

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2020

Public Authority: Money and Pensions Service
Address: 120 Holborn
London
EC1N 2TD

Decision (including any steps ordered)

1. The complainant has requested information relating to the British Steel Pension Scheme. The Money and Pensions Service ("MAPS") denied holding information within the scope of the request.
2. The Commissioner's decision is that the request was clear and that MAPS was not required to obtain any further clarification of it. On the balance of probabilities, MAPS holds no information within the scope of the request the complainant made.
3. The Commissioner does not require further steps.

Background

4. MAPS is a relatively new public authority. It was formed from a merger of the Pensions Advisory Service, Pension Wise and the Money Advice Service. It is a non-departmental public body, sponsored by the Department for Work and Pensions (DWP). It was added to the list of public bodies set out in Schedule 1 of the FOIA by the Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019.
5. The complainant appears to have engaged in several rounds of correspondence with both MAPS and the Pensions Advisory Service (TPAS) prior to the request in question. Some of this correspondence is relevant to the request and the reason why MAPS holds no information.

6. On 5 December 2018, the complainant contacted TPAS to enquire about the steps it had put in place to inform members of the British Steel Pension Scheme as to their pension options when the Scheme was split off from Tata UK in 2017.¹ That correspondence appears to have been followed up by another letter. Responding on 27 February 2019, TPAS stated that a:

"dedicated helpline for BPS members was set up by TPAS on the 23 November 2018 [sic]. All information and guidance TPAS staff were briefed by email on the 23 November and in meetings on the 28 November on the options available to BPAS members."

7. The complainant first attempted to make a request to TPAS on 27 March 2019. He sought correspondence with the DWP during the period 1 December 2017 and 31 March 2018. MAPS took on responsibility for answering this request, but refused it on 22 July 2019, citing section 12 of the FOIA (cost of compliance exceeds appropriate limit.)

Request and response

8. On 28 July 2019, the complainant wrote to MAPS and requested information in the following terms:

"I therefore request a copies of of correspondence between the Department for Works and Pensions and the Pension Advisory Service between the 23rd of November 2018 [sic] and the 28th of November 2019, [sic] and the subsequent briefings of TPAS staff on the 28th November 2018 [sic] relating to options available to Members of the British Steel Pension Fund who had High/Low Pensions."

9. MAPS responded to this request on 22 August 2019. It noted that "28th November 2019" had, at that point, yet to occur and asked him to clarify his request.
10. The complainant then sent a further letter, dated 3 September 2019, which clarified his request in the following terms:

¹ Scheme members were given the option to either join a new BPS (with fewer entitlements), transfer to a personal pension or have the entire Scheme placed into the Pension Protection Fund.

"the request should have read relating to the above 23 of November 2018 and 28 of November 2018 not 2019 as originally stated." [sic]

11. On 18 September 2019, MAPS responded. It denied holding the requested information.
12. The complainant requested an internal review on 1 October 2019. He pointed out that the dates he had chosen as the parameters of his request had been based on the dates supplied in TPAS' correspondence of 27 February 2019. It would therefore be illogical to claim that MAPS held no information about an event it confirmed had taken place.
13. MAPS sent the outcome of its internal review on the same day. It upheld its original position, however it also noted that the correspondence from TPAS had contained the incorrect date. TPAS' correspondence stated that the helpline for Scheme members had been established on 23 November 2018, when it had in fact been established on 23 November 2017.

Scope of the case

14. The complainant contacted the Commissioner on 14 October 2019 to complain about the way his request for information had been handled. In particular, he was unhappy that his request had failed because he had selected time parameters based on information supplied to him by TPAS.
15. At the outset of her investigation, the Commissioner contacted the complainant. Whilst agreeing that it was most unfortunate that TPAS had supplied incorrect information, she nevertheless noted that MAPS was only obliged to respond to the exact request which had been submitted. In the absence of any evidence to suggest that MAPS would hold relevant information, for a very narrow period, one year after the helpline had been established, she considered it unlikely that investigating the complaint would achieve anything of use. She therefore advised the complainant to make a fresh request based on the updated information he now possessed.
16. The complainant did not accept the Commissioner's view and asked her to investigate whether, notwithstanding the circumstances outlined above, MAPS held information within the scope of his request as submitted.
17. Having asked MAPS for its submission, the Commissioner wrote to the complainant again on 19 February 2020 and, again, advised that she did

not consider that MAPS held information within the scope of the request. She also advised that MAPS had identified the information he was interested in and would be happy to provide it in the event of a request being made. The complainant was not prepared to accept the Commissioner's view and argued that he had been misled.

18. The Commissioner therefore considers that a decision notice is appropriate.
19. The scope of this case is to consider whether further information was held within the scope of the request.

Reasons for decision

Held/Not Held

20. Section 1(1) of the FOIA 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.*

21. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
22. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The Complainant's position

23. The complainant argued that he had selected the date parameters of his request carefully and precisely, so as to avoid exceeding the cost limit. The parameters had been chosen in good faith, based on information supplied to him by TPAS. The complainant argued that MAPS must hold

information within the scope of the request, because the request referred to when TPAS had told him that the helpline was established.

24. Even if the dates did not correspond, the complainant noted, that did not, in itself, prove that MAPS held no relevant information.

The MAPS' position

25. MAPS reiterated the stance it had taken at internal review. It did hold information that was likely to be that which the complainant actually wanted, but this information did not fall within the scope of the request which had actually been received.
26. MAPS offered to provide this information to the complainant during a phonecall with the Commissioner's office. The Commissioner advised MAPS that she had no objection to the information being disclosed and that it was ultimately a decision for MAPS to make. However, she pointed out that, as the information did not fall within the scope of the request the complainant had submitted, any disclosure would thus have to take place outside of the FOIA process. Were the complainant to be dissatisfied with the information he received in this manner, he would have no right of appeal under Section 50 of the FOIA. She therefore suggested it might be preferable for MAPS to await a refined request so that it could disclose information whilst preserving the complainant's appeal rights.
27. In addition to this exchange, MAPS confirmed that it had conducted thorough searches of its records based on the date parameters of the request. These included searches of its electronic records and information transferred to it from TPAS. Whilst it had located numerous documents of relevance, none fell within the time parameters set out in the request and were thus outside its scope.

The Commissioner's view

28. The Commissioner's view is that MAPS does not hold the requested information.
29. Given that the splitting of the BSPS from Tata UK occurred in 2017, it would be logical that any helpline would have been established in either 2017 or early 2018. Providing advice only a year after it was required appears illogical. A much more plausible explanation is that the date provided in TPAS' correspondence of 27 February 2019 was a simple error.
30. The Commissioner is not persuaded that the complainant has been "misled" as he suggests. A single digit in error, whilst clearly regrettable, is far more likely to reflect an email sent by a person with a heavy

workload. Indeed the Commissioner notes that the complainant made a similar mistake himself when submitting his request of 28 July 2019. No evidence has emerged, or been offered, that would contradict the suggestion that both these incidents were simple typographical errors.

31. Nevertheless, the Commissioner is satisfied that MAPS has carried out appropriate searches for information falling within the scope of the request. The fact that these searches have identified relevant information outside of the specified date parameters indicates that the searches were adequate to identify any information within the scope of the request.
32. It is rare that the Commissioner is able to “prove” that particular information is, or is not, held by a public authority – but in this case, the Commissioner is as sure as she can be that MAPS holds no information within the narrow scope of the request the complainant submitted.

Was MAPS obliged to clarify the request?

33. Given the issues raised in this case, the Commissioner considers it useful to reflect MAPS’ duty, under section 16 of the FOIA, to provide advice and assistance to a person making, or attempting to make, a request for information.
34. Where public authorities are unsure as to the wording of the request or of what the requestor is actually seeking, the Commissioner considers that they should contact the requestor and seek any clarification necessary to process the request. This often leads to better outcomes for requestors (who do not have requests refused and do not get provided with large quantities of information which they don’t want) and saves time for all concerned in the long run.
35. However, the Commissioner’s guidance on interpreting and clarifying requests also states that:²

“The authority must answer a request based on what the requester has actually asked for, and not on what it thinks they would like, should have asked for or would be of most use to them.”

² <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

36. The request which the complainant submitted on 28 July 2019 was unclear because it sought information created on dates that had yet to occur. MAPS complied with its section 16 duty and sought clarification.
37. The complainant then submitted a further request on 3 September 2019. This request was very clear in describing the precise information the complainant was apparently seeking. Whilst there *was* a reference to the request he had submitted on 28 July 2019, there was *not* a reference to the correspondence of 27 February 2019 or the reasons why the complainant had chosen the particular dates that he had.
38. Of course, the complainant was under no obligation to make reference to this correspondence, but those responsible for responding to the request at MAPS would have had no reason to examine all his previous correspondence to check for potential errors. When the complainant did draw MAPS' attention to the earlier correspondence, it admitted the error.
39. The request the complainant submitted was very clear. It was not the complainant's fault that the dates he chose were not going to produce any information. Equally, it was not the responsibility of MAPS to second guess what he "really" wanted and there was no suggestion that he was seeking anything other than the information defined in his request.
40. The Commissioner also notes that, since becoming aware as to the precise information the complainant is actually interested in, MAPS has advised him that it does hold information, should he wish to request it.
41. The Commissioner is therefore satisfied that MAPS complied with its duty to provide advice and assistance.

Right of appeal

42. 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@justice.gov.uk

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

43. 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.
44. 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

**Phillip Angell
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