

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2019

Public Authority: Department for Communities (NI)
Address: Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG

Decision (including any steps ordered)

1. The complainant has requested data on approval-related audits from the Department for Communities (NI) (“the Department”)
2. The Commissioner’s decision is that Capita Business Services Ltd holds the requested information on behalf of the Department by virtue of section 3(2)(b) of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the requested information or, in the alternative, a refusal notice explaining why it will not provide the requested information.
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.

Background

5. The Department for Communities is a devolved Northern Ireland government department in the Northern Ireland Executive. Social security and welfare is one of its devolved functions.

6. Personal Independence Payment ("PIP") is a welfare benefit in the United Kingdom that is intended to help adults with the extra costs of living with a long-term health condition or a disability. It was introduced by the Welfare Reform Act 2012 and the Social Security (Personal Independence Payment) Regulations 2013 (as amended).
7. Some tests to determine eligibility for PIP have been outsourced by the DWP to two private companies, Independent Assessment Services (formerly known as Atos Healthcare) in the north of England, London and southern England, and Capita Business Services Ltd¹ in central England, Wales and Northern Ireland.

Request and response

8. On 23 July 2018, the complainant wrote to the public authority and requested, amongst other things, information in the following terms:

"Data on the proportion of reports that have been deemed to be unacceptable" in the approval-related audit since the introduction of PIP in June 2016".
9. The public authority responded on 16 August 2018. It stated that it did not hold this requested information.
10. Following an internal review the public authority wrote to the complainant on 18 October 2018. It stated that it upheld its original decision.

Scope of the case

11. The complainant contacted the Commissioner on 5 November 2018 to complain about the way his request for information had been handled.
12. The Commissioner considers that she has to decide whether the public authority holds the requested information.

Reasons for decision

¹ <http://www.capita-pip.co.uk/en/index.html>

13. Section 3(2) of FOIA states

For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.

14. The Department has provided the Commissioner with a detailed explanation (which she accepts) of the context of this request and this explanation is provided in paragraphs 15 to 19 below.

15. The service delivery for the Lot 4 Personal Independence Payment (PIP) contract with Capita Business Services Ltd (Capita) commenced on 20 June 2016. The primary purpose of the contract is to provide Departmental Decision Makers (DMs) with medical expertise to facilitate the assessment of benefit eligibility in Northern Ireland. Capita's performance is measured against a defined set of service levels and Capita are contractually required to provide the Department with a suite of Management Information on a weekly and monthly basis.

16. Capita are contractually obliged to carry out Lot wide Audits (LWA) to provide an assurance of the quality of the reports completed by their Health Professionals (HP). LWA is an audit conducted by Capita of a random statistically valid sample of assessment reports. Results of these audits are reported to the Department to monitor performance against the associated Service Level (SC1). The Department's Health Assessment Advisor (HAA) team independently re-validate a sample of the LWA completed by Capita.

17. The PIP Assessment Guide is a supplementary document deemed to be incorporated into the contract. Part three of the guide recommends that Capita also undertake other internal quality audits to ensure quality standards are being met. One of these audits is Approval-related audit which is carried out during the HP approval process where HPs are subject to 100% audit to ensure that they are consistently able to apply the competence standards before they are approved. The PIP Assessment Guide is in the public domain and can be accessed using the following link: <https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers>

18. In Appendix 3 of the contract between the Department and Capita it states;

- The Authority intends, wherever it can, to capture and collate information through its IT system(s). However, the Authority does reserve the right to make reasonable requests for information (at

no additional charge) from the Provider including ad-hoc requests for information from time to time.

