

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 7 June 2021

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1A 9NA

Decision (including any steps ordered)

1. The complainant has requested information related to how the Financial Investigation Unit (FIU) of the Department for Work and Pensions (DWP) contacts parents liable to pay child maintenance.
2. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold information falling within the scope of the request.
3. The Commissioner does not require DWP to take any steps.

Request and response

4. On 6 March 2020, the complainant wrote to DWP and requested information in the following terms:

"Please could you provide copies of all information, policies and guidance in relation to FIU contact/communications with paying parents. In particular, please could you confirm whether such contact is conducted by letter, email, phone or in person. If by phone or in person, please could you provide all information, policies and guidance in relation to how that communication is recorded".

5. DWP provided its response on 19 March 2020. It confirmed that it does not have any recorded policies or guidance regarding FIU contact and communication with paying parents. DWP explained that formal interviews in criminal cases are covered by the Police and Criminal Evidence Act (PACE) and provided a link to the PACE Codes of Practice.

6. DWP provided a further explanation outside of the Act. It advised that informal interviews for financial investigations are recorded in note form. DWP confirmed that in face to face interviews, the interviewee would be given an opportunity to read and sign the notes. It also confirmed that for interviews conducted over the phone, the investigator would communicate in writing to the interviewee.
7. The complainant requested an internal review on 19 March 2020. They disputed that DWP did not hold any information falling the scope of the request and considered that as DWP was able to provide an explanation regarding how contact is recorded, this must mean that the information is held.
8. DWP provided the complainant with the outcome of its internal review on 2 April 2020. It upheld its original position that it does not hold recorded information falling within the scope of the request. DWP explained that the additional explanations regarding informal interviews had been confirmed verbally. DWP explained that this is covered in FIU training and is not covered in policies or procedures.

Scope of the case

9. The complainant contacted the Commissioner on 19 May 2020 to complain about the handling of their request for information.
10. The Commissioner considers that the scope of this case is to determine, on the balance of probabilities, whether DWP holds information falling within the scope of the request.

Reasons for decision

Section 1: General right of access to information

11. Section 1(1) of the Act states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any procedural section or exemption that may apply. A public authority is not obliged under the Act to create new information in order to answer a request.
12. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-Tier Tribunal

(Information Rights) decisions and applies the civil standard of proof – ie on the balance of probabilities.

13. In the circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, DWP holds recorded information that falls within the scope of the request.

DWP's position

14. DWP explained that FIU does not have any policies or procedures regarding how FIU operates. DWP explained that FIU is governed by criminal statute including PACE and the Criminal Procedure and Investigation Act.
15. DWP explained that FIU investigators may also operate under the Child Support legislation information gathering powers, specifically the Child Support Information Regulations 2008, Section 15 of the Child Support Act and various other pieces of legislation including the Fraud Act for criminal cases.
16. DWP confirmed that its FIU investigators are qualified, or in the process of qualifying, in the accredited Counter Fraud Investigation Programme via Northampton University.
17. DWP confirmed that where contact is needed, the FIU investigator would contact the paying parent by letter to request information if needed and to invite them to interview. DWP explained that it is not aware of a scenario where an officer would make contact informally and be compliant with PACE Codes of Practice. DWP confirmed that calls by FIU investigators are for investigative purposes and therefore not deemed informal in the same manner as a general casework call. DWP confirmed that when asking for information, this must be by letter to comply with the Child Support Information Regulations. DWP explained that contact made for other purposes would be made in accordance with PACE Codes of Practice C, E & F¹ and decided on a case by case basis in consultation with the Head of FIU. DWP confirmed that information is recorded on the FIU case file and is referred to during ongoing consultation with the Head of FIU regarding all matters, issues or questions throughout the case.

¹ <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

18. DWP explained that FIU investigators carry out a specific role and they refer to the PACE Codes of Practice which provides guidance on identification and contact.
19. DWP confirmed that it does not hold any guidance, explanatory notes or training materials relating to its investigations under PACE. DWP confirmed to the Commissioner that it has not produced its own guidance on how to apply the Codes of Practice. DWP explained that the training material is held by the external training provider.
20. DWP explained that this accredited training equips FIU investigators with the necessary knowledge on PACE. DWP explained that the requirements of PACE are supported by the relevant Code of Practice.
21. DWP confirmed that the training does not specifically cover customer contact and delegates are not provided with handouts. Training material is accessed via a password protected gateway.
22. DWP confirmed that it had conducted searches of its procedures and guidance using the search term "FIU contact" and had not located any information.

The Commissioner's position

23. In making her determination, the Commissioner has considered DWP's submissions and the specific wording of the request.
24. The Commissioner notes that the request is focussed on information relating to how a specific department communicates, and records communications, with parents paying liable to pay child maintenance. In light of the specific nature of the request, the Commissioner considers that it is unlikely that FIU would not be able to easily locate any information falling within the scope of the request. The Commissioner considers that this information is sufficiently important and high-level that it should not require in depth searches to locate, if it were held. She would expect FIU to have knowledge of any information held regarding how to contact individuals and record this contact.
25. She therefore considers that the searches performed by DWP were adequate and proportionate in the specific circumstances of this case. Given DWP's knowledge that FIU operates on the basis of PACE, she is satisfied that DWP would not need to undertake detailed or extensive searches to confirm that no information is held. She is satisfied that the high level searches undertaken by DWP would locate any information falling within the scope of the request.
26. Whilst the Commissioner understands why the complainant would believe that the requested information is held, DWP has provided

reasonable explanations regarding why it does not hold information on how FIU makes contact with individuals, essentially that FIU adheres to the PACE Codes of Practice in all cases. She also notes that DWP provided the complainant with a link to these Codes of Practice.

27. For the reasons set out above, the Commissioner considers that on the balance of probabilities, DWP does not hold information falling within the scope of the request.

Right of appeal

28. 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

29. 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.
30. 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

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF