

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 17 December 2019

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information related to claimants of benefits who had committed suicide.
2. The Commissioner's decision is that, on the balance of probabilities, the Department for Work and Pensions (DWP) does not hold information further to that already disclosed. However, the Commissioner does find that DWP breached section 10 by not providing the disclosed information within the statutory time frame.
3. The Commissioner does not require DWP to take any further steps with regards to this request.

Request and response

4. On 8 October 2018, the complainant wrote to DWP and requested information in the following terms:

"1- Considering a shift in number of statistically expected self inflicted death amongst whom one way or another have been affected directly by implementation of welfare reform in capacity of benefit claimants, if you may forward any information held in view of or with regard to the impact of the FES's interactions with claimants while DWP carries out implementation of welfare reform , e.g. by way of FES talking to those effected about changes that may would have had affected their benefit payments ever more had they had not shorten their lives.

2- Any statistics data or report held on number of self inflicted death of deceased social welfare benefit claimants who had records of correspondence with FES or so called Local Services Compliance in the last year of their life."

5. DWP responded on 6 November 2018. It explained that the Fraud and Error Service (FES) has now been renamed to the Counter Fraud and Compliance Directorate (CFCD). DWP explained that CFCD has responsibility for the prevention, detection and, where appropriate, investigation of fraud and error against all benefits administered by and on behalf of DWP.
6. DWP explained that it does not hold the specific information requested. It explained that the GOV.UK website does hold some statistical information regarding mortality rates for some of the "out of work" benefits between May 2010 and February 2014 and provided a link to this data¹.
7. On 8 November 2018, the complainant requested an internal review. He disputed DWP's assertion that it does not hold the requested information and stated that Ms Esther McVey, then Secretary of State for DWP, had responded to Select Committee questioning that DWP held peer reviews of cases falling within the scope of the request. The complainant set out that he considered DWP could review these cases for FES' interaction with the claimant.
8. On 28 November 2018 DWP provided the outcome of its internal review. It upheld its original response to the request. DWP provided a link² to information regarding the peer reviews and explained that DWP had conducted reviews of cases where it is alleged DWP's actions are linked to the death of a benefit recipient. DWP explained that it was not clear from the report whether these deaths were suicides or associated with the FES or CFCD.

¹ <https://www.gov.uk/government/statistics/mortality-statistics-esa-ib-and-sda-claimants>

² <http://researchbriefings.files.parliament.uk/documents/CBP-8221/CBP-8221.pdf>

Scope of the case

9. The complainant contacted the Commissioner on 12 January 2019 to complain about the way his request for information had been handled. Specifically, the complainant disputed that DWP did not hold information falling within the scope of his request.
10. The Commissioner has considered the wording of the requests put to DWP and she considers that the objective interpretation of the requests is as follows:

Request 1

Any information related to the impact of FES/CFCD's interaction with claimants regarding welfare reform which might or could have cut their benefit. The specific claimants are those whose suicide is directly attributed to distress regarding benefit.³

Request 2

Any statistics, data or report(s) regarding claimants known to have committed suicide who had recorded communication with FES/CFCD or Local Services Compliance in the last year of their life.⁴

11. During the course of the investigation, DWP revised its position and confirmed that it had located some, albeit incomplete, information falling within the scope of the requests. DWP wrote to the complainant on 12 September 2019 and explained that its original response was based on the grounds that DWP does not record a cause of death for benefit claimants as this piece of information is not required for the assessment and processing of benefit claims. DWP explained that it had not originally considered that it may have become aware of the cause of death via correspondence from the family and apologised for this oversight.
12. DWP confirmed that there is no specific impact assessment on CFCD's involvement in claimants' cases but it could provide general information

³ The complainant confirmed that the use of might/could in his request is in line with the letters sent by DWP to claimants regarding potential benefit changes

⁴ The Commissioner confirmed to DWP that there would be overlap between both requests. However, the second request does not identify welfare reform as a criteria and therefore DWP should include information from before 2013 in its considerations.

around its policy for safeguarding vulnerable claimants during the course of any investigation if this would be helpful to the complainant.

13. DWP confirmed that if it is made aware that that a claimant has committed suicide, an Independent Peer Review will be conducted into this case. DWP explained that it had reviewed all cases where an IPR was conducted since the start of Welfare Reform (2013) and found 96 cases that related to claimants who had committed suicide. DWP confirmed that of these 96 cases, it had found that CFCD had been involved in four cases in the last 12 months of those claimant's lives.
14. DWP explained that due to its document retention policies, specific records of CFCD involvement are no longer stored and it is not therefore possible to indicate the extent to which CFCD was involved in these cases.
15. On 27 September 2019, the complainant confirmed to the Commissioner that he was not satisfied with DWP's response and wished to proceed with the investigation.
16. The Commissioner considers that the scope of this case is to determine whether, on the balance of probabilities, DWP holds information further to that already provided. This determination is based on the interpretation set out above.

Reasons for decision

Section 1: Information not held

17. Section 1(1)(a) of the Act states:

"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"

18. Section 1(1) of the Act provides 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 obliged to create information in order to answer a request.

19. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First Tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
20. In the circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, the DWP holds recorded information that falls within the scope of the request.

Complainant's position

21. The complainant considers that the existence of the peer reviews indicates that DWP at least cannot deny that information is potentially held. He considers that stating the information is not held means that either the peer reviews were flawed and inconclusive or they should have encompassed the realms of FES or Local Services Compliance. The complainant also considered that the scope of his request includes any guidance that FES and Local Services Compliance teams may have been issued with, in view of the increasing number of claimant suicides.
22. The complainant considers that the disclosure does not fulfil his request for information and is "devoid of context" as it is post-welfare reform. He considers that information is held that pre-dates the information provided.

DWP's position

23. DWP explained that when it is made aware that a claimant has committed suicide, usually through correspondence from an MP, an independent peer review is conducted into their case.
24. All cases on which an independent peer review has been conducted are stored centrally. DWP confirmed that it had conducted a review of these cases and identified 96 cases relating to claimant suicide that have been independently peer reviewed since the start of Welfare Reform (2013).
25. DWP confirmed that it had reviewed these cases and found that CFCD (previously FES) had been involved in four of these claimant's cases in the last 12 months of their lives.
26. DWP explained that due to its retention policies, the specific records are no longer stored and it is therefore not possible to indicate the extent to which CFCD was involved in these cases.
27. DWP confirmed that its retention period for cases dealt with by its Investigations teams is five years after the date the case is closed.

Cases dealt with by the Compliance team are stored for 14 months after the date the case is closed.

28. The Commissioner asked DWP whether there had been any assessment conducted regarding adverse effects on claimants following contact by FES and/or CFCD. DWP explained that there had not been a specific impact assessment regarding this. It has a general policy for safeguarding vulnerable claimants who are subject to investigation.
29. DWP confirmed that since 2014, it has been mandatory to conduct an Independent Peer Review in all cases where the Department becomes aware that a claimant has, or is alleged to have, committed suicide. Prior to 2014, it was not mandatory to conduct an Independent Peer Review into cases where DWP becomes aware that a claimant has committed suicide.
30. DWP explained that there is no statutory requirement to inform DWP about the death of a claimant nor their cause of death. Where a claim is closed due to the death of a claimant, this is simply recorded as a death. Determination of cause can only be made by a Coroner. This determination may not be made until several months later and DWP would not be informed of any such decision automatically.
31. DWP explained that information about a cause of death would be received via a complaint made to DWP by a third party. This information would not be stored with a claimant's pre-existing records.
32. DWP confirmed that searches were conducted of each of the Independent Peer Review case files held to identify any relating to claimants who had or were alleged to have died as a result of suicide. These cases were then passed to CFCD who cross checked these against records of people subject to investigations during the last 12 months of their life as per the complainant's request.
33. DWP confirmed that Independent Peer Reviews are stored centrally for six years and deleted records are not retrievable. Due to this retention period, records for Independent Peer Reviews conducted prior to 2013 are no longer stored.
34. The Commissioner considers that, during the investigation, DWP undertook reasonable and logical searches to locate information falling within the scope of the request. As Independent Peer Reviews were mandatory for cases in which DWP became aware of a claimant's suicide, it is reasonable for DWP to use these peer reviews as its starting point for searches. In the Commissioner's view, she would expect these searches to have returned information relating to the request.

35. The Commissioner considers that the searches conducted were adequate and proportionate in view of how such records would have been retained and archived by DWP.
36. The Commissioner understands the complainant's position that further information must be held given the sensitivity of the requested information and the potential distress and impact of an investigation on the specified claimants in the period before their death. However, the Commissioner cannot require a public authority to hold information it does not, she can only determine whether, on the balance of probabilities, where information is held.
37. For the reasons set out in this section, the Commissioner considers that, on the balance of probabilities, no information is held falling within the scope of the request.
38. The Commissioner is concerned however that DWP did not consider that information may have been provided voluntarily and therefore did not handle the request with the care and attention she would expect. It is public knowledge that Independent Peer Reviews are undertaken in cases where DWP is aware of a claimant's suicide, or alleged suicide⁵. The outcome of 49 peer reviews, albeit not necessarily triggered by a claimant's suicide, were ordered to be disclosed by the First Tier Tribunal in 2016⁶.
39. The Commissioner is disappointed that DWP did not identify the peer reviews as a starting point for its searches until the Commissioner had started her investigation and drew DWP's attention to the complainant's reference to the peer reviews in his internal review.
40. The Commissioner expects public authorities to consider requests made thoroughly and where a requester asks for an internal review, the points made should also be considered and addressed. The Commissioner expects DWP to take steps to ensure that future requests are fully considered before issuing a formal response.

Section 10 – Time for compliance

41. Section 10(1) of the Act states:
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⁵ Not all Independent Peer Reviews are triggered by the suicide of a claimant however.

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[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1778/Pring,John%20EA-2015-0237\(12-04-16\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1778/Pring,John%20EA-2015-0237(12-04-16).pdf)

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

42. As set out above, DWP reconsidered its searches and provided information during the course of the Commissioner's investigation. As this was clearly outside of the statutory time frame, the Commissioner finds that DWP has breached section 10 of the Act.

Other matters

43. The complainant raised concerns regarding what information was and was not being recorded and the apparent difficulties in extracting this information. The Commissioner is unable to require public authorities to hold information or to hold it in a specific fashion (outside that required in a publication scheme). It is the responsibility of the public authority to decide what information is required for its purposes and how best to store this information in line with its requirements.
44. The complainant also requested that the Commissioner conduct an investigation under section 77 of the Act. Having reviewed the information before her, the Commissioner is not persuaded that a deliberate act of blocking or concealing the requested information took place. However, as set out above, the Commissioner is concerned that DWP did not conduct a thorough consideration or search regarding this request before a complaint was brought before the Commissioner.

Right of appeal

45. 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

46. 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.
47. 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

Jonathan Slee
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