

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 8 March 2022

Public Authority: DWP
Address: Caxton House
Tothill Street
London
SW1A 9NA

Decision (including any steps ordered)

1. The complainant has requested information relating to the 'two ticks' scheme at Cardiff University. DWP stated it does not hold the information.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) does not hold any information within the scope of the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 5 June 2021, the complainant wrote to DWP and requested information in the following terms:

"The DWP is requested to provide the following information:

In respect of the following declaration published by Cardiff University (2015-2021): 'The programme welcomes applications from disabled candidates and since 2010 has demonstrated its commitment to employing disabled people through the use of the Department of Work and Pensions Jobcentre Plus 'positive about disabled people' symbol (2 ticks).

Having recently reviewed the use of the 2 ticks symbol with the DWP Jobcentre Plus, the programme has been advised that as appointments are to paid training posts and not paid jobs, the symbol does not apply.'

<https://www.cardiff.ac.uk/study/postgraduate/research/programmes/programme/clinical-psychology>

The DWP is requested to provide:

(1) Full copy of the 'review' conducted and report created by DWP Jobcentre Plus referred to in the above statement to advise on the employment/employee status of NHS employees working in clinical psychology.

(2) Full copy of the documents used by DWP Jobcentre Plus to determine that the jobs in clinical psychology undertaken by NHS employees working in Cardiff and Vale Local University Health Board (NHS Trust) are 'not paid jobs'.

(3) Full details of how and why DWP Jobcentre Plus advised Cardiff University and Cardiff and Vale Local University Health Board (NHS Trust) that the jobs jobseekers are seeking comprising employment and pre-registration training in clinical psychology working in the NHS are 'not paid jobs'.

(4) Full details of how and why DWP Jobcentre Plus advised Cardiff University and Cardiff and Vale Local University Health Board (NHS Trust) that Disabled People seeking employment with the Disability Confident Employer - Cardiff and Vale Local University 1 Health Board (NHS Trust) - are not entitled to access to the Disability Confident Scheme despite the NHS job posts of 'trainee clinical psychologist' being full-time salaried NHS jobs with all rights and benefits as per all other NHS jobs; apart from the rights afforded jobseekers due to DWP Jobcentre Plus and Cardiff University and Cardiff and Vale Local University Health Board (NHS Trust) denying jobseekers and Disabled jobseekers the rights afforded by the Equality Act 2010 and DWP Disability Confident Scheme.

(5) Full copy of correspondence between DWP Jobcentre Plus and employees of Cardiff University and employees of Cardiff and Vale Local University Health Board; including but not restricted to 'Honorary Professor' Reg Morris, who appears to be an NHS employee that was gifted the title of 'Honorary Professor' by Cardiff University, and whose name appears in association with contracts of employment issued to trainee clinical psychologists by Cardiff and Vale Local University Health Board.

Note: HMRC has declared that in 2017 HMRC wrote to all NHS Trusts employing people in the NHS jobs of 'trainee clinical psychologists', issuing a legal determination to the NHS Trusts stating that the legal status of trainee clinical psychologists is that of NHS employees employed to do a job of work, and are not 'trainees on training contracts'. HMRC has declared that ALL activities undertaken by trainee clinical psychologists while employed on the NHS three-year contracts of employment constitute part of their employment contract and ALL activities constitute a job of work for which the NHS employees are paid by the NHS Trust (not students; not 'postgraduate students' of Cardiff University).

Please provide information as PDF file copies via email."

5. DWP responded on 21 June 2021 and stated:

"Our records show that Cardiff University is not signed up to the Disability Confident scheme. We are not able to provide the information that you have requested."

6. Following an internal review DWP wrote to the complainant on 6 September 2021 stating:

"that the handling of your original request and response has now been appropriately reviewed by someone unconnected with the handling of your original request. As a result of this review we are satisfied that the original response was handled properly and that the outcome of your original request was correct."

Scope of the case

7. The complainant contacted the Commissioner on 21 September 2021 to complain about the way his request for information had been handled.
8. The Commissioner wrote to the complainant on 20 January 2022 and advised that on the balance of probabilities, he considered DWP did not hold the requested information, and invited him to withdraw his complaint.
9. The complainant responded to the Commissioner on 24 January 2022 stating he wished to pursue his complaint to conclusion with a decision notice.

Amongst other things he stated:

"The information about the DWP 'review' and eligibility of disabled persons to access the DWP Disability Confident Scheme pertains to employment of members of the Public (disabled people) by Cardiff and Vale University Health Board. The statement/information about the DWP review published by Cardiff University pertains to the employment of NHS employees by Cardiff and Vale University Health Board."

10. Therefore, the Commissioner considers the scope of this case to be to determine, if, on the balance of probabilities DWP holds information within the scope of the request.

Background

11. DWP explained the 'Two Ticks' campaign was superseded by Disability Confident. For any new Disability Confident employers, there is a self-serve option for employers to access on gov.uk and it would have no direct contact with these at local/Operational level so would have no paper/clerical or electronic interactions to retain.
12. The Disability Confident scheme was introduced in November 2016 and is a voluntary business to business led learning journey that supports employers to attract, recruit, retain and progress disabled people in the workplace. The scheme provides employers with Disability Confident information and resources, including: videos, webinars, newsletters and guidance available on gov.uk.
13. To become a Disability Confident Leader (Level 3) an employer agrees to have their self-assessment independently reviewed and validated by one of the following: disability organisations, disabled people's user-led organisations and other Disability Confident Leaders. DWP is not involved in the validation process and does not hold a copy of the self-assessment or validation template.
14. As part of the Disability Confident complaints process, DWP can investigate a complaint and will work with an employer to support the improvement of their policies and practices, to ensure they are complying with the schemes criteria. DWP does however, reserve the right to suspend or downgrade an employer from the scheme if the employer is unwilling to improve.

Reasons for decision

Section 1(1): General right of access to information

15. 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.
16. 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. He 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, he will consider any reason why it is inherently likely or unlikely that information is not held.
17. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities. 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.
18. In its submission to the Commissioner, DWP has acknowledged that in its original response to the request, it had not confirmed that it does not hold the requested information. It advised the Commissioner that it will ensure going forward it confirms if the requested information is held or not.

DWP's position

19. As is his usual practice in cases such as this, the Commissioner asked DWP a number of questions relating to searches it had carried out and its retention policy of similar information.
20. DWP confirmed it had conducted checks of shared electronic folders searching by title/name. There are no paper based records that exist, and colleagues involved with this activity have no recollection or stored files linked to this matter.
21. It further stated that there was no retention of documents (paper based or digital) relating to the Two Ticks.

22. It explained that DWP creates a large volume of records in all business areas and it does have a formal document retention policy that dictates how long information needs to be retained. This is based on a number of different factors eg document type/information type/ and if it is part of a ministerial decision etc. Its Jobcentres manage information that requires retention in line with this policy/guidance.
23. The DWP also follows ICO guidelines regarding information retention and it is retained while it is considered relevant to do so, then disposed of.
24. It explained, there is no record of the requested papers/associated documents in either the shared folder or clerical storage (all would be pre 2015). There would only be a need to retain the information while the Two Ticks scheme was in place.
25. DWP confirmed that as far as it was aware there was no statutory requirement to retain the information once it had been superseded by the Disability Confident scheme.
26. DWP stated that it does not hold any self-assessment information or validation templates – for complaints, the DWP files and stores this information. Generally, complaint information is kept locally for 14 months before being destroyed. Complaints cases are closed down as soon as they are resolved.
27. DWP explained that, with reference to most complaints, they are mainly managed between the employer and individual. In limited circumstances, it will work with an employer to improve their policies and procedures to improve compliance with the scheme criteria. It does not issue updated statements.

The Commissioner's decision

28. In making his determination, the Commissioner has considered DWP's submissions and the specific wording of the request. The Commissioner is satisfied that, on the balance of probabilities, DWP does not hold information falling within the scope of the request.
29. It is not the Commissioner's role to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
30. The Commissioner considers that the searches DWP has undertaken for relevant information were adequate and appropriate. He also considers that relevant individuals in DWP have been approached about the request. Having considered all these factors, the Commissioner has decided, on the balance of probability, that DWP does not hold the

information the complainant has requested and it has complied with section 1(1)(a) of FOIA.

Other matters

31. Section 50(2) of the FOIA states that: On receiving an application under this section, the Commissioner shall make a decision unless it appears to [him]— (c) that the application is frivolous or vexatious.
32. The Commissioner considers that it would not be an appropriate use of his limited resources if he were continually required to investigate and issue decision notices in respect of complaints relating to the over-arching issue of Trainee Clinical Psychologists (TCPs).
33. The complainant obviously has an absolute right to appeal this decision notice if he wishes to do so. However, in the absence of a successful appeal to the Tribunal, the Commissioner considers it reasonable to put the complainant on notice that he is likely to rely on section 50(2)(c) of the FOIA in future to refuse to accept his complaints where the underlying cause for his requests and complaints relates to TCPs, whether that is contracts between public authorities, whether TCPs are employees or students or the delivery of the course and training, where there is limited wider public interest.

Right of appeal

34. 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

35. 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.
36. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF