

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 17 September 2018

Public Authority: Department for Work and Pensions

Address: 4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information regarding situations where Jobcentre Managers would be invited to visit 10 Downing Street.
2. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold the requested information.
3. However, the Commissioner finds that DWP has breached section 10(1) of the Act as it did not comply with section 1(1)(a) of the Act within the statutory timeframe.
4. The Commissioner does not require DWP to take any steps.

Request and response

5. On 29 January 2017, the complainant wrote to DWP and requested information in the following terms:

"In my previous FOI requests (FOI4886 and FOI172) you have stated "managers in Jobcentre Plus, along with all DWP staff, could attend 10 Downing Street as part of meeting their official duties" and "it is just part of normal business".

Please describe the nature of the of the [sic] "official duties" and "normal business" a lowly Jobcentre manager would have in attending 10 Downing Street in an official capacity.

It is in the public interest to know that Jobcentre managers are taking orders directly from Conservative Ministers instead of following legitimate departmental procedure. There has been a politicisation of the process and Jobcentre managers are breaching the impartiality clause of the Civil Service Code.

For example, after [named individual] the manager of [named Jobcentre] met Ian [sic] Duncan Smith at 10 Downing Street I was sanctioned multiple times."

6. On 24 February 2017, DWP responded and stated:

"Official duties and normal business for all Civil Servants is to support the government of the day in implementing its policies and delivering public services".

7. DWP also provided an explanation regarding the application of sanctions.

8. On 25 February 2017, the complainant requested an internal review and explained that DWP had not provided the requested information. The complainant confirmed that he was seeking the *"specific details of the "official duties" and "normal business" a lowly Jobcentre manager would have in attending 10 Downing Street in an official capacity."*

9. On 10 April 2017, DWP provided the outcome of its internal review and stated:

"As a result of this review I uphold the original decision as I am satisfied that the original response was handled properly and was correct. The reasoning behind this decision is that there is no further information to add to our response to FOI 362 dated 24 February 2017. We provided you with the recorded information that best answered your request.

The FOIA does not oblige a public authority to create new information to answer questions; nor does it require a public authority to give advice, opinion or explanation in relation to issues/policies under question. The information you request cannot be provided under the FOIA."

Scope of the case

10. The complainant contacted the Commissioner on 17 May 2017 to complain about DWP's request handling in general. The Commissioner confirmed that under section 50, she could only consider specific requests for investigation and asked the complainant to set out which requests he wished to proceed to investigation. On 28 September 2017,

the complainant confirmed that he wished to complain about the request made on 29 January 2017.

11. The Commissioner considers that despite providing an internal review and complying with the Commissioner's investigation, it appears that DWP's responses to the complainant are more in keeping with a normal course of business query rather than a formal response under the Act.
12. The Commissioner considers that the scope of this investigation is to determine whether the request is a valid request under the Act and whether DWP holds information falling within the scope of the request.

Reasons for decision

Section 8: Valid requests for information

13. The Commissioner has considered whether the complainant's request is a valid request under the Act.
14. As DWP explained in its internal review, public authorities are not obliged to create new information in response to a request and they are not obliged to provide explanations, opinions or advice. A request under the Act is a request for recorded information.
15. The Commissioner notes that the complainant asked DWP to "describe the nature of the of the [sic] "official duties" and "normal business"" Jobcentre managers would have in attending 10 Downing Street (emphasis added). At first glance, this may appear to be a request for an explanation of why Jobcentre managers would be invited to 10 Downing Street.
16. However, as the request was made on the WhatDoTheyKnow website, the Commissioner considers that it is clear that the complainant was attempting to make a request under the Act rather than submit a normal course of business request.
17. Section 8(1)(c) specifies that a valid request under the Act must describe the information required. The Commissioner has issued guidance¹ on what constitutes a description of the information for the purposes of section 8(1)(c).

¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

18. In the Commissioner's view, a request will meet the requirement of section (8)(1)(c) as long as it contains a sufficient description of the information required. Details as to date, author, purpose or type of document, physical location, subject matter or area concerned with may all help to identify the nature of the information sought, but are not specifically required for a request to be valid under the Act.
19. Each request will have to be judged on its individual merits as to whether there are sufficient indicators provided to enable the information requested to be adequately described for the purposes of section 8.
20. The Commissioner considers that there is a low threshold for meeting the requirement to describe information. A description will be valid if it contains sufficient detail for the requested information to be distinguished from other information held by the authority.
21. It is important to recognise that most requesters are unlikely to know exactly what information is held by an authority or have an appreciation of how its records are stored. This means that requesters cannot always be reasonably expected to be specific about details such as the titles, contents and location of documents.
22. The Commissioner considers that authorities should therefore treat any description that allows the requested information to be distinguished from other information held by the authority as valid under section 8(1)(c).
23. The Commissioner considers that the requester has asked for the circumstances, or criteria, when Jobcentre managers may be invited to attend 10 Downing Street.
24. The Commissioner therefore considers that the request is valid for the purposes of the Act.

Section 1(1)(a): Information not held

25. Section 1(1) of the Act states 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"

26. In scenarios where there is some dispute between the public authority and a complainant as to whether the information requested is held by the public authority, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of proof, i.e. on the balance of probabilities, in determining whether the information is held.
27. In order words, in order to determine this specific complaint, the Commissioner must decide whether, on the balance of probabilities, DWP holds any information which falls within the scope of the request, further to that already provided.
28. In response to the Commissioner's questioning, DWP explained that it had originally interpreted the request as being for the definitions of the phrases "*official duties*" and "*normal business*" and supplied an extract from the Civil Service Code.
29. Following the Commissioner's confirmed of the scope of the request, DWP confirmed that it did not hold information regarding the circumstances when Jobcentre managers or DWP employers in general, may be invited to attend 10 Downing Street. DWP also confirmed that it does not hold any information regarding a process or procedure to be followed on receipt of an invite to 10 Downing Street.
30. DWP confirmed that it had undertaken searches of its intranet (internal internet system), as any information of this nature would be held on this platform. DWP confirmed that all content, including guidance, procedures and processes to follow, can be searched for by keywords.
31. DWP confirmed that it had used the following search terms when searching its intranet:

10 Downing Street

Ten Downing Street

Number 10 Downing Street

No. 10 Downing Street

Downing Street

Number 10

No. 10

Number Ten

Prime Minister

Prime Minister's Office

32. DWP also confirmed that there was no evidence the information had ever been held.
33. DWP explained that the department has different retention criteria for different types of information and provided the Commissioner with its "*Retention of Specific Information Guide*".
34. DWP confirmed that there was no statutory requirement or business purpose to hold the information. It explained that Jobcentre managers conduct their work activities in line with the descriptors within their job roles, many of which include working with internal and external stakeholders and delivery partners.
35. In the particular circumstances of this case, the Commissioner considers that the searches undertaken were reasonable and proportionate, and that they would have been likely to produce any information falling within the scope of the request; which they did not. The Commissioner has considered what further steps DWP could have taken to attempt to locate information within the scope of the request and is it not apparent to her what further searches could be undertaken. She considers it is entirely reasonable that guidance regarding visits to 10 Downing Street, should it exist, would be available to all staff via its internal communication system.
36. The Commissioner notes that the complainant states that he is aware of a Jobcentre manager's visit to 10 Downing Street and therefore considers that DWP must be fully aware of the reasons for their invite.
37. The Commissioner does not consider that one known visit is sufficient evidence to prove that information must be held, particularly in light of the fact that it is not apparent whether the visit was made in a professional or personal capacity.
38. The Commissioner considers that, on the balance of probabilities, DWP does not hold the requested information.
39. However, she does consider that DWP has breached section 10(1) of the Act as it did not comply with section 1(1)(a) and confirm that the information was not held within the statutory timeframe, i.e. within 20 working days following the date of the request.

Right of appeal

40. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

41. 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.
42. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF