

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 22 March 2021

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Complainant: Mr Owen Stevens

Address: ostevens@cpag.org.uk

Decision (including any steps ordered)

1. The complainant requested information relating to a review of safeguarding procedures. The Department for Work and Pensions (DWP) asserted that the requested information is not held.
2. The Commissioner's decision is that, on the balance of probabilities, DWP does hold the requested information and has failed to fully consider and respond to the request in accordance with section 1(1). In failing to comply with section 1(1), DWP has breached section 10(1).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the request that does not deny that the information is held AND then either disclose the information or issue a refusal notice citing a reason to withhold the 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.

Request and response

5. On 24 January 2020, the complainant wrote to DWP and requested information in the following terms:

"This FOI refers to reporting here:

<http://www.disabilitynewsservice.com/the-death-of-errol-graham-man-starved-to-death-after-dwp-wrongly-stopped-his-benefits/>

The story reports various comments by an assistant coroner, including the following:

The assistant coroner said: "There simply is not sufficient evidence as to how he was functioning, however, it is likely that his mental health was poor at this time - he does not appear to be having contact with other people, and he did not seek help from his GP or support agencies as he had done previously."

[...]

But she decided not to write a regulation 28 report demanding changes to DWP's safeguarding procedures to "prevent future deaths" because the department insisted that it was already completing a review of its safeguarding, which was supposed to finish last autumn.

Please send me:

- a) The terms of reference or any similar document setting out the scope of the review referred to in that news story
 - b) The results of the review referred to in that news story."
6. On 20 February 2020, DWP provided its response. DWP stated that it would be required to create new information in order to answer the request and it was not obliged to do so under the Act. DWP stated that it held no recorded information to answer the request.
7. Outside of the Act, DWP explained that in response to the first request, officials conducted case research, considered coroners' reports and engaged through local networks in DWP Operations.
8. In response to the second request, again outside of the Act, DWP explained that there is no formal commission to publish a review. DWP explained that the purpose of the work was to identify areas where more could be done to build on the support DWP currently provides to vulnerable claimants.

9. On 20 February 2020, the complainant requested an internal review of the handling of his request for information. He explained that DWP's statement "there is no formal commission to publish a review" was unclear and it was not apparent how there could be no results which could be provided. The complainant stated that if the purpose of the review was to identify areas where more could be done to build on the support DWP provides to vulnerable claimants, DWP should provide any documents which indicate what areas were identified.
10. DWP provided the outcome of its review on 17 March 2020. DWP confirmed that it was satisfied that the original response was handled properly and that the outcome was correct. DWP again confirmed that no information was held falling within the scope of the requests.
11. DWP explained that the statement "there is no formal commission to publish a review" was intended to explain that this review was undertaken without formal terms of reference or a consolidated report at a specific date, but has instead identified various areas of work which are being taken forward to ensure that vulnerable claimants are supported. DWP explained that this work is ongoing and part of its improvement efforts.
12. DWP provided, outside of the Act, a list of areas that had been identified to work on to ensure that it offers safety and support to vulnerable people.

Scope of the case

13. The complainant contacted the Commissioner on 19 March 2020 to complain about the way his request for information was handled.
14. The Commissioner considers that the focus of her investigation is to determine whether DWP holds information falling within the scope of the complainant's request.

Reasons for decision

Section 1(1): General right of access to information

15. Section 1(1) of the Act 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 to create new information in order to answer a request.

16. Where there is a dispute between the information located by a public authority and the information the complainant believes should be held, the Commissioner follows the lead of a number of First-Tier Tribunal decisions in applying the civil standard of the balance of probabilities.
17. In the 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.

DWP's position

18. DWP confirmed that it does not hold single formal documents or other documents for the terms of reference of the review.
19. DWP explained that the information in its response was an illustration reflecting the many ongoing conversations and discussions taking place across the Department as it continues to develop its approach to improving safeguarding measures to support vulnerable claimants. DWP confirmed that the explanation in its original response was provided on the basis that it believed it would assist the requestor and was based on considered reflections rather than reference to a specific report or documents.
20. DWP acknowledged the Commissioner's comments¹ that the request was for the "terms of reference or any similar document setting out the scope of the review" and that the request is not restricted to only a formal terms of reference document, rather it is for any information setting out the scope of the review. DWP again stated that it does not hold this information or any similar document setting out the scope of the review.
21. DWP clarified that the reference to review in this context represents the ongoing discussions taking place within the Department to develop its approach to improving safeguarding measures to support vulnerable claimants. DWP explained that the "review" is not a formal review whereby a terms of reference, scoping paper or plan were created or used. DWP explained that it is a term used when DWP is internally examining how DWP supports vulnerable claimants, but there is not a formal review that will lead to a published report.

¹ In her letter to DWP requesting its submissions

22. DWP explained that its reference to reviewers in this context means representatives from across DWP who are essentially internal stakeholders, who participated in conversations to help identify areas for improvement and to give their perspective and experiences.
23. The Commissioner requested further submissions from DWP, in particular regarding news articles which stated that the review was led by Mr David Carew and was due to be reported on by Autumn 2019.
24. DWP confirmed that Mr Carew had confirmed, by way of a witness statement dated 3 June 2019, that he was "leading a review of the safeguarding policy and procedures that will help to ensure the welfare and well-being of vulnerable adults who access DWP services". DWP stated that this was also confirmed, in oral evidence, to the inquest on 7 June 2019.
25. DWP explained that the review was not a finite project but work to inform the development of the Department's approach. DWP stated that the work referred to as the safeguarding review is an ongoing and continuous piece of work. DWP explained that it is an effort to draw together the varied and broad interests in the organisation to consider the need to develop and improve its efforts to ensure an effective response when claimants may need additional support including input from other organisations.
26. DWP explained that the time scale provided by Mr Carew at the inquest was therefore indicative. DWP explained that it was estimated that reasonable progress would be made within that time scale but also recognised that there would be further work required by the Department to address the needs identified through the discussions with stakeholders.
27. DWP explained that internal stakeholder group discussions took place to consider the issues to address in future policy and guidance and to discuss issues that might be going on in a specific business delivery or policy area. DWP explained that a wide range of evidence would be used to inform these discussions, including findings from internal process reviews.
28. DWP explained that at the beginning there was no dedicated business unit responsible for this work. DWP explained that this was subsequently recognised and introduced at a later stage in December 2019. DWP explained that for this reason, there are very limited records from these discussions other than some handwritten notes. DWP explained that the focus was on drafting the policy document as a record of the conversations given the limited resources available at that time, which has since been addressed.

29. DWP explained that no formal terms of reference were provided to the internal stakeholder group involved in the discussions. DWP explained that the internal stakeholder groups did not have formal review roles but instead participated in conversations to help identify areas for improvement and to give their perspective and experiences.
30. DWP stated:

“On account of the fact that there were no formal terms of reference, the Department does not hold this information or any similar document setting out the scope of the review. Any emails or other recorded information regarding the scope of the internal discussions are withheld under the s.35 (formulation of government policy) exemption”.
31. The Commissioner raised with DWP that in its original response it stated that the purpose of the work was to identify areas where more could be done to build on the support DWP currently provides to vulnerable claimants and that at internal review it stated that various areas of work had been identified and provided a list of areas that had been identified, albeit outside of the Act.
32. The Commissioner set out that it was not apparent why these identified areas do not comprise the results of the review in light of DWP’s explanation that the purpose of the review was to identify areas where more could be done to support claimants.
33. DWP explained that it is continually working to provide support to vulnerable claimants and as part of the work done in the course of the review, regular discussions were held with internal stakeholders (ie people from different business and policy areas within DWP). DWP explained that the purpose of these discussions was to work on the development of a DWP-wide safeguarding policy and guidance document, and to discuss issues that were affecting specific business delivery and policy areas.
34. DWP explained that whilst these discussions did identify areas of work that could be taken forward to ensure vulnerable claimants are supported, it became more apparent that the department required infrastructure for better delivery to support the implementation of any changes to policy or guidance. DWP explained that, as a result, the work has now moved across to the recently formed Customer Experience Directorate within the Department.
35. DWP explained that the Customer Experience Directorate was created to coordinate policy development, guidance and learning, as well as monitoring the implementation of change. DWP explained that through this Directorate, the Department is examining how it listens and learns

as an organisation - using customer experiences, insight and data to improve the service it offers to its customers. DWP explained that this is part of a new wider approach to identify vulnerable people, learn lessons and make improvements.

36. The Commissioner asked DWP to confirm whether the outcomes of the ongoing discussions were recorded and why DWP does not consider these outcomes fall within the scope of the request for the results of the review. DWP responded and stated only:

“As set out in the responses to B & C² there is no formal outcome document as yet from the review”.

37. The Commissioner asked DWP how, if it does not hold the requested information, its records management was in accordance with the section 46 Code of Practice³. DWP’s response was as follows:

“The purpose of the work was to produce a safeguarding policy and guidance framework. This document is in draft and is therefore exempt from release under s35 (formulation of government policy). This document constitutes a record of the activities, but was completed in the early stages, before the Department took the decision to establish a dedicated resource to take this work forward”.

38. The Commissioner asked DWP to confirm what DWP’s formal records management policy says about the creation, retention and deletion of records of this type. DWP explained that its information management policy sets out that all staff have a responsibility to keep records of the decisions they make and the advice they give in the course of their work. DWP confirmed that this includes correctly managing information that is classed as a corporate record.

