

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 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 information regarding any communications between the Department for Work and Pensions (DWP) and the Daily Telegraph.
2. DWP provided some information falling within the scope of the request. The complainant disputed that DWP had located all of the information held.
3. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold further information to that already provided.
4. The Commissioner does not require DWP to take any steps.

Request and response

5. On 13 July 2023, the complainant wrote to DWP and requested information in the following terms:

"Please treat this as a request for information under the Freedom of Information Act. Please provide details of all meetings, correspondence and phone and other calls between DWP ministers/special advisers and staff of the Daily Telegraph in the last three months".
6. DWP provided its original response on 11 August 2023 and refused to comply with the request on the basis of section 14(1), vexatious requests.
7. Following an investigation, the Commissioner issued a decision notice on 27 February 2024 finding that the request was not vexatious and ordering DWP to issue a fresh response which did not rely on section 14(1)¹.
8. DWP issued this revised response on 2 April 2024. DWP confirmed that it held information falling within the scope of the request and provided a copy of an invite to an event with the opportunity for a 5 minute one to one interview with a minister afterwards. DWP confirmed that personal data had been redacted on the basis of section 40(2). DWP also confirmed that the then Secretary of State for Work and Pensions was interviewed by Christopher Hope for 'Chopper's Politics Podcast', the Telegraph's weekly politics podcast. DWP explained that the interview took place on 1 June 2023 and was broadcast shortly after.
9. DWP upheld this position at internal review.

Scope of the case

10. The complainant contacted the Commissioner on 2 May 2024 to complain about the way their request for information had been handled. Specifically, they disputed that DWP had located all of the information falling within the scope of the request. They did not dispute DWP's use of section 40(2) to redact the information provided.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4028746/ico-257131-14v8.pdf>

11. The Commissioner therefore considers that the scope of his investigation is to determine whether, on the balance of probabilities, DWP holds further information falling within the scope of this request.

Reasons for decision

12. 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 falling within the scope of the request and, if so, to have that information communicated to them. This is subject to any procedural sections or exemptions that apply. A public authority is not obliged under FOIA to create new information in order to answer a request.
13. Where there is a dispute between the information located by a public authority and the information a complainant believes is held, the Commissioner follows the lead of a number of First-Tier Tribunal decisions and applies the civil standard of proof – ie on the balance of probabilities.
14. For clarity, the Commissioner is not expected to decide categorically whether information is held; he is only required to make a judgement on the civil standard of the balance of probabilities. That is, whether it is more likely than not that DWP holds further information.
15. DWP explained that on receipt of the Commissioner's decision notice dated 27 February 2024, it conducted a full search of all information. DWP set out that all Ministerial Offices and the Special Advisers' Office searched for correspondence, emails and meetings electronically for the period specified. DWP explained that the search was extended to the Press Office and the Correspondence Unit, who were asked to check for any information.
16. DWP explained that Government policy communicated on non-corporate communication channels, such as WhatsApp, private email and SMS, should be captured into Government systems to support accountability. DWP confirmed that it had no record of non-corporate communications with the Daily Telegraph registered by either Ministers or Special Advisers.
17. DWP also confirmed that Ministers and Special Advisers were asked to check non-corporate communication channels for any information within scope of the request which was held but not registered and all confirmed that there was no information to register.

18. DWP confirmed that it repeated these searches upon receiving the complainant's request for internal review.
19. DWP explained that searches were made across the most frequently used communications channels in the department, this being email and diaries.
20. DWP confirmed that these searches were limited to the three month period, were specific to any contact with staff of the Daily Telegraph and multiple teams and offices were involved in the search to ensure all possible methods of search (including mailboxes, calendars, correspondence, emails etc) were exhausted.
21. DWP stated that it was satisfied that it had made a thorough and targeted search, and if any information was held it was confident this would have been found through Outlook searches.
22. DWP confirmed that its searches included calendar entries for all Ministers and Special Advisers and these checks were manually conducted by each Special Adviser and Minister's Private Offices. DWP explained that all calendar entries are stored in shared Ministerial or Special Adviser mailboxes as a central record, with individual Ministers' and Special Advisers' individual calendars copied into invites. DWP confirmed that searches were conducted across both shared mailboxes, and individual calendars for thoroughness.
23. With regards to the podcast referred to in DWP's revised response, DWP explained that there is limited information held regarding the podcast as this was a political appearance and DWP would not, therefore, hold any information about this as it is not departmental business. DWP set out that the Civil Service has a duty to impartiality and political neutrality and would not hold any information that is political beyond the event occurring for diary management purposes.
24. DWP explained that it had included this in its response to the complainant as a courtesy as it felt it was within the spirit of the request.

The Commissioner's position

25. On the basis of DWP's explanations, the Commissioner is satisfied that, on the balance of probabilities, DWP does not hold any further information to that previously provided.

26. The Commissioner's guidance on 'Determining whether information is held'² states:

"We don't expect you to search all of your filing cabinets or computers before determining that you don't hold information. However, you should search those areas where it is reasonable to expect that you would find the information (if it existed). The broader the request, the more areas you are likely to need to search".

27. The Commissioner understands why the complainant would believe that DWP would hold further information given the concerns they raised in the previous case IC-257131-L4V8. However, the Commissioner is satisfied that DWP has undertaken proportionate and adequate searches and, on the balance of probabilities, no further information is held falling within the scope of the request.

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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