

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 12 July 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) conducts informal interviews of 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.

Request and response

3. On 19 March 2020, the complainant wrote to DWP and requested information in the following terms:

"Further to your FOI2020/10704 response of 19th March 2020, please could you provide all information, policies and guidance for:

(a) fact checking any answers given by paying parents during FIU informal interviews

(b) procedures to follow where paying parents have been found to lie in FIU informal interviews

(c) sharing the information with the receiving parent obtained during informal interviews with the paying parent

(d) the provision of a final FIU report at the end of their investigations"

4. On 3 April 2020, DWP provided its response. It confirmed that it held no policies or procedures in relation to FIU investigations or interviews. DWP confirmed that it had previously explained that when FIU undertakes investigations and formal interviews in criminal cases, these activities are covered by the Police and Criminal Evidence Act 1984 (PACE). DWP confirmed that they also operate under the Criminal Procedural and Investigation Act 1996 (CPIA).
5. The complainant requested an internal review on 3 April 2020 stating only *"I find it incomprehensible that you do not hold any information in relation to my request"*.
6. DWP provided the outcome of its internal review on 27 May 2020. It upheld its original response, however, it stated that it had advised that the department does not release information in relation to investigation and detection of fraud under section 31(1)(a) and (b) of the Act.

Scope of the case

7. The complainant contacted the Commissioner on 27 May 2020 to complain about the handling of their request for information.
8. During the course of the investigation, DWP confirmed that it did not hold the requested information.
9. 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(1): General right of access to information

10. 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.
11. 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.

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

DWP's position

13. DWP confirmed that FIU Investigators are trained in formal interviews as part of their accredited Counter Fraud Investigation Programme. DWP explained that no informal interview training material, guidance or recorded information exists.
14. Regarding element (a) of the request, DWP explained that the Child Maintenance Service bases decisions regarding Child Maintenance assessments on HMRC data. This is provided via an automated interface between DWP and HMRC at the outset of a case and this information is accepted as the accurate income figure.
15. Regarding element (b) of the request, DWP confirmed that it held no recorded information regarding when a parent lies in an interview. DWP explained that if this became a criminal matter, formal PACE and CPIA guidance would apply.
16. Regarding element (c) of the request, DWP confirmed that as personal information provided by a parent is covered by the Data Protection Act, it would not be shared.
17. Regarding element (d) of the request, DWP confirmed that it held no internal policies, guidance or information by DWP on FIU investigations. Investigations are covered by PACE and CPIA.
18. DWP confirmed that FIU can carry out informal interviews which are conversations regarding findings from a non-criminal issue. DWP confirmed that there is no guidance, procedures or information available regarding information interviews or conversations.

The Commissioner's position

19. The Commissioner notes that this request directly followed a request for FIU procedures when contacting paying parents. The Commissioner has considered this previous request and has issued a decision notice (IC-

40707-F5S1¹) which finds that, on the balance of probabilities, DWP does not hold the requested information. DWP referred the Commissioner to its submissions in the previous case and she has included these in her considerations.

20. In her decision notice IC-40707-F5S1, the Commissioner accepted DWP's explanation that FIU Investigators adhere to the PACE Codes of Practice in all cases and that all FIU Investigators are qualified, or in the process of becoming qualified, in the accredited counter-fraud qualification which trains candidates on conducting investigations in accordance with PACE.
21. This request is one of several requests made by the complainant for information on processes undertaken by FIU and the Commissioner notes that they have been provided with a link to the PACE Codes of Practice and CPIA guidance by DWP in response to previous requests.
22. For the same reasons as set out in IC-40707-F5S1, the Commissioner accepts DWP's explanation that it does not hold any information on how FIU undertakes its investigations or interviews. The Commissioner accepts DWP's explanation that no internal information is held as FIU Investigators follow the PACE Codes of Practice².
23. The Commissioner also accepts that DWP would not hold information regarding FIU sharing information obtained in its interviews with the receiving parent as it would process this information in accordance with the Data Protection Act 2018 and UK GDPR.
24. The Commissioner has considered whether the training material included in the external course that all FIU Investigators must complete is held by the provider on behalf of DWP in accordance with section 3(2)(b).
25. In DWP's submissions for case IC-40707-F5S1, DWP confirmed that the course had not been created specifically for DWP but was a course hosted by Northampton University which is open to candidates who undertake counter-fraud investigations.
26. The Commissioner is therefore satisfied that the course materials are not held by the provider on behalf of DWP.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619949/ic-40707-f5s1.pdf>

² <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

27. DWP also confirmed in its submissions for IC-40707-F5S1 that delegates are not provided with handouts to use in their roles and the course material is accessible via a password protected gateway.
28. For the reasons set out above, and in IC-40707-F5S1, the Commissioner is satisfied that, on the balance of probabilities, DWP does not hold information falling within the scope of the request.

Other matters

29. Whilst noting that the DWP has been affected more than most public authorities by the Covid-19 pandemic, the Commissioner is disappointed that, not for the first time, she has been required to draw attention to basic errors in the DWP's handling of requests for information.
30. The Commissioner notes DWP's internal review introduced confusion regarding whether or not the information was held by DWP. Despite originally stating that it did not hold the requested information, at internal review DWP stated that it had advised that section 31 was engaged in relation to investigations.
31. The Commissioner expects to see an improvement in the quality of internal reviews conducted by DWP. The handling of this request and its internal review will be logged and used as evidence when considering DWP's overall compliance with the Act.

Right of appeal

32. 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

33. 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.
34. 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
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