

Freedom of Information Act 2000

Decision notice

Date: 26 October 2015

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

Decision (including any steps ordered)

1. The complainant requested information relating to service charges for tenants in receipt of housing benefit. The Department for Work and Pensions (DWP) denied holding any relevant information.
2. The Commissioner's decision is that on the balance of probabilities the DWP is unlikely to hold any information relevant to the complainant's request.

Request and response

3. On 1 March 2015, the complainant wrote a letter to the DWP and requested information in the following terms:

"1. Can you confirm by providing documentation that the apparent levy of the percentage of RPI is acceptable to the DWP as being an eligible service charge?"

...

[items for replacement listed]

...

2. Are the proposed replacement items which leaseholders are obliged to reimburse the council for their renewal or repair or maintenance considered as an eligible service charge under the benefit regulations?"

4. The complainant did not receive a response so resent his request by email on 16 April 2015. The Commissioner has not seen any evidence that the initial request was received by the DWP and therefore does not have information to confirm a breach of section 10 of the Freedom of Information Act 2000 (the Act) by not responding within 20 working days following receipt of the request.
5. The DWP responded on 6 May 2015 as follows:
 1. Stated that it was the responsibility of landlords to set service charges. It also stated that should an individual consider a service charge to be unreasonable then they should apply to the First Tier Tribunal (Property Chamber) in England or the Leasehold Valuation Tribunal in Wales.
 2. Stated that service charges which are ineligible for housing benefit claims are included in regulation 11 of the Housing Benefit Regulations 2006.¹
6. The complainant requested an internal review for item 2 of his request. The DWP issued its review on 21 May 2015. It upheld the view that was stated in its response of 6 May 2015.

Scope of the case

7. The complainant contacted the Commissioner on 1 June 2015 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the case to be whether the DWP holds information relevant to item 2 of the complainant's request.

Reasons for decision

9. Section 1(1) of the Act states:

(1) Any person making a request for information to a public authority is entitled –

¹ <http://www.legislation.gov.uk/uksi/2006/213/regulation/11/made> see subsection (3)

(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 this case the complainant considers that the DWP holds information which is relevant to his request. If he is correct then the DWP will have breached section 1 of the Act because it has not confirmed in writing that the information is held and it has not communicated the information to the complainant.
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities.

Complainant's view

12. The complainant stated to the Commissioner that the DWP is responsible for determining what constitutes an ineligible service charge, so it follows that it should hold a list of what constitutes an eligible one. The DWP has confirmed to the Commissioner that it is the government department which owns legislation concerning housing benefit so does have a connection to the list of ineligible service charges in the Housing Benefit Regulations 2006.
13. He also argued that should the DWP become involved in a situation where it would need to show a landlord's service charge was ineligible under the terms of the Housing Benefit Regulations 2006, then it would need to be able to prove what an eligible service charge was. This would require the DWP to hold recorded information about what constitutes an eligible service charge.

DWP's position

14. The DWP argued that the reason it did not hold relevant information was because – whilst it was the government department which owned housing benefit legislation – the administration of housing benefit claims are the responsibility of local housing authorities. The DWP referred the Commissioner to the government's Housing Benefit and Council Tax Benefit guidance which confirmed that the Secretary of State for Work and Pensions issues a subsidy order to assist local authorities with the

cost of housing benefit.² From reading through the guidance the Commissioner is satisfied that the provision of housing benefit to claimants is administered through local authorities rather than the DWP.

15. The DWP confirmed that the determination of what constitutes an eligible service charge is not its responsibility. It repeated its assertion made to the complainant in its response of 6 May 2015 that the list of ineligible service charges is provided in the Housing Benefit Regulations 2006. The DWP also stated that it did not hold information about the specific items that the complainant had listed in his request.
16. The Commissioner enquired whether the DWP held guidance on the matter of this request. The DWP confirmed that it did and referred the Commissioner to where it could be found on its website.³ Having reviewed the guidance on eligible service charges the Commissioner cannot see anything which would indicate that the DWP should hold information relevant to the complainant's request.
17. The Commissioner asked whether the DWP would ever enter into discussions concerning service charges and the DWP confirmed that it would not. It stated these commercial discussions were the responsibility for the tenant, landlord and local authority. It also added:

"The responsibility lies with the claimant to provide all relevant documentation concerning their accommodation charges to the local authority so the local authority can calculate the eligible rent/service charge payments."
18. This strongly suggests it is unlikely that the DWP would become involved in discussions as suggested in the complainant's second argument (paragraph 13).

Commissioner's position

19. With respect to the complainant's arguments, the Commissioner does not agree. Firstly, whilst the DWP does own the legislation which covers ineligible service charges this does not guarantee that the DWP should

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236947/hbgm-a1-overview.pdf see section 1.200, page 138

3

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236953/hbgm-a4-eligible-rent.pdf see section 4.700, page 159

hold records on what are eligible service charges. The DWP does have an involvement in housing benefit which is connected to service charges – as evidenced by the subsidy order the DWP issues to local authorities to assist in the cost of housing benefit. However, the Commissioner accepts that it is not the responsibility of the DWP to administer housing benefit. Beyond the complainant's assertion that it would be reasonable for the DWP to hold the information, the Commissioner has not seen any evidence which suggests that it does. Based on this he considers it unlikely that the DWP holds information for the reason stated by the complainant.

20. Secondly, the complainant's additional argument is based on the assumption that the DWP would become involved in a situation where it would need to challenge a landlord's service charge. The Commissioner has read through the government's guidance on the subject and it is clear that services charges should be challenged first with the landlord and then referred to the relevant tribunal. There is no indication that the DWP is involved in this process or that it has any requirement to hold a list of eligible service charges. As the DWP has confirmed that it does not become involved in the commercial discussions between landlord and tenant the Commissioner considers it unlikely that the DWP would hold information of this nature.
21. The Commissioner's decision is that on the balance of probabilities it is unlikely that the DWP holds information relevant to the complainant's request. The DWP is not responsible for the administration of housing benefit or service charges and it appears to the Commissioner that the DWP has no reason to hold information within the scope of the request.
22. In the Commissioner's view of the request the complainant is asking for the DWP to make a judgement on the service charges in his circumstances. Were such information to be provided it is possible that this task would go beyond the amount of skill a public authority is required to deploy in order to respond to a request. The Act requires public authorities to provide recorded information it holds, and on occasion this might mean collating or summing information to provide it in a more usable format. It does not require a public authority to analyse the information it holds and create a response based on that analysis or make any kind of judgement which requires anything more than a basic amount of skill.
23. However, the Commissioner does not consider it likely that the requested information is held by the DWP. Regardless, the Commissioner considered it appropriate to make this clear for the complainant's benefit should he wish to make a similar request to his local housing authority.

Right of appeal

24. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

25. 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.
26. 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

Alexander Ganotis
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