

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 December 2020

Public Authority: Department of Health and Social Care
Address: 39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant requested from the Department of Health and Social Care ("the DHSC") information relating to the "Clap For Our Carers" campaign. The DHSC stated that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the DHSC did not hold the requested information.
3. The Commissioner does not require the DHSC to take any steps as a result of this notice.

Request and response

4. On 29 May 2020, the complainant wrote to the DHSC and requested information in the following terms:

"I would like to make two requests for information under the Freedom of Information Act."

- 1. I would like to request full copies of all documents relating to the Department of Health and Social Care's involvement with the creation of the campaign known as Clap For Our Carers.*
- 2. I would like to request full copies of all documents relating to any Department of Health and Social Care contract with a company, Objective Partners, concerning the campaign known as Clap For Our Carers."*
5. The DHSC responded on 24 June 2020. It stated that it did not hold the requested information. It explained that the DHSC was not involved in the creation of the "Clap For Our Carers" campaign and that the DHSC had no contracts with "Objective Partners".
6. The complainant requested an internal review on the same day. Following an internal review the DHSC wrote to the complainant on 17 July 2020. It maintained its original position and stated that no information was held.

Scope of the case

7. The complainant contacted the Commissioner on 28 July 2020 to complain about the way his request for information had been handled.
8. The scope of this case and the following analysis is to consider whether, on the balance of probabilities, the DHSC held the requested information.

Reasons for decision

Section 1 – general right of access to information held by public authorities

9. Section 1(1) of the FOIA states 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."*
10. 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. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

11. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The complainant's position

12. The complainant stated that prior experience with the DHSC regarding a separate information request has led him to question the accuracy of the response to the request in question here.
13. The complainant has also stated, *"the Home Office told me, in response to an FOI request concerning Clap for Our Carers, that it held no such information because 'it was a Department of Health and Social Care campaign'. The Cabinet Office indicated that it was a DHSC campaign."*
14. As part of his internal review request, the complainant argued:
 - *"Other reliable sources have told me that they are certain that the DHSC holds the information I am seeking, including a copy of the contract that I have requested."*
 - *"The Freedom of Information Act covers WhatsApp messages, which we know a number of officials have taken to using in preference to emails."*
15. As supporting evidence, the complainant has provided a copy of a response issued to him regarding a similar information request that he submitted to the Home Office. This request was submitted on 29 May 2020 and stated:

"1. I would like to request full copies of all documents relating to the Home Office's involvement with the creation of the campaign known as Clap For Our Carers.

2. I would like to request full copies of all documents relating to any Home Office contract with a company, Objective Partners, concerning the campaign known as Clap For Our Carers."
16. The Home Office's response explained, *"the Home Office does not hold the information which you have requested. Clap for our Carers is a Department for Health and Social Care campaign."*

The DHSC's position

17. In response to the Commissioner's investigation, the DHSC's FOI department detailed the service pressures that it is experiencing due to the impact of Covid-19. However, the DHSC confirmed that this case was thoroughly investigated at the internal review stage and that an explanation was provided to the requester.
18. When responding to the Commissioner, the DHSC stated that it would maintain that the requested information was not held.

The Commissioner's view

19. The Commissioner notes the complainant's argument that the DHSC holds this information is because of the response he has received from the Home Office. However, the Home Office's, or Cabinet Office's, response to any separate information request do not prove that the DHSC would necessarily hold the requested information. In fact, while the Home Office have stated that this was a DHSC campaign, it is the Commissioner's understanding that the "Clap For Our Carers" campaign was created by an individual and not the DHSC.¹ The complainant has not submitted any evidence he holds to suggest this was a DHSC campaign.
20. Therefore, as this campaign was not created by the DHSC and neither is the Commissioner aware of any evidence suggesting DHSC involvement in this campaign, the Commissioner considers it unlikely that the DHSC would hold any information falling within the scope of the complainant's information request.
21. In view of this the Commissioner considers there is no merit in asking the DHSC to respond to the usual held / not held questions as this would not change its fundamental position.
22. Therefore, the Commissioner's view is that, on the balance of probabilities, the DHSC does not hold the requested information.

¹ <https://clapforourcarers.co.uk/>

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: 0300 1234504

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

Ben Tomes
Team Manager
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