

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2023

Public Authority: Advisory, Conciliation and Arbitration Service (ACAS)

Address: Windsor House
50 Victoria Street
Westminster
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant requested information about meetings regarding the creative industries. ACAS initially stated that the information requested was exempt under section 44 (prohibitions on disclosure). During the course of the Commissioner's investigation ACAS confirmed that it did not hold any information falling within the scope of the request. The Commissioner's decision is that, on the civil standard of the balance of probabilities, ACAS holds no recorded information within the scope of the request. The Commissioner has also determined that the information is not held on behalf of ACAS by a third party. The Commissioner does not require any steps to be taken.

Request and response

2. On 21 March 2023 the complainant wrote to ACAS and requested information in the following terms:

"Please send all transcripts or other similar records of the roundtable meetings regarding the creative industries to me. This is a process in which Creative UK have led me to believe ACAS took part. To help you by being more specific, I understand that these 'roundtable' meetings seem to have been facilitated by the

DCMS and chaired by the Creative Industries Federation and the substance was in large part about the setting up of a new regulator, the Creative Industries Independent Standards Authority (CIISA)".

3. ACAS responded on 5 April 2023 and stated that it considered section 44 of the FOIA to apply to the request as ACAS was "prohibited from disclosing information relating to a worker, trade union or employer in the provision of its services under 251B Trade Union and Labour Relations (Consolidation) Act 1992 (ACAS etc)".
4. On 6 April 2023 the complainant requested an internal review of the handling of their request. They asked that ACAS consider redacting any information which was considered exempt and disclosing the remaining information held.
5. ACAS provided the outcome of its internal review on 11 April 2023 and upheld its initial response. ACAS also stated that "I can further confirm that there are no documents to provide, having spoken to the representative who attended on Acas' behalf".

Scope of the case

6. The complainant contacted the Commissioner on 24 April 2023 to complain about the way their request for information had been handled.
7. During the course of the Commissioner's investigation, ACAS confirmed that its position was that it did not hold any information relevant to the request.
8. The scope of the Commissioner's investigation is to determine whether, on the balance of probabilities, ACAS holds any information within the scope of the request.

Reasons for decision

Section 1 – general right of access

Section 3 – information held by or on behalf of a public authority

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.

10. Section 3(2) sets out the criteria for establishing if information is held for the purposes of the FOIA:

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

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(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."

11. The issue for the Commissioner to determine is whether ACAS holds the requested information and, if not, whether it is held by another person on its behalf.

ACAS' position

12. The request in this case relates to meetings regarding the creation of Creative Industries Independent Standards Authority (CIISA). According to evidence which the Founder and Interim Chair of CIISA provided to Parliament¹:

"CIISA as a new independent body will give clear advice on how to create better workplace culture across the creative industries, to create capability to tackle and prevent these challenging issues, to triage concerns to the right place and investigate when the most serious behaviours of harm are reported.

CIISA will also carefully track data and trends, offering insight to the creative industries but also being able to demonstrate how it is meeting its long term aims of improving and professionalising cultural norms of behaviour. In tandem advocating for important strides forward on achieving inclusivity, such as advocating for the Black Lives in Music Anti Racism Code. CIISA will work in closely in partnership with unions, support lines, the criminal justice system and statutory provisions within the law and not duplicate existing routes of resolution, it is misrepresentation of CIISA to suggest otherwise".

¹ https://www.google.co.uk/_url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewiAv9rSy_LAhUZhv0HHTdmBeYQFnoECA4QAw&url=https%3A%2F%2Fcommittees.parliament.uk%2Fwrittenevidence%2F121152%2Fdefault%2F%23%3A~%3Atext%3DCIISA%2520as%2520a%2520new%2520independent%2Cbehaviours%2520of%2520harm%2520are%2520reported.&usq=AOvVaw0tCZLnf4cQ98X7liDqo5t_&opi=89978449

13. ACAS advised that meetings held to discuss the creation of CIISA were chaired by the Creative Industries Federation and facilitated by the Department of Culture, Media and Sport (DCMS) (now Department for Science, Innovation and Technology (DSIT)). ACAS confirmed to the Commissioner that its role in the meetings held about the creation of CIISA was "as an observer and advisory capacity to determine whether there are any interests pertinent to employment law". Whilst ACAS is aware that meetings of the working group have taken place, it advised that it was not involved in early meetings of the group.
14. ACAS confirmed that Creative UK are, in effect, a customer of ACAS. In light of this, in its initial response, ACAS applied section 44 of the FOIA, by virtue of section 251B of the Trade Union and Labour relations Act 1992. However, at the time of its internal review, ACAS carried out additional investigations and established that no recorded information falling within the scope of the request was held. In light of its role in the working group, as described above, ACAS does not consider that information is held by a third party (for example DSIT or Creative UK) on its behalf in accordance with section 3(2)(b) of the FOIA.
15. In terms of searches conducted to establish information held relevant to the request, ACAS confirmed that enquiries were made with the relevant officer who was responsible for the matter. They confirmed that no recorded information falling within the scope of the request was held. As this key official would have been the person who attended any roundtable meetings they would have been aware of any relevant information.
16. ACAS advised that any information held would have been held in electronic format. The official in question conducted searches on their personal computer and no relevant information was identified. ACAS confirmed that no information relevant to the request had been deleted or destroyed.

The complainant's position

17. The complainant advised the Commissioner that they had made a similar request to DSIT who confirmed that it holds the information requested, but it considers that the information is held on behalf of a third party – the working group. As the complainant considers ACAS to be a member of the working group they consider that ACAS are "joint owners" of any transcripts/minutes of meetings of the working group. The Commissioner is investigating a separate complaint regarding this request for information.

The Commissioner's position

18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
19. The Commissioner is satisfied that ACAS approached relevant staff and made appropriate and proportionate searches to identify relevant information.
20. Previous Tribunal judgments have confirmed that the question of whether information is held by another person on behalf of the authority is not simply determined by who owns the information, whether there are exclusive rights to the information or whether there is a legal basis for holding the information. It is a question of fact, to be determined on the evidence and the circumstances of the case.
21. The Commissioner is aware of a number of circumstances in which it is generally accepted that information is held by another person on behalf of a public authority. These include situations where there is a contractual arrangement and where public authorities are working in partnership arrangements. The Commissioner does not consider any of these situations to be the case here. The Commissioner notes that ACAS' role in the roundtable discussions was in an advisory capacity only and the relationship between ACAS and the working group suggests that it does not have any control over the information. The Commissioner considers this key to his decision because 'another person' is only considered to hold information on behalf of a public authority where the public authority is able to access or has a degree of control over the information.
22. Based on the searches undertaken and the other representations provided the Commissioner is satisfied that, on the balance of probabilities, ACAS does not hold the requested information itself, and it is not held by a third party, for example DSIT or Creative UK on behalf of ACAS.

Right of appeal

23. 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

24. 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.
25. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF