

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2023

Public Authority: Department for Work and Pensions
Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Work and Pensions (DWP) relating to Direct Temporary Recruits (DTRs) who joined the Child Maintenance Group in 2021 in a particular area. The DWP provided some information in response to the first part of the request but stated at internal review that no recorded information was held regarding the second part of the request. The complainant did not accept this position.
2. The Commissioner's decision is that, on the balance of probability, the DWP does not hold any information falling within the second part of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 13 October 2022, the complainant wrote to the DWP and requested information in the following terms:

"1) Who is authorised and supposed to make the decision on whether or not an AO at the Child Maintenance Group meets the criteria to pass probation?

2) In reference to the Direct Temporary Recruits who joined the Child Maintenance Group in 2021, how does the Department for Work and Pensions justify automatic unconditional passes to probation for all of these recruits?"

5. DWP responded on 10 November 2022 to the first part of the request and explained who was the decision maker.
6. Regarding the second part of the request, DWP responded by refuting the premise of the question by saying that "no automatic passes to probation were given to this group".
7. On 12 November 2022 the complainant asked for an internal review.
8. The internal review on 2 December 2022 upheld the response:

"HR Business Partners, CMG Managers and CMG resourcing colleagues have worked with local line managers to explore this concern and have found no evidence or recorded information to suggest that automatic unconditional passes to probation were given to Direct Temporary recruits who join (sic) Child maintenance Group in 2021 that supports the information provided in this Internal Review."

Scope of the case

9. The complainant contacted the Commissioner on 5 December 2022 to complain about the way their request for information had been handled.
10. The Commissioner wrote to the DWP about the complaint and the DWP sent a response to the Commissioner reiterating that it did not hold information in relation to part 2 of the request and providing its reasons.
11. On 10 February 2023 the Commissioner wrote to the complainant and explained that the DWP had stated that it did not hold the requested information and provided its argument to that effect.
12. He explained that the question asked by the complainant does not ask directly for recorded information but asked the DWP to "justify" an action the complainant believed it to have taken. However, the DWP responded under FOIA stating that it did not hold any information relating to it.

13. The Commissioner explained to the complainant that he bases his decisions on the balance of probability. He acknowledged that the complainant stated that they had knowledge of this matter but that this did not prove that the DWP held any information relating to it. The Commissioner said that it wasn't within his remit to consider what did or didn't occur, only whether information is held relating to it. The Commissioner asked the complainant if they were content to accept that the information was not held. Alternatively, he invited the complainant to specify what they had expected the DWP to hold, such as a policy, and to provide any evidence that the requested information was held.
14. The complainant did not accept the Commissioner's view but reiterated their argument that the information must be held.
15. Subsequently, the DWP responded to the Commissioner's letter asking for a more detailed submission.
16. The Commissioner considers that the scope of his investigation is solely to look at whether the DWP holds the requested information.

Reasons for decision

Section 1 – general right of access to information held by public authorities

17. Section 1(1) of 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.”

18. In cases where there is a dispute over the amount of information held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided). The Commissioner is not expected to prove categorically whether the information is held.
19. On 11 February 2023 the complainant provided some information that cannot be reproduced here without breaching data protection legislation.

However, the complainant maintained that probation reviews had to be completed and therefore the information had to be held. They also argued that DWP policy had requirements which have to be met for probation to be passed, "As people were passed automatically at six months, DWP certainly has records to state why this was allowed to happen."

20. As indicated, the DWP responded to the Commissioner's investigation letter twice. It explained that the initial request had been sent to the central DWP resourcing team to ask if it held documentation on probation passes. "The team advised they would not hold that information and that as per DWP policy and procedure any paperwork would sit with local line management."
21. Consequently there was discussion with local line management as to what process had been followed for all the DTRs which had no paperwork or evidence to support the claim made in the request – that policy and procedure had not been followed. The DWP further explained that a "light touch decision making process was followed for all DTR colleagues...to decide upon suitability to pass promotion". The DWP states that each DTR "had a probation review document completed for each discussion which included a summary of the 6-month probation period". These "templates included comments from both Team leaders and DTR colleagues about work expectations, learning and development".
22. This documentation is held for all the DTR individuals going through the process. Reviews were held at two months and five months and a recommendation made in writing at six months concerning whether a colleague had reached probationary expectations. The DWP state that this is in line with its Probation Policy which outlines the following:

"At the end of the probation period your manager will complete a written assessment of your conduct, attendance and work performance, and will recommend confirming or terminating your appointment. A decision maker will make the final decision on whether to confirm or terminate your appointment."

The review forms are used to support decisions regarding an individual's passing or failing and were stored locally. In this instance probation was passed by all the DTR individuals and "evidenced by the review forms held".

23. Any decision where acceptable standards had not been reached would have been evidenced and discussed but no cases were identified. The DWP stresses that there were "no automatic unconditional passes to

probation...given to any DTR colleagues who joined the Child Maintenance Group in 2021”.

24. The DWP also responded to the Commissioner’s more specific questions in order to establish what had been done to locate any information falling within scope. Searches were carried out centrally and locally by the relevant individuals involved in the process. Local line managers were also asked to search all electronic documentation regarding the DTR probation process. The probation review documents are in hard copy that are scanned onto the DWP systems. The DWP does not believe any information has been deleted or destroyed and there are completed documents for all the individuals concerned, showing that process and policy were adhered to.
25. Finally, the DWP explained to the Commissioner that all records are kept securely in line with its Probation Policy and Procedures and handled in line with the DWP managing HR Records Procedure. The latter requires all records of employment to be kept until a colleague reaches the age of 85. These documents are held by DWP Employee Services but the complete record of Probation Review Documents are held locally “in line with DWP Managing HR Records Procedure and Information Management Policy”. For this reason there was no consultation with DWP Employee Services.

The Commissioner’s view

26. The complainant has assured the Commissioner that automatic unconditional passes to probation were given in this instance. He acknowledges the complainant’s belief that this occurred but he is not required to consider whether a public authority has followed its own procedures. He is only required to consider whether the requested information is held to a civil standard of proof. Leaving aside the issues raised in paragraph 12 of this decision notice, he has concluded that the information requested in part 2 of the request is not held, based on the DWP’s submission.

Right of appeal

27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

28. 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.
29. 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

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