

Freedom of Information Act 2000

Decision notice

Date: 18 August 2014

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information about how public sector pensions comply with the Equality Act 2010. The Commissioner's decision is that the Cabinet Office has breached section 1 of the Freedom of Information Act 2000 (the Act) because it did not confirm that it held information relevant to the complainant's request.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant's request for information of 7 October 2013.
3. 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

4. On 7 October 2013, the complainant wrote to the Cabinet Office and requested information in the following terms (Commissioner's emphasis):

"Section 19(2)(b) of the Equality Act says that indirect discrimination will exist if a 'provision, criterion or practice puts, or would put' someone with protected characteristics at disadvantage when compared with

people who do not share that characteristic. The phrase 'puts, or would put', indicates that the responsible person must only take account of disadvantages that arise now; they must also consider disadvantages that are likely to occur in the future (Tolley's Discrimination in Employment Handbook, paragraph 3.68).

The equality duty requirements of section 149 of the Equality Act place a further set of obligations on public sector authorities. This section requires them inter alia to eliminate discrimination (1(a)), minimise disadvantages (3(a)), and treat others more favourably than others where necessary to achieve these aims (7).

I should like to know how our public sector pension provisions comply with these provisions in relation to disabled people whose life expectancies are significantly foreshortened by their disabilities, as such people will receive significantly less in terms of pension payments and enjoy much fewer days of retirement."

5. The Cabinet Office responded on 19 November 2013. It stated that no information relevant to the complainant's request was held.
6. The complainant remained unsatisfied with this response and requested an internal review. The Cabinet Office issued its internal review on 17 January 2014, whereby it upheld its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 9 February 2014 to complain about the way his request for information had been handled. In his correspondence, the complainant stated to the Commissioner that the Treasury Solicitor's Department (TSol) also held information which was relevant to his request as it was consulted about legal actions he had launched against the Cabinet Office. The complainant argued that the Cabinet Office would be able to obtain this information from TSol and so it should have been provided to him upon request.
8. The Commissioner disagrees. The Cabinet Office is responsible for searching its own records to locate information relevant to requests. It is not obliged to search the records of other public authorities. The Commissioner has not considered whether TSol holds information that falls within the scope of the complainant's request, only whether the Cabinet Office holds information relevant to the complainant's request.

Reasons for decision

9. Section 1 of the Act states that a public authority has a duty to confirm or deny whether it holds information relevant to a request. If it does hold information then it is obliged to communicate that information to the requester, providing that the information is not exempt.
10. The complainant was able to show that the Cabinet Office did hold relevant information. He had previously launched legal action against the Cabinet Office and intended to take it to an Employment Tribunal. He made a claim for disability discrimination under the Equality Act 2010 on the grounds that reasonable adjustments were not made to public sector pensions to take into account the possible reduced life expectancy of people with disabilities.
11. The complainant provided the Commissioner with a copy of a skeleton argument that the Cabinet Office intended to use at a pre-hearing review for the Employment Tribunal. In it there are arguments put forward to counter the complainant's claims that public sector pensions discriminated against disabled people.
12. The Commissioner brought this document to the Cabinet Office's attention and enquired whether it still held this document and any supporting information. The Cabinet Office confirmed that it did hold this skeleton argument, as well as other documents relating to the complainant's legal action. In its submissions to the Commissioner the Cabinet Office explained that when dealing with the request it had not contacted its department which had handled the complainant's legal claims, so it had not identified the information that it held which was within the scope of the complainant's request.
13. The Commissioner's investigation was to determine whether the Cabinet Office holds information relevant to the complainant's request. As the Cabinet Office has confirmed that relevant information is held, the Commissioner requires the Cabinet Office to issue a fresh response to the complainant's request.

Other matters

14. It is apparent that the information already identified by Cabinet Office relates to the complainant's legal claim. The document provided by the complainant – as well as some of the supporting documents to which the Cabinet Office refers – contain the complainant's personal data, as this information contains biographic data which identifies the complainant.

15. In respect of information which consists of the complainant's personal data, the Commissioner would draw the Cabinet Office's attention to the exemption at section 40(1) of the FOIA (information which is the requester's own personal data). However, the Cabinet Office should also be conscious of its obligations under section 7 of the Data Protection Act 1998 (right of access to personal data).

Right of appeal

16. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

17. 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.
18. 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

Alexander Ganotis
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