

Freedom of Information Act 2000

Decision notice

Date: 10 August 2016

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 from the Department for Work and Pensions (DWP) relating to an interview given by the then Work and Pensions Secretary.
2. The Commissioner's decision is that on the balance of probabilities the DWP does not hold any information relevant to the request. The Commissioner also finds that the DWP breached section 10(1) of the Freedom of Information Act 2000 (the Act) because its initial response to the complainant's request was issued after more than 20 working days. As the response has been issued no steps are required.

Request and response

3. On 19 October 2015, the complainant wrote to the DWP and requested information in the following terms:

"On the 2nd October this year the Guardian published an interview with IDS. It's online here <http://www.theguardian.com/politics/2015...>

It has in it the following paragraph where Duncan Smith speaks of ESA claimants which I'll copy and paste directly;

"The blunt nature of the system, he says, means that claimants who would like to do some work end up being fearful of voicing their thoughts, for fear that they might lose support altogether. "So you have a [situation in] which people know they would like to stay in touch with

the world of work, but at the same time fear that to express any such thing immediately makes them not sick enough – or then [they ask themselves] do they go off and do work and not declare it. So you have created a system that creates all the perverse incentives that you never want to see in a system ... You are just saying to somebody: you must crawl over that line whatever else happens. Once you are over that line, you must never ever do anything positive again about seeking work, which is the exact opposite of what we really want to achieve." But his office points out that appeals against ESA decisions fell by 81% in 2014-15 compared with 2013-14."

I'm baffled as to why IDS would make this statement about claimants knowing "they would like to stay in touch with the world of work, but at the same time fear that to express any such thing immediately makes them not sick enough – or then [they ask themselves] do they go off and do work and not declare it... you must never ever do anything positive again about seeking work,"

I'm baffled because it says as it says clearly on the government's own website (this would be the UK government, not some distant foreign one you might reasonably expect IDS to never have heard of), in the section devoted to that part of government which Duncan Smith is himself in charge of, that ESA claimants even in the Support Group category are allowed to perform what's known as 'permitted work' and, indeed, they can perform as much of what's known as 'supported permitted work' as they wish! It's here <https://www.gov.uk/employment-support-al...>

I'm confused. This appears to contrast directly with what IDS is claiming in his Guardian interview. Please supply me with the evidence Mr Duncan Smith relies upon for his seemingly baseless public statements above about ESA claimants and work."

4. The DWP responded on 18 November 2015. It provided links to information online which it considered supported some of the statements made by Rt. Hon Ian Duncan Smith MP in the interview. The complainant disagreed and asked for an internal review, stating that he could not see evidence which showed claimants were afraid to voice their thoughts about wanting to do some work.¹

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https://www.whatdotheyknow.com/request/evidence_again_for_statement_in/#outgoing-495248

5. Following an internal review the DWP wrote to the complainant on 5 January 2016. It stated that any information of relevance to the request had already been provided.

Scope of the case

6. The complainant contacted the Commissioner on 9 January 2016 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of the case to be whether on the balance of probabilities the DWP has provided all of the information it holds relevant to the request. The Commissioner will also consider the time the DWP took to respond to the complainant's request.

Reasons for decision

Section 1 – information held

8. Section 1(1) of 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.

9. 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. 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 was held at the time of the request).
10. The DWP confirmed in its internal review that it had provided links to the statistical data and reports which formed the basis of Mr Duncan Smith's views that were expressed in the interview. The complainant considers that the information available in the links provided by the DWP do not adequately address the intention of his request, which was to uncover

information that supported the assertion that some claimants were afraid to voice their thoughts about wanting to do work.

11. The Commissioner asked the DWP to confirm what preparation had gone into the interview. The DWP stated that the interview was arranged and supported entirely by Mr Duncan Smith's special advisors. It confirmed that the arrangements had not in any way involved civil servants, because in giving the interview Mr Duncan Smith was acting in a political role and not his Departmental one.
12. Under the terms of the Act, non-official information in the possession of a public authority is not caught by the provisions of the Act. As the Commissioner's guidance on this issue notes, an example of such information includes party political correspondence. The Commissioner acknowledges that the interview was given in Mr Duncan Smith's political rather a Departmental role. Therefore, the Commissioner is satisfied that whilst information about the interview, such as explanatory notes or plans which could support the views expressed by Mr Duncan Smith might be held within the DWP's records, in the Commissioner's view such information can be correctly classified as party political correspondence and thus is not caught by the Act.²
13. With regards to whether the information provided in the links sufficiently answers the complainant's request, in the Commissioner's view the information provided does not sufficiently address the complainant's request. However, the Commissioner is of the view that it is unlikely on the balance of probabilities that the DWP holds information that confirms this is the case.
14. The Commissioner considers that the interview provides a frank interpretation from Mr Duncan Smith based on his views of the welfare system as Work and Pensions Secretary. It does not follow that the DWP would have to hold information to support any or every view or opinion put forward by its Secretary of State. Given that the DWP was not involved in the preparation for the interview the Commissioner cannot make a determination on whether Mr Duncan Smith had evidence to support his view, only that the Commissioner considers it unlikely there is information held relevant to the complainant's request, held by the DWP, which would satisfy the complainant's query.

² https://ico.org.uk/media/for-organisations/documents/1144/awareness_guidance_12_info_caught_by_foi_act.pdf#page=7

15. The Commissioner's decision is that on the balance of probabilities the DWP does not hold information relevant to the complainant's request. No further action is required in regards to this aspect of the appeal.

Section 10 – time for compliance with request

16. Section 10(1) of the Act states that a public authority must comply with section 1(1) within 20 working days following receipt of the request.
17. The complainant made his request on the 19 October 2015, and the DWP confirmed receipt on the same day. The twentieth working day after the date of receipt was the 16 November 2015. As the DWP did not issue its response until 18 November 2015 it breached section 10(1) of the Act.
18. The Commissioner asks that the DWP try to ensure that responses to requests are issued within the statutory time frame.

Right of appeal

19. 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>

20. 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.
21. 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
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