

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2019

Public Authority: The 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 the names of employees in the post of Deputy Director for Disability Assessments and copies of any emails sent or received by this post holder which cite a named study.
2. The Department for Work and Pensions (DWP) has provided the names of the post-holders and confirmed that it does not hold any emails of the description provided.
3. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold the requested emails. However, DWP has breached section 10(1) as it did not comply with section 1(1)(a) within the statutory timeframe of twenty working days.
4. The Commissioner does not require any steps to be taken in respect of this request.

Request and response

5. On 31 March 2017, the complainant wrote to DWP and requested information in the following terms:

"The Journal of Epidemiology and Community Health has published a study titled "'First, do no harm': are disability assessments associated with adverse trends in mental health? A longitudinal ecological study" B.Barr et al. November 2015. and concluded WCAs kill 200 people every year.

Please provide copies of any Emails which mention this study, the Journal of Epidemiology and Community Health or any of the authors that were sent or received by the DWP Deputy Director for Disability Assessment in 2015/16.

Please state the names of the current Deputy Director for Disability Assessment and anybody else who has held this or effectively the same position since 2012.

The job function of this position states that they are "responsible for development and maintenance of the policy in relation to the health aspects of benefit entitlements assessments", so if your search of the Deputy Director for Disability Assessment Emails account for the period 2015/16, establishes that the information I have requested is not held please provide a believable reason."

6. On 2 May 2017, DWP responded and confirmed that it was aggregating the request with others made since 14 January 2017 and refused to comply with the request, relying on section 12. DWP did not cite a subsection.
7. The complainant requested an internal review on 14 May 2017 and disputed that the requests could be aggregated.
8. DWP provided the outcome of its internal review on 12 June 2017, upholding its reliance on section 12.

Scope of the case

9. 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 dated 31 March 2017.

10. During the course of the Commissioner's investigation, DWP amended its position and on 10 September 2018 provided the complainant with a fresh response under the Act. DWP provided the names of the Deputy Directors for Disability Assessment since 2012. DWP confirmed that it held no information in relation to emails relating to the named study sent or received by the Deputy Director in 2015 and 2016.
11. The complainant confirmed that he wished to dispute DWP's position that no emails were held.
12. The Commissioner therefore considers that the scope of this investigation is to determine whether, on the balance of probabilities, DWP holds emails relating to the named study that were sent to or received by the Deputy Director for Disability Assessments.

Reasons for decision

13. Section 1(1)(a) of the Act states:

"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"

14. Section 1(1) of the Act provides 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 sections or exemptions that may apply. A public authority is not obliged to create information in order to answer a request.
15. 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 in applying the civil standard of the balance of probabilities.

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

DWP's position

17. DWP confirmed to the Commissioner that the current Deputy Director had been in post in the period 2015-2016 and that, following DWP's change of position in August 2018, he had searched his emails using the search terms of the title of the article, the name of the Journal and the lead author's name. DWP confirmed that no records were found.
18. DWP confirmed that its searches included archived and retained emails. DWP explained that its Information Management Policy set out differing retention periods dependant on the content of the information. DWP confirmed that this policy is available on its intranet for all staff to review and adhere to. DWP explained that its staff are advised to undertake appropriate document management activity once a month.
19. DWP confirmed that there was no business need or statutory requirement to hold the requested information.
20. DWP explained that where it is made aware of external reports, and those reports relate closely to its work, they may be shared with Deputy Directors of that policy area. DWP explained that it is unable to track all external reports, but may be made aware through voluntary sector stakeholders, existing relationships with academics and the Economic and Social Research Council, and correspondence with MPs.
21. DWP further explained that any external report brought to its attention would be judged on its own merits. It set out that a response to a third party study would depend on the robustness of the findings and how they relate to the Department's objectives. Department Analysts would consider the quality of the analysis and interpretation of the results. The analytical assessment may be shared with the Deputy Director(s) depending on the public interest in the report and the area it relates to. DWP explained that if the analysis is judged to be robust and the recommendations meet the Department's objectives, then its findings may be acted upon, but a wide range of evidence will always be taken into account when making any policy changes. DWP confirmed that it had made a number of changes to the Work Capability Assessment since the research was published, however, it could not ascribe any changes in policy to one particular piece of evidence.

The Commissioner's position

22. The Commissioner considers that DWP has undertaken reasonable and logical searches to locate information falling within the scope of the

request. DWP has searched the relevant email folders of the Deputy Director for Disability Assessments in post at the specified time. DWP has also used the search terms specified by the complainant in his request. In the Commissioner's view, she would expect these searches to have returned information relating to the request.

23. The Commissioner considers that the searches conducted were adequate and proportionate in view of the how such records would have been retained and archived by DWP.
24. The Commissioner accepts that it is possible that information may have been held at the time of the request but due to the length of time before searches were conducted, it is entirely reasonable that if emails were held they may have been deleted as part of DWP's routine retention and deletion activities.
25. The Commissioner has issued guidance on the retention and destruction of requested information¹. Paragraphs 29-31 set out that, where a request has been refused on the basis of section 12, the Commissioner does not expect public authorities to delay the deletion of information until the relevant complaints and appeal procedures have been exhausted. The Commissioner states:

"we recognise that it would defeat the purpose of these provisions if authorities were obliged to put considerable resource into locating and setting aside the requested material in case the original decision should later be overturned."

26. In this case, DWP had aggregated this request with various others before amending its position and confirming that it did not hold emails of the description specified. It is regrettable that these searches took place a significant period of time after the request, however, this is due to the original section 12(4) investigation taking place.
27. The Commissioner understands why the complainant would believe that information is held falling within the scope of the request. It is entirely reasonable to expect that the Deputy Director of Disability Assessments would be made aware of published studies relating to disability assessments. However, the lack of emails located does not automatically mean that no information is held, only that no emails were retained by a specific individual.

¹ <https://ico.org.uk/media/for-organisations/documents/1160/retention-and-destruction-of-requested-information.pdf>

28. For the reasons set out in this section, the Commissioner considers that, on the balance of probabilities, no information is held falling within the scope of the request.

Procedural Requirements

Section 10: Time for compliance

29. Section 10(1) of the Act states:

"Subject to section sections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

30. In its original response dated 2 May 2017, DWP did not confirm whether or not the information was held. It simply stated that it was refusing to comply with the request and relied on section 12. DWP did not clarify this in its internal review dated 12 June 2017.
31. The Commissioner acknowledges that during the course of the investigation, DWP provided a fresh response which complied with the obligations set out in section 1(1)(a), namely to confirm or deny in writing whether the requested information is held.
32. However, since this fresh response was clearly issued out of the 20 working day time for compliance, the Commissioner finds that DWP breached section 10(1) of the Act.

Right of appeal

33. 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

34. 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.
35. 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
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