19. The Department maintains it does not physically hold the requested information and that Capita does not hold it on its behalf. That is the Approval-related audit information, which is carried out during the HP approval process, as described in paragraph 17 above.
20. The Commissioner asked the Department, to determine whether it physically held the requested information, what searches it had undertaken to locate the same. The Department's replies are given in paragraphs 21 and 22 below.
21. Whilst this information is not reported to the Department, checks were carried out on the Department's electronic document and records management system (HPRM) to verify that none of the information within the scope of the request was held. None of the information requested was found. The Department's Health Assessment Advisory Team (HAA Team) were also consulted - they confirmed that this information was not held within their records.
22. A search of the Department's electronic document control system was carried out. This system stores both documents and e-mails. The following search terms were used:
 - Approval-related audit
 - Approval audit
 - Capita Audit
 - PIP Audit report
23. The Commissioner accepts that the Department has taken reasonable steps to determine whether it physically holds the requested information and that these steps did not locate the said information. The contract agreement between the Department and Capita clearly states that the requested information was to be generated by Capita and there appears to be no term that the information was to be automatically supplied to the Department. The Commissioner is therefore satisfied that the Department, as it maintains, does not physically hold the requested information.
24. The Commissioner therefore has to reach a decision whether Capita holds the requested information and, if it does, does it hold it on behalf of the Department by virtue section 3(2)(b). This will be done on the civil standard of on the balance of probabilities.

25. The Commissioner considers that where information is held by a third party as a result of a contractual arrangement, the provisions of the contract may indicate whether or not the information is held on behalf of the public authority. However, it is necessary to take account of all the circumstances of the case and consider whether there is an appropriate connection between the information and the public authority.
26. The Commissioner asked the Department to explain why the term in appendix 3 did not mean that Capita held the requested information on its behalf.
27. The Department submitted in reply that the clause is a contractual arrangement between the Department and Capita to ensure access to information which cannot be obtained through its IT systems. It is clear that it was intended only to be used in these particular circumstances and subject to limitations in that the request must be 'reasonable' and used infrequently 'from time to time'. It clearly was not intended to provide an unfettered right of access to Capita's internal documentation using the Department as a conduit.
28. The Department does not consider that a request for the information within the scope of this FOI request should be considered 'reasonable' as it is for information:
 - which was not created for Departmental business reasons;
 - is not gathered or required by the Department to meet a business requirement; and
 - would require additional work by the Department to provide an explanation of the materials context to enable the requester to correctly interpret it to be used in these particular circumstances and subject to limitations in that the request must be 'reasonable' and used infrequently 'from time to time'. It clearly was not intended to provide an unfettered right of access to Capita's internal documentation using the Department as a conduit.
29. When looking at a contract to establish whether information is held on behalf of the authority, it is necessary to establish the scope of any clauses dealing with access to information. They may give the authority access to certain specified information, or give the authority a more general right to access information in order to monitor the contractor's performance. In a case involving a 'general' right of access the Commissioner would consider whether the information requested is information that the authority would need to see in order to monitor performance.
30. On the facts of this matter the Commissioner view is that the requested information relates to the monitoring of a function – medical

assessments for the determination of eligibility for state benefits - contractually devolved from the Department to Capita.

31. The Commissioner considers that the closer the outsourced service is to the public authority's core functions, the more likely it is that information about that service is held on behalf of the authority. In this case the medical assessments are a core function of the Department. The relevant core function being the assessment of eligibility of state benefits.
32. The Commissioner is also of the view that a request from the Department to Capita to, under the terms of their agreement, provide the complainant requested information would not be an unreasonable one. The reason for this it relates to the provision of a function (medical assessments for social security benefits) that the Department has contractually devolved to Capita.
33. Due to the reasons give above the Commissioner has decided that the Department could make a "reasonable request" for the Approval - related Audit reports and Capita would be contractually bound to comply. Accordingly the Commissioner's decision is that section 3(2) operates so that the requested information is held by Capita on behalf of the public authority. The Commissioner therefore directs the Department provides the complainant with the requested information or, in the alternative, a refusal notice explaining why it will not provide the requested information.

Right of appeal

34. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

35. 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.

36. 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

**Gerrard Tracey
Principal Advisor
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**