

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2024

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

Decision (including any steps ordered)

1. The complainant has requested a copy of the operating procedures and guidelines for Independent Case Examiners ('ICE') from the Department for Work and Pensions (DWP). DWP referred the complainant to publicly available information in accordance with section 21 of FOIA, which it confirmed was the only information held within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold any additional information within the scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 5 March 2024, the complainant wrote to the Department for Work and Pensions (DWP) and requested information in the following terms:
"Please provide the current operating procedures and guidelines which govern how ICE investigates. What they can investigate and how they should investigate and agree on elements of the complaint."

5. DWP responded on 26 March 2024. It provided some of the requested information and advised the remaining was exempt under section 21, as it was reasonably accessible to the complainant.
6. Following an internal review DWP wrote to the complainant on 15 April 2024. It stated that it did not hold some of the specific information requested.

Scope of the case

7. The complainant contacted the Commissioner on 15 April 2024 to complain about the way their request for information had been handled.
8. The complainant was specifically concerned that DWP did not hold operating guidelines and procedures for ICE investigations. The complainant advised that the information provided under section 21 wasn't the information requested and that they were specifically interested in DWP's "internal policy/guidelines/procedure".
9. Based on the above, the Commissioner considers that the scope of his investigation is to consider, on the balance of probabilities, whether DWP at the time of the request, held any additional information within the scope of the request.

Reasons for decision

10. Section 1(1) of FOIA 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 sections or exemptions that may apply. A public authority is not obliged under FOIA 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, following the lead of a number of First-Tier Tribunal decisions, applies the civil standard of proof – ie on the balance of probabilities.
12. In the specific circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, DWP holds recorded information that falls within the scope of the request.

13. The complainant was concerned that DWP did not have any operational guidance or procedures as they consider that this is usually a standard practice within a government organisation.
14. DWP advised the Commissioner that, at the time of the request, it did not hold a document which outlined operating instructions which outlined what or how ICE could investigate. This was due to a period of transformation, which led to multiple pilots being undertaken.
15. DWP informed the Commissioner that it had held a series of workshops and pilot groups to discuss changes in practice within the department. It advised that these changes were verbally agreed upon in these group workshops, with updates also being applied to DWP's internal Microsoft team's folder (which is referred to internally as the bulletin board). DWP confirmed that there were no meeting minutes taken at these group workshops.
16. DWP explained that once the pilots in question had concluded, obsolete instructions had been deleted from the bulletin board to prevent any colleagues following incorrect procedures. It explained that, at the time of the request, there were no written procedures in place, nor were there any records or copies of the obsolete instructions which had been deleted.
17. DWP explained that in order to confirm no further information was held, it had conducted a search of the bulletin board for 'Procedures/Instructions'. It informed the Commissioner that if any information was held, this is the only place where information would be located. DWP confirmed that the searches conducted only located the information which had already been disclosed to the complainant.
18. The Commissioner has reviewed the DWP position and whilst he notes the complainant's concerns and the expectation that a government organisation would hold operating guidance, his role is only determine what is held by DWP, not what should be held.
19. Based on the information provided by DWP, the Commissioner is satisfied that the search terms used by DWP would have located any information within the scope of the request. He is also satisfied that searching the internal bulletin board would be the most appropriate location for the requested information.
20. The Commissioner has therefore determined that, on the balance of probabilities, DWP did not hold any additional information within the scope of the request.

Other matters

21. The DWP advised the Commissioner that on 17 July 2024, it introduced a new standardised operating model which it advised could be provided in a new request for information from the complainant.

Right of appeal

22. 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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
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