

Freedom of Information Act 2000

Decision notice

Date: 31 March 2017

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 a poster seen in offices of Yardley Jobcentre. The Department for Work and Pensions (DWP) denied holding any relevant information.
2. The Commissioner's decision is that the DWP has breached section 10(1) of the Freedom of Information Act 2000 (the Act) as it did not respond to the complainant's request within the statutory timeframe. As the response has now been issued no steps are required in relation to this breach.
3. In relation to whether the DWP holds information relevant to the complainant's request, the Commissioner's decision is that on the balance of probabilities the DWP does not hold any relevant information. No steps are required.

Request and response

4. On 22 June 2016, the complainant wrote to the DWP and requested information in the following terms:

"The "Yardley ESA Challenge" was the title of a performance-related poster created by a member of staff that was on private display at Yardley JCP.

I would like to know the aspect of performance the poster was intended to address. Please extract the information from relevant documents you hold. Such documents might include notes of disciplinary or supervisory

activities with the member of staff concerned. I'm sure you will suitably redact any original documents you choose to disclose."

5. The DWP responded on 27 July 2016 and denied holding any relevant information. This was upheld in the DWP's internal review of 4 August 2016.

Scope of the case

6. The complainant contacted the Commissioner on 8 August 2016 to complain about the way his request for information had been handled. Specifically, he considered that the DWP's responses to him had been inadequate and had not sufficiently explained why there was no information held about an incident that had made the national press.¹
7. The Commissioner considers the scope of the request to be whether the DWP holds information relevant to the complainant's request. She will also look at the length of time the DWP took to issue its initial response to the complainant.

Reasons for decision

Section 10(1) – time for response

8. Section 1(1) of the Act provides 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."*
9. Section 10(1) of the Act provides that 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.
10. The DWP confirmed receipt of the complainant's request on the same day it was submitted by the complainant – 22 June 2016. The DWP issued its response on 24 July 2016, which is 22 working days after

¹ <http://www.mirror.co.uk/news/uk-news/tory-minister-insists-jobcentres-dehumanising-7668030>

receipt of the request was acknowledged. This is a breach of section 10(1) of the Act, although as the DWP has issued its response the breach has been addressed.

Section 1(1) – information held

11. Section 1(1)(a) of the Act is known as the duty of a public authority to confirm or deny whether it holds relevant information. It follows that in order for a public authority to be aware of whether or not it holds the requested information, it would need to carry out searches for that information within its records – unless it was patently obvious from the wording of the request that no information would be held.

12. The Commissioner notes the wording of the request:

"I would like to know the aspect of performance the poster was intended to address. Please extract the information from relevant documents you hold. Such documents might include notes of disciplinary or supervisory activities with the member of staff concerned."

In her view, this means the complainant is interested in information relating to why the poster was created, or what the motivation of the member of staff was who created the poster.

13. The DWP stated that in its submissions to the Commissioner that it had not carried out any searches to locate the relevant information. It felt the poster was:

"[The poster] was an attempt to bring to life our ambition to support people who wish to be supported towards employment and who are currently claiming ESA. It was a misjudgement by an individual to achieve this. No email accounts were searched as it was a manually created poster that involved no email traffic."

14. The Commissioner disagreed with the DWP that searches were not required in this instance. The poster was significant in size and must have required a coordinated effort, so it seems feasible this might have resulted in email traffic between the relevant members of staff. This information might reveal the motivation of the individual(s) who made the poster and what the poster was supposed to achieve. Furthermore, the poster had resulted in national press coverage and had drawn the attention of MPs, so it is not beyond possibility that this resulted in disciplinary action for the relevant members of staff responsible for creating the poster.

15. The DWP agreed to search its records, and confirmed that no relevant information was held. It stated to the Commissioner that all members of staff at Yardley Jobcentre searched their Departmental email accounts. They were instructed to search for any reference to the keywords

"display", "poster" and "space invader" between the dates January 2016 – May 2016.

16. The Commissioner considers that the searches carried out were appropriate under the circumstances. The poster was only present in Yardley Jobcentre so it would follow that information about the poster should – if held – be in its records. The Commissioner also agrees that the search terms employed are the appropriate terms given the subject matter requested.
17. The DWP provided the Commissioner with its retention policy in regards to internal communications. This showed that the DWP employs the following with regards to internal emails:
 - personal, trivial or ephemeral – kept for four months.
 - discussing team or non-significant DWP business including internal enquiries – kept for one year.
18. The Commissioner notes that the searches were carried out on 24 January 2017, some seven months after the request was submitted to the DWP. The Commissioner acknowledges that there is a possibility that emails deemed "personal, trivial or ephemeral" might have been potentially held at some point but deleted before the searches were carried out, although she has no evidence that this has occurred. The Commissioner does consider that this shows the benefits of ensuring that necessary searches are carried out at the appropriate time, as this would eliminate any such possibility. The Commissioner asks that the DWP be more diligent in determining the extent of information held in its records.
19. The DWP also provided the Commissioner with a statement from a member of staff at Yardley Jobcentre. With the DWP's permission the Commissioner has replicated this statement in full, as it provides a useful insight into how the poster came about:

"At the time there were two leaders on site but both have since moved to different roles within the civil service. My recollection is that ideas were requested from staff to create a poster to help enhance staff engagement with ESA claimants. The poster was intended to represent how many Employment and Support Allowance (ESA) claimants were securing positive outcomes by moving out of the support group onto jobseekers allowance or into employment directly as a result of

interventions by Yardley staff. The people group² asked for content ideas and several came forward.

It was decided to go with a space invader theme. The poster was made by several members of office staff from craft materials. The money for the craft materials was donated by the leaders or materials were donated by staff from home. The space invader shape and letters were taken from the internet, printed off and traced to be cut out. Black lining paper was purchased from Hobby Craft, which was stapled to the wall. It was cut to the size of a whiteboard and checked to ensure it was level. The border was then attached; the space invaders and letters were then glued to the lining paper. The cutting out was completed in people's own time at home. Some were cut out in the office to see what they looked like but only 3 or 4. No flexitime was claimed for this work, it was produced by jobcentre staff for staff in their own time. There were three members of staff involved.

I led the task and was subsequently spoken to informally by my line manager."

20. The Commissioner notes that this was provided by a member of staff during the course of the Commissioner's investigation, and so would not have been held at the time of the complainant's request. The Commissioner has included this because she considers it provides an insight into why the poster was created.
21. This member of staff's account shows that the poster was devised by an informal staff group as a way of representing the work the Jobcentre does. It also shows that there was an informal discussion between this member of staff and their line manager in relation to the poster, but that no official action was taken. This account supports the DWP's view that no information relevant to the request is held, as the matters were all handled informally and no written records of events were kept.
22. The Commissioner considers that on the balance of probabilities the DWP does not hold information relevant to the complainant's request. She expects the DWP to be better in the future in identifying occasions when searches are required, but she has seen no evidence to suggest that any relevant information was held by the DWP at the time of the request. No steps are required.

² Described by the DWP as a "Local staff group who have the responsibility of enhancing engagement with colleagues".

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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Jonathan Slee
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