

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2013

Public Authority: Department of Enterprise, Trade & Investment
Address: Netherleigh House
Massey Avenue
Belfast
BT4 2JP

Decision (including any steps ordered)

The complainant has requested information in relation to the application process for a position within the Department of Enterprise, Trade and Investment (DETI). The Commissioner's decision is that DETI has breached sections 1(1)(b) and 10(1) of FOIA as it did not provide the complainant with some of the information it held within the scope of her request within the statutory time limit as set out in FOIA. The Commissioner is satisfied that DETI holds no further information within the scope of the complainant's request and orders no steps to be taken in relation to the above breaches as the information was subsequently provided to the complainant.

Request and response

1. On 16 May 2012, the complainant wrote to HR Connect, which is the body responsible for shared HR services within the Northern Ireland Civil Service (NICS) and requested information in relation to a job application process. As the request was made up of a number of parts, it is set out in an annex to this Notice.
2. DETI acknowledged the complainant's correspondence on 31 May 2012. It stated that the correspondence had been passed to the FOI department of DETI on 21 May 2012 and that it would be dealt with shortly.
3. DETI responded to the complainant on 21 June 2012, providing information within the scope of the complainant's request and stating that it did not hold some of the requested information.

4. Following an internal review DETI wrote to the complainant on 8 November 2012. It stated that it had provided the complainant with all the information it held within the scope of her request, save for some of the points in her request, namely those numbered 18 to 20. It provided information in relation to those points under cover of its internal review response.
5. Following a complaint to him, the Commissioner wrote to DETI on 31 January 2013.

Scope of the case

6. The complainant contacted the Commissioner on 9 November 2012 to complain about the way her request for information had been handled. She was of the view that DETI had not provided her with all of the information it held within the scope of her request.
7. The Commissioner has considered DETI's handling of the complainant's request.

Reasons for decision

Is the remaining requested information held by DETI?

8. Section 1(1) of 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."
9. The Commissioner asked DETI a number of detailed questions to determine what information it held that was relevant to the scope of the complainant's request.
10. In considering whether or not the information is held by DETI, the Commissioner is mindful of the Tribunal's decision in the case of *Bromley*

*v the Information Commissioner and the Environment Agency*¹ in which it was stated that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records". The Tribunal clarified that it was applying the application of the balance of probabilities test, which required a number of factors to be considered, that is:

- The quality of the public authority's initial analysis of the request
- the scope of the search that it decided to make on the basis of that analysis and the thoroughness of the search that was then conducted; and
- the discovery of materials elsewhere whose existence or content point to the existence of further information

It was therefore clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities.

11. The Commissioner is also mindful of the case of *Ames v the Information Commissioner and the Cabinet Office*². In this case the complainant expected that the information would be held because it was extremely important, but the Tribunal concluded that it was not held. Therefore even where the public may reasonably expect that information should be held, this does not mean that it is held.
12. On 28 February 2013 DETI responded to the Commissioner's questions. It also explained that it did not hold any further information or documentation within the scope of the complainant's request other than two documents which it had identified as being "loosely" within the scope of points 11 and 12 of the complainant's request.
13. DETI explained that some of the complainant's questions could not be answered from information held by DETI, or on behalf of DETI. For example, DETI does not 'hold' or have access to individual HR records relating to staff from other Departments, or indeed to data on community background of its own staff (the latter is collected and held by the Department of Finance and Personnel (DFP) for all NICS staff). DETI, therefore, did not search its records for this type of information

¹ EA/2006/0072

² EA/2007/0110

but requested relevant data from DFP on the complainant's behalf. DETI also made the point that many of the other questions and queries raised by the complainant relate to general NICS policies and procedures, produced by DFP, which are readily accessible to the applicant, as they are to all NICS staff. This was explained in DETI's initial response and reinforced in the documents that accompanied it. Again it was not necessary to search DETI records for this type of information. Otherwise, information relevant to questions raised was recorded in the secure HR section of DETI's electronic records system, in an area set aside for that particular trawl competition. This system allows records to be sorted in date order so it was not difficult for DETI to identify all documents within the relevant timeframe – e.g. between initiation of the competition and completion of the shortlisting process.

14. DETI explained that any information within the scope of the complainant's request would be held electronically. It also explained that the relevant records are held on a discrete area of DETI's electronic records system, with access available only to HR staff and two system administrators. HR staff cannot however delete records – this can only be done for valid reasons by certain staff in DETI's Information Management Unit on receipt of a written request, and evidence of all such deletions is maintained in an electronic log. DETI informed the Commissioner that it can find no evidence to suggest that any relevant records have been deleted. DETI also provided the Commissioner with a copy of its Records Disposal Schedule.
15. The Commissioner has considered DETI's explanation of its search procedures and has concluded that these were thorough and that DETI took all reasonable steps to ascertain what recorded information, if any, it held which was relevant to the complainant's request.
16. The Commissioner had considered what information he would expect DETI to hold and whether there is any evidence that it was ever held. In doing so he has taken into account the responses DETI provided to his questions. The Commissioner is also mindful of the Tribunal decisions highlighted at paragraphs 10 to 11 above. The Commissioner considers that on the balance of probabilities DETI holds no further recorded information relevant to the scope of the complainant's request, other than the two documents already identified and subsequently provided to the complainant.

Procedural requirements

17. As DETI did not provide the two documents, which it later identified as being within the scope of the complainant's request, at the time of the request, the Commissioner considers that this is a breach of section 1(1)(b) of FOIA. DETI has also breached section 10(1) of FOIA as it did not provide the complainant with the documents within the statutory time limit of 20 working days as set out in that section.

Right of appeal

18. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. 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.
20. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX

Recruitment Process

1. When the trawl for this competition was drawn up how many Audit Managers were in post giving details by:
 - department;
 - gender (male/female);
 - religion (Protestant/Catholic);and
 - age group (20+, 30+, 40+, 50+).
2. If any SO Auditors had been deputised/temporary promoted to Audit Managers clearly highlight these posts in the above information and state the length of time at the higher grade.
3. From the results of this information are there any groups that were under represented at this grade? If so, why did the trawl not address this issue?

Deputising/Temporary Promotion

4. If there were SO Auditors that were deputised or temporary promoted to Audit Manager at anytime from February 2010 to 7 November 2011 please explain **why** when a temporary embargo was in place on recruitment and promotion.
5. In addition, if there was a valid reason for doing so then why were other SO Auditors from other departments not given the same opportunity?

Application Form and Process

6. The information requested in the application form was as follows:

Eligibility Criterion 2 states that "Applicants must, by the closing date for applications *have at least 2 years' post certification experience (from the date the BATS, GIAS or GIAC was awarded), within the last 5 years, of risk based audit approaches as laid down in the Government Internal Audit Standards)*". It also refers applicants to the following "Please provide specific employment evidence and relevant dates (month and year) in the box below so as to clearly demonstrate that you meet the required

experience". (**I would emphasise at this point that the information to be provided in this box was limited by the amount of characters to be used**).

In addition, the application states that "*Applicants should be aware that after an eligibility sift, should it be necessary to shortlist candidates to go forward to interview, the following short listing criterion will be used:*

Shortlisting Criterion 1 states that "*An assessment of the strength, depth and quality of the evidence provided against eligibility criterion 2*". A box is given below this criterion however it states that "*candidates are not required to provide any additional information in the box below and any information provided will not be considered by the panel. Please note that you will be unable to submit your application if the box below is left blank. In order to submit your application please insert N/A in the box below.*

7. This information was confusing. Firstly, how was **one** box used to complete two very different criteria?
8. Due to the **limitation** on the **amount of characters to be used in one box** how was an applicant expected to provide an adequate response to fully satisfy **each** criterion?
9. I had a **wide variety of audit work listed to meet the Eligibility Criterion 2** why was I then **disadvantaged** by the amount of information expected by the panel to meet the shortlisting criterion 1? I have a copy of correspondence from the DETI Departmental HR Director (Acting) where he states that "In terms of space available there was a full page and the majority of applicants had no difficulty in providing the required information within the space available". This information is incorrect as the space was limited to 3700 characters.
10. What was the relevance of having a second box below the shortlisting criterion if it was to be completed with N/A and nothing else?
11. The application form contains no guidance on what is required to satisfy the short listing criterion 1 "An assessment of the strength, depth and quality of the evidence provided against eligibility criterion 2". Why?
12. This criterion was open to interpretation and very subjective therefore how did the panel assess it and what guidance was used?

13. What was the justification for applying shortlisting criterion in this competition?
14. Given the limitations on the space provided in **one** box, **can you confirm** that the **successful applications** that were reviewed by the panel **fully met the Eligibility Criterion 2** (at least 2 years' post certification experience was met within the last 5 years ...)? (I have had sight of one applicant's form who was successful in the sift through to interview and yet there was only 1½ years experience listed). It would appear that successful applicants only listed some examples of their work to meet the shortlisting criterion yet when doing so they were at risk of not fully meeting the Eligibility Criterion 2.
15. How did HR Connect ensure that this Eligibility Criterion 2 was met?
16. I have a copy of correspondence from the DETI HR Director (Acting) where he states that "**if anything, the panel was somewhat lenient**, in that even if the candidates only gave **minimal evidence** of their strength, depth and quality of experience related to risk-based auditing, they were shortlisted in". If this was the case then how was the main **Eligibility Criterion 2 satisfied with minimal evidence submitted?**
17. Can an independent review of the applications be carried out to ascertain if all the applicants who were successful in the sifting exercise **actually met the Eligibility Criterion 2?**
18. If the "**panel was somewhat lenient**" as quoted above; then **what assurance** can be **provided** that the assessment process for this post was **fair and equitable?**

Selection Panel

18. The panel was made up of all DETI staff when further positions in the NICS were to be considered from this competition. Why?
19. Did **each** panel member receive **equality opportunities training** and training on **assessment techniques?** If so, when? If not, why?
20. How many of the panel had "at least 2 years' post certification

experience (from the date the BATS, GIAS or GIAC was awarded), within the last 5 years, of risk based audit approaches as laid down in GIAS"? Did **each** panel member have the proper **experience to assess this criterion**?

Decisions

The decision letter from HRConnect dated 25 November 2011 states that "On the basis of the information contained in your application form for the above opportunity the panel determined that you met all of the eligibility criteria. However, I regret to advise that you did not meet the following short listing criterion: An assessment of the strength, depth and quality of the evidence provided against eligibility criterion 2". Panel Feedback states that "The candidate has listed activity with no supporting evidence of how they have applied risk based audit approaches to their work". In addition, the HRConnect letter dated 21 December 2011 states the following explanation from the Chairperson "On the basis of the evidence provided, the candidate did not demonstrate the strength, depth, and quality of the risk based audit approach adopted. On this basis the request is denied".

21. Where in the application form does it require candidates to either explain the risk based audit approach or how they applied it to their work?
22. Can you please provide the rationale for the panel's decision to deny my request of appeal?

Appeal Process

23. Why is there only one appeal process which involves the same individuals who made the original decision?
24. If the appeal process was overseen by an HRConnect representative then how can that person justify how this process was carried out given the number of concerns raised?
25. Why is there not a second stage to the appeal process where someone independently reviews the original decision?

26. Please provide details of how many applicants in each department did not meet the shortlisting criterion?
27. How many of these applicants exercised their right of appeal?
28. How many of these appeals were successful and from what departments?

General

29. I am CMIIA qualified (Chartered status); yet was unsuccessful in the sifting exercise to go through for the interview stage. Why has the government invested time and money in me if I am unable to avail of the career opportunity that I have trained and worked for since starting audit in 2001?
30. Career opportunities for the Audit Manager post are very limited and it will be probably be a few years before there is another trawl therefore this in itself is a de-motivating factor. In addition, the HR Handbook refers to the NICS Policy Statement which states that 'The NICS is **committed to providing equality of opportunity**. It is our policy that all eligible persons shall have **equal opportunity for employment and advancement** in the NICS on the **basis of their ability, qualifications and aptitude for the work**". Therefore, **why was I not afforded this opportunity for advancement?**
31. Why were EOI Trainee Auditors who were not of substantive SO Auditor grade allowed to apply for a DP Auditor Manager post?
32. How did EOI Trainee Auditors meet "Eligibility Criterion 2"?
33. If EOI Trainee Auditors were temporary promoted/deputised at anytime from February 2010 to 7 November 2011 please explain why when a temporary embargo was in place on recruitment and promotion. Please also provide details of how many EOI Trainee Auditors this affected, the length of time at the higher grade and from which departments.

34. Have any EOI Trainee Auditors ever skipped the SO Auditor grade and been promoted to DP Auditor Manager? If so, please give details of how many and from which departments?