

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2017

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested copies of emails sent from the email account of the Secretary of State for Work and Pensions.
2. The Department for Work and Pensions (DWP) denied holding information falling within the scope of the request.
3. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold information falling within the scope of the request. DWP is not required to take any remedial steps.

Request and response

4. On 26 October 2015, the complainant wrote to DWP and requested information in the following terms:
*"1) Can you please provide a csv-file of the folder for sent items from the email account of the Secretary of State for Work and Pensions?
2) Can you if possible include the date field?"*
5. DWP responded on 23 November 2015 and denied holding information falling within the scope of the request.
6. Following an internal review, DWP wrote to the complainant on 23 December 2015. The internal review maintained DWP's position of 23 November 2015.

Scope of the case

7. The Commissioner considers the scope of the case to be whether, on the balance of probabilities, DWP holds any information falling within the scope of the request.

Reasons for decision

8. Section 1 of the FOIA states that:

“(1) 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 the information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him”

9. In cases 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.
10. Furthermore, the Commissioner applies the civil burden of proof in order to determine whether a public authority holds any information which falls within the scope of a request (or was held at the time of the request).
11. In response to the Commissioner's request for a submission regarding this case, DWP set out that the Secretary of State's mailbox is empty because no emails have been sent from it.
12. DWP also cited decision notice FS50595166 which states within paragraphs 18 and 19:

“To manage email traffic effectively each Private Office uses a team email account. These mail boxes should capture all DWP emails received by Ministers or on their behalf. The mail boxes are managed on a day to day basis by a team of private secretaries on behalf of their respective ministers.

Response to these Ministerial communications are handled by the private secretaries and related sent emails will be retained in the personal email accounts of the Private office staff of those sending them.”

13. The complainant also cited FS50595166 as evidence the information requested is held. The complainant explained that this is a similar request which DWP refused to comply with citing section 12(1) as the cost of compliance would exceed the appropriate limit. The complainant considered that the application of 12(1) in FS50595166 meant that the response to his current request for information was "*false/inconsistent*".
14. The Commissioner does not accept the complainant's reasoning regarding this argument. The request in FS50595166 is for the emails sent and received by "*the Secretary of State for Work and Pensions (SSWP) or his office*" whereas the request being considered in this case is for the emails sent from the email account of the Secretary of State for Work and Pensions only.
15. DWP set out in FS50595166 that the emails received by the Secretary of State for Work and Pensions' email account are handled by his private office and it is the cost of compiling information from these emails that would exceed the appropriate limit.
16. The Commissioner notes that the above case has recently been heard by the First-Tier Tribunal and DWP's reliance on section 12(1) has been upheld. The Commissioner does not consider that the outcome of this appeal has any impact on her substantive finding in this case.
17. The complainant also provided an internal review of another request for information which he also considered proof that the DWP had provided false information.
18. It is not apparent to the Commissioner how this internal review is relevant to the case as it relates to a request for the email addresses for Directors of DWP who have responsibility for the final responses to complaints. The Secretary of State for Work and Pensions is not a Director of DWP and that request is clearly different to the request in this case. Therefore, the Commissioner does not consider that this internal review affects her substantive finding in this case.
19. The Commissioner has also had sight of a further request for similar information by the complainant to which DWP responded on 19 September 2016 stating:

"To manage the high volume of email traffic received by the Secretary of State's Private Office a dedicated email account is used to receive all emails destined for the Secretary of State. This email account is managed on a day-to-day basis by a team of six members of staff, including private secretaries, assistant private secretaries and diary managers on behalf of the Secretary of State.

Emails received into the Secretary of State email account are immediately moved to the respective private secretary's named folder within that account, depending on the subject matter of each email and the division of responsibilities between the members of staff in the private office.

Each of the six members of staff use their own work email accounts to send emails on behalf of the Secretary of State as well as for other DWP purposes and occasionally for personal use."

20. Having reviewed the complainant's arguments and the explanation of how the Secretary of State for Work and Pensions' emails are handled, the Commissioner's decision in this case is that, on the balance of probabilities, DWP does not hold information falling within the scope of the complainant's request.
21. The Commissioner does, however, find that DWP failed to provide adequate advice and assistance under section 16 of the FOIA.
22. The Commissioner considers that it would be entirely reasonable for a public authority to assume that a member of the public would not have a working knowledge of how a Minister's Private Office would handle emails sent to the Minister.
23. The Commissioner therefore considers that DWP could reasonably have provided the complainant with the explanation provided to her in case FS50595166, and to the complainant on 19 September 2016, at the time of its response to the request made earlier on 26 October 2015.
24. As the complainant has now been provided with an explanation in two decision notices and a further separate request, she does not require DWP to provide further advice and assistance.

Other matters

25. The Commissioner notes that in his request for an internal review in this case and others, the complainant appears to alter the interpretation of his request if the public authority is unable to comply.
26. The Commissioner acknowledges that the complainant is likely making an attempt to work with the public authority in order to obtain information useful to him. However, she would like to remind the complainant that an alteration of a request for information would in most cases constitute a fresh request for information and she would expect the public authority to treat it as such.

27. The Commissioner expects the complainant to refrain from creating situations where a public authority receives a refined request for information at the same time as a request for internal review of the original refusal notice. The Commissioner considers that expending resources conducting an internal review if the applicant is willing to refine or re-word their request is not an efficient use of a public authority's resources.
28. The Commissioner also notes that in the course of this investigation, she has had sight of three separate requests for copies of the Secretary of State for Work and Pensions' emails. DWP has refused all requests and has had its decision upheld by the Commissioner and the Tribunal in FS50595166, and also upheld by the Commissioner in this case. Therefore, the complainant should consider any further requests for similar information carefully as the public authority may be entitled to refuse to comply with such requests on the basis of section 14 of the FOIA (vexatious or repeated requests). The complainant should also be aware that the Commissioner has discretion to refuse to accept a complaint in reliance on section 50(2)(c) of the FOIA. It may be appropriate to consider this provision in the event further requests for similar information are made as she considers that the complainant is, by now, aware that such requests are not likely to result in disclosure of information.
29. The Commissioner would also like to remind DWP of its obligations to provide advice and assistance under section 16 of the FOIA. The Commissioner has noted a concerning increase in the number of refusal notices that state only that the information is not held or that DWP is relying on s12 of the FOIA. In these refusal notices, DWP does not provide the applicant with information or guidance on how to make a meaningful refined request. She also notes that subsequent internal reviews state only that it has upheld its own decision and, in the case of reliance on section 12, that the applicant has been informed that they could make a refined request.
30. As set out in paragraph 22 above, the Commissioner considers it unreasonable to assume that a member of the public would have the necessary working knowledge of a public authority's internal systems to on all occasions be able to narrow the scope of their request to meet the cost threshold or make a request that an authority is able to comply with without clarification. Therefore, in line with the requirement set out in section 16 and as a matter of good practice, the Commissioner expects a public authority to provide an applicant with information and guidance on why a request cannot be complied with in order that the applicant can then submit a meaningful fresh request to the public authority.

31. The Commissioner asks that, in future responses, DWP takes care to consider what advice and assistance would aid an applicant in making a meaningful request for information.

Right of appeal

32. 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@hmcts.gsi.gov.uk

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

33. 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.
34. 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

Terna Waya
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