39. DWP confirmed that changes to departmental policies and procedures, including background information, would be expected to be retained to evidence its development work in line with the information management policy and the requirements of the Public Records Act.

40. The Commissioner asked DWP whether there is a business purpose for which the requested information should be held and if so why DWP had decided not to hold this information.

² The Commissioner’s questions

³ <https://www.nationalarchives.gov.uk/information-management/manage-information/planning/records-management-code/>

41. DWP explained that the primary purpose of the work undertaken was to enhance policy and guidance to strengthen the support for vulnerable claimants. DWP stated that it did not create terms of reference because the work evolved in recognition of a need to consider what more could be done to enhance its approach to safeguarding. DWP explained that, at the time, it did not have a formal commission or a commitment to publish the findings of the review. DWP explained that the piece of work relates to the established and continuing efforts to improve safeguards for claimants and so should be viewed as part of its programme of work that is now integrated into the work of its Customer Experience Directorate. DWP explained that this review work and related discussions will inform future policy and guidance development which is geared towards supporting vulnerable claimants.
42. DWP confirmed that it is legally required, under the Public Records Act to keep an accurate record of the administration of the Department and to ensure that these records are available for public scrutiny. DWP stated that, however, as the specific information requested regarding the terms of reference and the results of the review was a) not created and b) not yet completed this cannot be shared.

The Commissioner's position

43. With regards to the first request, as set out above, the Commissioner confirmed to DWP that as the request is for the terms of reference or any similar document setting out the scope of the review referred to in the linked news story, the information does not need to be held in a formal terms of reference document. Any information regarding the scope of the review is likely to fall within the scope of the request. DWP acknowledged this, however, it continued to refer to a formal terms of reference and stated that "emails or other recorded information regarding the scope of the internal discussions" are exempt under section 35.
44. The Commissioner notes that DWP confirmed that it considers the information held within emails and other recorded information regarding the scope engages section 35, however, this was in the context of submissions maintaining that no information is held. As set out above, this information falls within the scope of the request and the Commissioner therefore considers that, on the balance of probabilities, DWP does hold information falling within the scope of the first request and has failed to communicate this to the complainant.
45. With regards to request 2, the Commissioner notes that DWP's explanation of the purpose of the review differs in its submissions to her than it does in its response and internal review.

46. DWP states in its original response that the purpose of the review was to identify areas where more work could be done to support claimants. At internal review, DWP confirms that the review had identified various areas of work which are being taken forward. DWP also provided, outside of the Act, a list of areas that were identified.
47. Using the DWP's original explanation of the purpose of the review, and DWP's confirmation at internal review that the review had identified various areas, the Commissioner considers that, at the very least, these identified areas constitute the results of the specified review.
48. The Commissioner notes that DWP has also explained that it identified that further resources were needed to take the work further to develop policy and that as this policy is incomplete it does not hold the results of the work undertaken.
49. The Commissioner does not accept that the further work undertaken to develop DWP's policy and approach forms part of the original review. The introduction of further stages of work does not render the original review's outcomes incomplete. DWP confirmed in its submissions to the Commissioner that these discussions did identify areas of work and DWP confirmed in its original response that the purpose of the review was to identify areas of work. The Commissioner therefore considers that DWP did hold information regarding what areas of work had been identified by the date of the request.
50. The Commissioner therefore considers that, on the balance of probabilities, DWP does hold information falling within the scope of request 2, ie the areas of work where further support could be introduced that had been identified by the time of the request.
51. The Commissioner therefore considers that DWP has failed to fully consider the request and she requires it to provide a fresh response which does not deny that information is held and either provide the requested information or issue a refusal notice which complies with section 17.

Other matters

52. The Commissioner is disappointed with the quality of DWP's consideration of the request and its submissions during her investigation.
53. The Commissioner considers that DWP has the resources and expertise to fully understand that information does not need to be held in formal

documents or using specific terms in order to be held for the purposes of the Act.

54. DWP was provided with the opportunity to review and amend its position at internal review and twice during the Commissioner's investigation. DWP does not appear to have taken these opportunities to review its handling of the request afresh, instead it took a defensive position in which it attempted to explain why the information was not held despite having clearly identified that not only was it held but DWP considered it to be exempt from disclosure.
55. The Commissioner is mindful of the pressures placed upon DWP and its resources by the Covid-19 pandemic, however, she does not expect to have to issue a decision notice ordering steps on an issue that could have been resolved by a genuine review of DWP's position regarding one of the fundamental basics of the Act.
56. The Commissioner considers that the DWP FOI team has the experience and knowledge to ensure requests are handled correctly. She expects the wider DWP to use this resource, and her published guidance, to improve its request handling in the future. In particular, the Commissioner recommends that this resource is utilised when responding to this decision notice to ensure that the full scope of the request is identified and all information within this scope is considered.

Right of appeal

57. 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

58. 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.
59. 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



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