 or section 14 of the FOIA. A refusal notice must either contain the particulars of the public authority's internal review procedure or state that the public authority does not provide such a procedure.
29. ICE was not relying on an exemption in part II, section 12 or section 14 of the FOIA to refuse to comply with the complainant's request. Therefore, it was not required to issue a refusal notice and there was no breach of section 17 of the FOIA. However, the Commissioner notes that ICE generally includes details of its internal review procedure in response to all requests under the FOIA. ICE recognises that this was an oversight in this particular case and that details of the internal review procedure and the ICO's contact details were provided at the time of the internal review.

Other matters

30. The Commissioner notes that ICE has offered to liaise with CMEC in order for CMEC to provide the complainant with an electronic copy of the

Child Support Guide but the complainant rejected an offer to informally resolve the case on this basis. This is because he does not consider that this would fully meet his request.

31. The Commissioner considers that this was a reasonable offer for the DWP to make to the complainant and, as outlined above, he does not consider that ICE holds any further information within the scope of the request. Notwithstanding this the complainant has a right to pursue his complaint and to be provided with a definitive position as to whether the Child Support Guide is held by ICE unless ICE is entitled to refuse to confirm or deny whether the information is held in reliance on an exemption in part II, section 12 or section 14 of the FOIA.
32. ICE has argued that it complied with its duty to provide advice and assistance to the complainant by referring him to CMEC – the public authority that holds the information. The Commissioner notes that section III of the section 45 Code of Practice in relation to transferring requests only applies in the following circumstances:

'in any case in which a public authority is not able to comply with a request (or to comply with it in full) because it does not hold the information requested, and proposes, in accordance with section 1(1)(a), to confirm that it does not hold that information.'
33. As the Commissioner does not consider that ICE has adequately complied with its obligations under section 1(1)(a) of the FOIA he does not consider that a specific obligation under the section 45 Code of Practice arose. However, he considers that by referring the complainant to CMEC, ICE complied with its general duty to provide advice and assistance under section 16 of the FOIA.

Right of appeal

34. 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

35. 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.
36. 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

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