

## Freedom of Information Act 2000

### Decision notice

**Date:** 31 March 2017

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to a poster seen in offices of Yardley Jobcentre. The Department for Work and Pensions (DWP) denied holding any relevant information.
2. The Commissioner's decision is that the DWP has breached section 10(1) of the Freedom of Information Act 2000 (the Act) as it did not respond to the complainant's request within the statutory timeframe. As the response has now been issued no steps are required in relation to this breach.
3. In relation to whether the DWP holds information relevant to the complainant's request, the Commissioner's decision is that on the balance of probabilities the DWP does not hold any relevant information. No steps are required.

#### Request and response

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4. On 2 April 2016, the complainant wrote to the DWP and requested information in the following terms:

*"This is a Freedom of Information request regarding the poster that was recently spotted and photographed by a claimant attending Yardley Job Centre in the West Midlands. Here is the image in question, and the response from Justin Tomlinson.*

<http://www.mirror.co.uk/news/uk-news/tor...>

*I would like to know what exactly was the 'Yardley ESA Challenge'? Who invented it, who ran it and what did it entail?*

*I would also like to see the poster in question, in its entirety, please."*

5. The DWP responded on 9 May 2016 and denied holding the requested information. It maintained this position in its internal review of 3 August 2016.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 3 August 2016 to complain about the way her request for information had been handled.
7. The Commissioner considers the scope of the request to be whether the DWP holds information relevant to the complainant's request. She will also look at the length of time the DWP took to issue its initial response to the complainant.

## **Reasons for decision**

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### **Section 10(1) – time for response**

8. Section 1(1) of the Act provides 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."*
9. Section 10(1) of the Act provides that 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.
10. The DWP confirmed receipt of the complainant's request on the same day it was submitted by the complainant – 2 April 2016. The DWP its response on 9 May 2016, which is 25 working days after receipt of the request was acknowledged. This is a breach of section 10(1) of the Act, although as the DWP has issued its response the breach has been addressed.

### **Section 1(1) – information held**

11. Section 1(1)(a) of the Act is known as the duty of a public authority to confirm or deny whether it holds relevant information. It follows that in

order for a public authority to be aware of whether or not it holds the requested information, it would need to carry out searches for that information within its records – unless it was patently obvious from the wording of the request that no information would be held.

12. In making her decision the Commissioner has focussed on the wording of the complainant's request:

*I would like to know what exactly was the 'Yardley ESA Challenge'? Who invented it, who ran it and what did it entail?*

*I would also like to see the poster in question, in its entirety, please."*

In the Commissioner's view the scope is clear – the complainant wishes to know who is responsible for the poster and the 'Yardley ESA Challenge' it represents; as well as a copy of the poster in full, as opposed to the image available from the Daily Mirror article.<sup>1</sup>

13. The Commissioner asked the DWP what searches were carried out in order to locate any potentially held information, and the DWP confirmed that it had not carried out any searches. The DWP instead stated:

*"[The poster] was an attempt to bring to life our ambition to support people who wish to be supported towards employment and who are currently claiming ESA. It was a misjudgement by an individual to achieve this. No email accounts were searched as it was a manually created poster that involved no email traffic."*

14. The Commissioner disagreed with the DWP that searches were not required in this instance. The poster was significant in size and must have required a coordinated effort, so it seems feasible this might have resulted in email traffic between the relevant members of staff. This information might reveal which individual(s) invented and ran the 'Yardley ESA Challenge' which prompted the creation of the poster.

15. The DWP agreed to search its records, and confirmed that no relevant information was held. It stated to the Commissioner that all members of staff at Yardley Jobcentre searched their Departmental email accounts. They were instructed to search for any reference to the keywords "display", "poster" and "space invader" between the dates January 2016 – May 2016.

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<sup>1</sup> <http://www.mirror.co.uk/news/uk-news/tory-minister-insists-jobcentres-dehumanising-7668030>

16. The Commissioner considers that the searches carried out were appropriate under the circumstances. The poster was only present in Yardley Jobcentre so it would follow that information about the poster should – if held – be in its records. The Commissioner also agrees that the search terms employed are the appropriate terms given the subject matter requested.
17. The DWP provided the Commissioner with its retention policy in regards to internal communications. This showed that the DWP employs the following with regards to internal emails:
  - personal, trivial or ephemeral – kept for four months.
  - discussing team or non-significant DWP business including internal enquiries – kept for one year.
18. The Commissioner notes that the searches were carried out on 24 January 2017, some nine months after the request was submitted to the DWP. The Commissioner acknowledges that there is a possibility that emails deemed “personal, trivial or ephemeral” might have been potentially held at some point but deleted before the searches were carried out, although she has no evidence that this has occurred. The Commissioner does consider that this shows the benefits of ensuring that necessary searches are carried out at the appropriate time, as this would eliminate any such possibility. The Commissioner asks that the DWP be more diligent in determining the extent of information held in its records.
19. The DWP also provided the Commissioner with a statement from a member of staff at Yardley Jobcentre. With the DWP’s permission the Commissioner has replicated this statement in full, as it provides a useful insight into how the poster came about:

*“At the time there were two leaders on site but both have since moved to different roles within the civil service. My recollection is that ideas were requested from staff to create a poster to help enhance staff engagement with ESA claimants. The poster was intended to represent how many Employment and Support Allowance (ESA) claimants were securing positive outcomes by moving out of the support group onto jobseekers allowance or into employment directly as a result of interventions by Yardley staff. The people group<sup>2</sup> asked for content ideas and several came forward.*”

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<sup>2</sup> Described by the DWP as a “Local staff group who have the responsibility of enhancing engagement with colleagues”.

*It was decided to go with a space invader theme. The poster was made by several members of office staff from craft materials. The money for the craft materials was donated by the leaders or materials were donated by staff from home. The space invader shape and letters were taken from the internet, printed off and traced to be cut out. Black lining paper was purchased from Hobby Craft, which was stapled to the wall. It was cut to the size of a whiteboard and checked to ensure it was level. The border was then attached; the space invaders and letters were then glued to the lining paper. The cutting out was completed in people's own time at home. Some were cut out in the office to see what they looked like but only 3 or 4. No flexitime was claimed for this work, it was produced by jobcentre staff for staff in their own time. There were three members of staff involved.*

*I led the task and was subsequently spoken to informally by my line manager."*

20. The Commissioner notes that this was provided by a member of staff during the course of the Commissioner's investigation, and so would not have been held at the time of the complainant's request. The Commissioner has included this because she considers it provides an insight into why the poster was created.
21. The DWP also provided an extract from the Birmingham & Solihull's meeting Action Point log which asked for "All sites to confirm they have an ESA Visual Display showing countdown to transform lives". This was the impetus for Yardley Jobcentre's people group to create the poster, but the Commissioner does not consider this would come within the scope of the complainant's request as it is not in reference to the Yardley ESA Challenge. Instead, the Commissioner has provided this for context.
22. The Commissioner considers that these details help explain who invented and ran the 'Yardley ESA Challenge', as well as what it entailed. She also considers that this shows the poster was created through an informal group, which would support the DWP's view that no information relevant to the complainant's request about the creation and management of the 'Challenge' is held.
23. The DWP confirmed to the Commissioner that the poster was destroyed on 30 March 2016 soon after its existence was brought to the attention of senior staff. The Commissioner accepts that this is likely given the negative response it received.
24. The Commissioner considers that on the balance of probabilities the DWP does not hold information relevant to the complainant's request. She expects the DWP to be better in the future in identifying occasions when searches are required, but she has seen no evidence to suggest

Reference: FS50640471

that any relevant information was held by the DWP at the time of the request. No steps are required.

## Right of appeal

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25. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

26. 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.
27. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**