

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2016

Public Authority: Cabinet Office
Address: Room 405
70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information related to pensions for sacked civil servants. The Cabinet Office denied holding any relevant information.
2. The Commissioner's decision is that on the balance of probabilities the Cabinet Office does not hold any relevant information. No steps are required.

Request and response

3. On 26 January 2016, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Under the Public Interest Disclosure Act (PIDA) 1998, a person cannot be sacked for raising concerns under the act, or suffer a detriment. As such, please provide the following information.

What is the position of Civil Servants who were sacked for raising concerns under the PIDA before they were 55. Are they allowed to take their pensions in full, once they reach 55, as many Civil Servants who take early retirement do, or are they banned because they are no longer Civil Service employees. If so, is this a not a detriment and banned under the act. Please provide all guidance you have on this matter, from 2007, onwards.

Also provide figures showing the number of Civil Service whistle blowers who were sacked before they reached the age of 50, but who then were awarded their pensions in full from age 55 onwards. Please provide the number from 2007, onwards."

4. The Cabinet Office responded on 16 February 2016 and denied holding any relevant information.
5. Following an internal review the Cabinet Office wrote to the complainant on 4 May 2016. The internal review maintained the Cabinet Office's position of 16 February 2016.

Scope of the case

6. The Commissioner considers the scope of the case to be whether on the balance of probabilities the Cabinet Office holds any information relevant to the request.

Reasons for decision

7. 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 information of the description specified in the request, and

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

8. 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.
9. The Commissioner asked the complainant why he believed that the Cabinet Office would hold the requested information. The complainant replied that "The Cabinet Office authorise all payments to government whistleblowers". The Commissioner does not consider that this is in any way compelling evidence that the Cabinet Office will hold the information requested.

10. The Commissioner issued a decision notice in 2014 relating to a similar request made by this specific complainant regarding PIDA.¹ Therefore the complainant should be aware that in the Commissioner's view the case has not been made that the Cabinet Office will hold all information relating to concerns raised under PIDA. It is not clear to the Commissioner how the complainant came to the conclusion that the Cabinet Office would hold information on the subject. In any event he has been unable to provide the Commissioner with any evidence to substantiate his claims.
11. The Commissioner asked the Cabinet Office what searches had been carried out to identify any relevant information, and the Cabinet Office confirmed that the Civil Service Human Resources and the Cabinet Office Propriety and Ethics departments had both been searched. Neither had located any relevant information. The Commissioner considers that this search was appropriate and sufficient given the nature of the request.
12. The Cabinet Office also confirmed that it does not hold a list of civil servants who have been dismissed in relation to disclosures under PIDA. This means that it is not possible to check the pension status of such individuals. Given that the Commissioner's previous investigation found that the Cabinet Office does not retain information about disciplinary actions taken against staff that raised concerns under PIDA, it follows that it would not retain a list of staff who have been dismissed for raising such concerns.
13. The Commissioner is satisfied that the Cabinet Office has carried out sufficient checks to determine whether information is held, and that its position is consistent with the Commissioner's previous investigations into similar matters. She also finds that the complainant's assertion has no evidential backing and is far from being self-evident as the complainant believes. Finally, the Commissioner has considered whether, if the complaint were upheld, there are any steps she could require the Cabinet Office to take. The Commissioner has not been able to identify any steps because she is satisfied that the Cabinet Office has conducted an adequate search. Therefore on the balance of probabilities the Commissioner considers that the Cabinet Office does not hold any information relevant to the request. No steps are required.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1032358/fs_50533050.pdf

Other matters

Time for internal review

14. In the Commissioner's view the Cabinet Office took too long to complete its internal review for what is a quite straightforward request. The Commissioner's 'Guide to the Freedom of Information Act 2000' states that public authorities should "ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances".² The Cabinet Office took 48 working days to complete its internal review, which in the Commissioner's view is excessive, especially given the nature of the request in this case. The Commissioner expects the Cabinet Office to ensure internal reviews are completed promptly in future.

Frivolous appeals

15. The Commissioner has seen evidence indicating that the complainant has made a number of requests regarding PIDA with no likelihood of being successful due to the wording used in the requests. The Commissioner is mindful that the First-Tier Tribunal struck out one of the complainant's appeals due to the "deliberately contentious terms of the request" used, and the Commissioner considers that this case is comparable in terms of the wording of the requests.³ Both the requests in the appeal ask the Cabinet Office to accept that it sacks whistle-blowers, or individuals raising concerns under PIDA. Even were the Cabinet Office to do such things, it is inconceivable that it would record them as such. For the complainant to pursue a request using this wording means that the request has almost no chance of success.
16. The Commissioner would ask that the complainant refrain from making requests using such contentious language, as it expects public authorities to admit to gross failings, and thus makes the case about the interpretation of events rather than whether information is held. Should the Commissioner receive further appeals from the complainant along the same lines she will strongly consider refusing them as frivolous within the meaning of section 50(2)(c) of the FOIA.

² <https://ico.org.uk/media/for-organisations/guide-to-freedom-of-information-4-8.pdf#page=56>

³

http://www.informationtribunal.gov.uk/DBFiles/Decision/i950/2013_01_24;%20Andi%20Ali;%20EA.2012.0246;%20Strike%20Out%20decision.pdf

Right of appeal

17. 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>

18. 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.
19. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF