

Freedom of Information Act 2000

Decision notice

Date: 8 June 2015

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

Decision (including any steps ordered)

1. The complainant requested information using Twitter relating to a claim made by the DWP's Press Office about Universal Jobmatch. The DWP responded to the complainant via email and stated that no relevant information was held.
2. The Commissioner's decision is that the DWP is incorrect to state that no relevant information is held, which is a breach of section 1 of the Freedom of Information Act 2000 (the Act). The DWP also breached section 10 of the Act as it did not respond to the request within the statutory time limit. However, the Commissioner finds that the DWP did not breach section 11 of the Act by refusing to provide a response via Twitter.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a new response to the complainant's request which complies with section 1(1) of the Act, or issue a valid refusal notice.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 7 August 2014 the DWP Press Office's Twitter handle (@dwppressoffice) tweeted the following message:

"More than 99% of jobs on Universal Jobmatch are genuine - and we're working to tackle the tiny percentage which don't meet our terms"

6. On the same date the complainant responded and requested information in the following terms:

"@dwppressoffice FOI request: copy of internal report or assessment, including all data considered and method, for this assertion. Thanks."

7. On 5 September 2014 the DWP acknowledged the request through Twitter following a prompt from the complainant. In this response it stated that it could not respond to the request using Twitter but would send a response by email. The complainant replied and stated that the DWP could upload the response to its website and use Twitter to post a link.
8. The DWP issued its response to the request on 12 September 2014 via email. This stated that the figure was calculated by the relevant team but denied that any relevant information was held.
9. The complainant asked for an internal review and specifically asked the DWP to consider the following: first, format of response; second, timeliness of response; and third, whether any relevant information was held.
10. The DWP issued its internal review on 30 September 2014. For the first consideration, the DWP did not address whether a request could be responded to on Twitter. For the second, it stated that a request under the terms of the Act was only valid with a valid name and address for correspondence, with the suggestion being that the complainant's Twitter handle did not provide this information. Finally, the DWP stated that no information relevant to the complainant was held.

Scope of the case

11. The complainant contacted the Commissioner on 9 October 2014 to complain about the way his request for information had been handled.
12. The Commissioner considers the scope of the case to be whether information relevant to the complainant's request is held. In addition, the Commissioner will also look at whether the Act allows for requests to

be responded to via Twitter, and whether the DWP responded to the complainant's request within the statutory timeline.

Reasons for decision

Section 8 – request for information

Section 11 – means by which communication to be made

13. The complainant made his request using Twitter and asked that the DWP respond in kind. The DWP refused to do so because it considered the tweet containing the complainant's request did not provide the complainant's name and an address for correspondence.
14. The Commissioner disagrees with this view; the information available from the complainant's Twitter handle provides an address for a response to be sent to and clearly displays the complainant's name. This would meet the criteria in section 8(1)(b) of the Act. The Commissioner's guidance "Recognising a request made under the Freedom of Information Act"¹ explains:

"If the authority subscribes to a social media site such as Twitter or Facebook, then any request it receives through that site will be valid, provided it fulfils the criteria set out in Section 8."
15. To address the practical issue of putting a response into a tweet the DWP could place the response online and then send the complainant a tweet with a link to the location of the response. However, the Commissioner wishes to stress that it is not a specific requirement for the DWP to do so. The requirement in the Act is to confirm or deny whether information is held and communicate the requested information held to the applicant. The assumption is that the public authority should respond to the address used to make the request and this address must be responded to if no other address is available, but it is reasonable for a public authority to use a different address for genuine reasons of practicality or protecting personal information.
16. Section 11(1)(a) of the Act allows the applicant to express a preference for the form (or format) that the requested information should be

¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

communicated in, not the communication of whether information is held. The Commissioner finds that the DWP did not breach section 11.

17. The Commissioner would accept that an applicant could express a preference for the requested information to be provided in the form of a tweet. However, it will rarely be practicable to do this within the character constraints of a tweet and the public authority would be able to consider other practicable forms, for example sending the information in a document format. Section 11(1)(b) would not cover a preference for document to be published linked from a tweet.

Section 10 – time to respond to a request

18. Section 10 provides a 20 working day maximum limit for an initial response to a request. The DWP received the complainant's request on 7 August 2014 but did not respond until 12 September 2014 – a gap of 25 working days. The DWP has breached section 10 by failing to respond within 20 working days.

Section 1 – information held

19. Section 1 of the Act states that an individual making a request is obliged to be informed whether relevant information is held, and if held to have it disclosed (these rights are subject to various exemptions under the Act). In this case the DWP has stated that no relevant information is held, something the complainant contests.
20. In cases where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the DWP holds information relevant to the complainant's request based on the information provided.
21. The Commissioner's view is that the DWP has looked at this request in too narrow a way. It seems to have focussed on whether it holds an internal report or assessment which contains the figure contained in its Press Office's tweet. In its initial refusal notice the DWP stated:

"There is no set report or assessment for this assertion. This percentage was calculated by the team responsible for removing non-genuine accounts from the service from their own records."

This was upheld in the internal review. No mention was made about the assessment method used or whether any data was used to reach the figure of 99%.

22. However, the Commissioner considers the scope of the request is much wider than just a report or assessment document. The complainant specifically asks for "all data considered" to support the figure of 99%, and the initial refusal clearly shows that someone at the DWP had data to calculate the percentage. This was confirmed in the DWP's response to the Commissioner, where it was confirmed there were regular internal management information reports which show "the number of live vacancies, adverts posted by jobs boards and duplicate vacancies". This is seen by the Commissioner as data considered by the DWP to support its assertion. It is therefore implausible that no information was held.
23. The Commissioner's decision is that at the time of the complainant's request the DWP was likely to have held data used to produce the figure of 99%, and that this information would come within the scope of the complainant's request. The Commissioner requires the DWP to issue a new response which complies with section 1(1) of the Act, or issue a valid refusal notice.

Right of appeal

24. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

25. 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.
26. 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

Steve Wood
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