

Freedom of Information Act 2000

Decision notice

Date: 18 August 2015

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

Decision (including any steps ordered)

1. The complainant requested information relating to Disability Employment Advisors (DEAs) from the Department for Work and Pensions (DWP). The DWP denied holding any information relevant to the complainant's request.
2. The Commissioner's decision is that the DWP has not responded to the complainant's request of 25 November 2014. As the DWP has not issued a response directly to this request it has breached sections 1 and 10 of the Act. In relation to the requests of 20 September 2014 the Commissioner's decision is that no relevant recorded information is held by the DWP.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a response to the complainant's request of 25 November 2014.
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 20 September 2014, the complainant wrote to the DWP and requested information in the following terms (numbers inserted by the Commissioner for reference):

Leicester's three Jobcentres, Charles St, New Walk and Wellington Street each had two specific Disability Employment Advisers. These have been reassigned and Works Coaches now fulfil the role. For each Jobcentre I would like to know:

- 1. At what date the Disability Employment Advisers were reassigned?*
- 2. How many Works Coaches have taken their place at each Jobcentre?*
- 3. When did the Works Coaches complete their training for this important role? Please give as a percentage by date, i.e. 25% by 01/08/14, 75% by 01/09/14 etc.*

With reference to the training provided:

- 4. Was it tutored learning, e-learning or other?*
 - 5. How long did the training take?*
 - 6. What were the major learning subjects, (Just one word, i.e. ESA Legislation, etc.)*
 - 7. Is the training recorded in the Employee's electronic training on the staff management system?*
6. The DWP responded on 30 September 2014. It stated that DEAs had not been reassigned or removed from the named Jobcentres. It stated that as DEAs were still in place there was no need for work coaches to receive specific training to cover for the role.
7. On 25 November 2014 the complainant submitted a request for an internal review. In making his request for a review he also submitted an additional request:
- Who was responsible for leaving the vulnerable to their own devices for 6-9 months? Was it the area Manager or did the instruction come from higher up?*
8. The DWP issued its internal review on 22 December 2014. It upheld the decision in its original response. No reply was given to the complainant's request of 25 November 2014.

Scope of the case

9. The complainant contacted the Commissioner on 26 January 2015 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of the request to be whether on balance of probabilities the DWP holds information relevant to the complainant's request of 20 September 2014, and the handling by the DWP of the request of 25 November 2014.

Reasons for decision

11. Section 1(1) of the Freedom of Information Act 2000 (the Act) states:

(1) 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.

12. In this case the complainant considers that the DWP holds information which is relevant to his request. If he is correct then the DWP will have breached section 1 of the Act because it has not confirmed in writing that the information is held and it has not communicated the information to the complainant.
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 might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities.

Request of 25 November 2014

Who was responsible for leaving the vulnerable to their own devices for 6-9 months? Was it the area Manager or did the instruction come from higher up?

14. Section 10(1) of the Act states:

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

15. The DWP did not specifically acknowledge the complainant's request when it conducted its internal review. Despite this, the Commissioner has included it in his investigation and has received confirmation from the DWP that there is relevant information held.
16. The Commissioner asked the DWP whether the decision to make work coaches provide greater assistance to disabled claimants (see paragraph 21) led the DWP to conduct an internal assessment. It seemed to the Commissioner that the DWP would want to ensure that its provision to claimants with health issues was being met and that an alteration to the role of work coaches could possibly have a significant impact on this provision. The DWP stated that no assessment was carried out because the service had not changed. However, this appeared to contradict a separate statement from the DWP where it claimed that a "new system" was being tested.
17. After further questions from the Commissioner the DWP stated that it was correct to state that no assessment had taken place. It explained that due to the implementation of Universal Credit it had to change the way it organised the workload of work coaches. A decision was taken by senior managers in Central England and it was implemented in the named Jobcentres in Leicester.
18. Whilst the Commissioner acknowledges that the complainant's new request was framed in emotional language, it is reasonable to discern from the context of the correspondence containing the request that the complainant is interested in understanding who made the decision to alter the working patterns of work coaches and DEAs. The DWP's own admission shows that there is relevant information held about this, so the Commissioner considers it likely that it was held at the time of the request.
19. As the DWP did not issue a response to the complainant's request of 25 November 2014 it has breached sections 1 and 10 of the Act. It breached section 1 because it did not confirm that information was held and communicate it to the complainant, and section 10 because it did not do so within 20 working days. The Commissioner requires the DWP to issue a response to this request.

Requests of 20 September 2014

Items 1 – 2 of the request

Leicester's three Jobcentres, Charles St, New Walk and Wellington Street each had two specific Disability Employment Advisers. These have been reassigned and Works Coaches now fulfil the role. For each Jobcentre I would like to know:

1. *At what date the Disability Employment Advisers were reassigned?*
 2. *How many Works Coaches have taken their place at each Jobcentre?*
20. There is a dispute between the complainant and the DWP about whether or not DEAs have been "reassigned". The complainant states that he has first-hand evidence that this has happened and has received confirmation from affected staff members (i.e. DEAs working in Leicester Jobcentres) that his version of events is accurate. The DWP maintain that this is not the case and that DEAs still exist and are available to claimants. It referred the Commissioner to the gov.uk website which states that a "Disability Employment Adviser (DEA) at your local Jobcentre can help you find a job or gain new skills and tell you about disability friendly employers in your area".¹
21. The Commissioner's understanding is that that the implementation of Universal Credit has changed the working activities of DEAs, and that the role of work coaches has also altered as part of this change. Work coaches are now expected to provide greater assistance to claimants who are disabled or have health issues. However, claimants should still be able to access DEAs, and that the job role still exists. This version of events is not disputed by the DWP. The Commissioner notes the complainant's view that all DEAs have been reassigned to other roles is based merely on anecdotal evidence. He also notes from the DWP's own information² that the number of DEAs in the UK has dropped from previous levels but does not consider this to be confirmation of the complainant's view that the individuals at the Leicester Jobcentres have been reassigned to other jobs.
22. On the basis of the above, the Commissioner does not consider it likely that the DWP would hold recorded information about DEAs being reassigned at Leicester's Jobcentres. Therefore – for items 1 and 2 of the request – his decision is that on the balance of probabilities the DWP does not hold information within the scope of the complainant's request.

Items 3 – 7 of the request

3. *When did the Works Coaches complete their training for this important role? Please give as a percentage by date, i.e. 25% by 01/08/14, 75% by 01/09/14 etc.*

¹ <https://www.gov.uk/looking-for-work-if-disabled/looking-for-a-job>

² <https://www.whatdotheyknow.com/request/259758/response/640421/attach/3/FOI%201150.pdf>

With reference to the training provided:

- 4. Was it tutored learning, e-learning or other?*
 - 5. How long did the training take?*
 - 6. What were the major learning subjects, (Just one word, i.e. ESA Legislation, etc.)*
 - 7. Is the training recorded in the Employee's electronic training on the staff management system?*
23. The Commissioner has specifically focussed on the training given to work coaches to help assist with the changing work patterns of DEAs. Whilst he does not consider that the DEAs have been reassigned, it is clear from the DWP's submissions that work coaches are now expected to have a greater role in assisting claimants with health issues.
24. The Commissioner was able to determine that the DWP does provide training to work coaches to help them assist claimants who are disabled or have health problems. However, the DWP was adamant that since its decision to have work coaches provide greater assistance to claimants with health issues, it had not introduced new training to help the work coaches with this added responsibility. The DWP's submissions made it clear that whilst work coaches were being tasked with providing greater assistance to claimants with health problems there was no specific training provided to help with this change.
25. In the Commissioner's view, there is a reasonable doubt about whether the DWP would alter the responsibilities of work coaches without providing additional training, as such an alteration would likely require work coaches to provide support in a way that they had not been trained for. However, the Commissioner has made several enquiries with the DWP and its position remains the same. The Commissioner should make it clear that he has not seen any information to dispute the DWP's claim, only that it seems reasonable that a new way of working for work coaches might have been supported with an alteration in the training provided.
26. The Commissioner is satisfied with the response he has received from the DWP as to why there is no relevant information held about training given – i.e. that the training has not taken place. His decision on the balance of probabilities for items 3 – 7 of the request is that he is satisfied the DWP does not hold relevant information.

Other matters

27. The Commissioner wishes to draw attention to the standard of submissions he received from the DWP. Whilst he was eventually

provided with rational arguments as to why the information was not held, it took three attempts to get it.

28. As an example, the following is the response provided by the DWP to one of the Commissioner's questions:

[Commissioner]

5. In response to question 3 the DWP stated that "comprehensive" training had been given to Work Coaches, and also stated they had received 'Solution Focus' training.

a. Did this training contain modules/sections about how to specifically assist disabled claimants?

b. If so, how did this training prepare them for greater interaction with disabled claimants?

[DWP]

The training supplied to Work Coaches addressed how DWP is required to deliver services to claimants with disabilities.

29. This response not only ignored the specific and targeted questions the Commissioner had set out, but it also suggested that there was relevant information held – something that required further questioning to the DWP before the Commissioner was able to determine that it was unlikely to be held.
30. The Commissioner considers this type of response to be unhelpful and wholly inadequate for the purposes of any effective investigation. The substandard responses from the DWP in this case led to a protracted investigation, which benefitted no party involved.
31. The Commissioner hopes that the DWP heeds the criticism in this notice and considers how best to adapt its submissions for future appeals. The Commissioner is committed to resolving appeals in a way that complies with the Act, but also one that assists the requester and public authority where possible. For the DWP to persist in providing responses of this nature to the Commissioner's investigation makes this task difficult and reduces the chances of arriving at a mutually acceptable resolution.

Right of appeal

32. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

33. 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.
34. 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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