

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 November 2022

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested copies of Cabinet Office internal guidance used by the pension administrator, MyCSP, to calculate Civil Service Injury Benefit (CSIB).
2. The Commissioner's decision is that the Cabinet Office does not hold the requested information.
3. The Commissioner does not require any steps.

Background

4. The Cabinet Office is the scheme manager for Civil Service pension and compensation arrangements. MyCSP is an external provider and the scheme administrator on behalf of the Cabinet Office.
5. The complainant explained that they were engaged in a dispute with MyCSP over a claim for CSIB. The complainant stated that MyCSP had quoted from "internal guidance" in their correspondence however had refused to provide a copy of the guidance, stating that "the guidance is to aid pension administrators. It would not be appropriate for this guidance to be disclosed to members."

6. The complainant also explained that they could not locate the guidance quoted in the Civil Service Injury Benefit Scheme Rules¹, despite being directed to this document on more than one occasion.

Request and response

7. On 20 January 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

“Dear Sirs,

Please send me the internal office guidelines for the assessment of Civil Service Injury Benefit as used by MyCSP.

I look forward to hearing from you as soon as possible.

Yours sincerely
[redacted]”

8. The Cabinet Office responded on 16 February 2022. It stated that the information was not held. The Cabinet Office directed the complainant to the Civil Service Injury Benefit Scheme Rules which are publicly available on the MyCSP website.
9. Following an internal review the Cabinet Office wrote to the complainant on 25 March 2022. It upheld its position.

Scope of the case

10. The complainant contacted the Commissioner on 17 March 2022 to complain that the Cabinet Office had not responded to their request for internal review. The Cabinet Office provided their internal review response on 25 March 2022 and the Commissioner accepted the complaint for investigation on 29 March 2022. The complainant disputes the position that the requested information is not held.

¹ <https://www.civilservicepensionscheme.org.uk/knowledge-centre/resources/scheme-rules/>

11. The complainant considers that MyCSP are a private sector company contracted by the Cabinet Office and therefore should be subject to FOIA. It is not within the remit of the Commissioner to determine or comment on which bodies are covered under FOIA.
12. The scope of this case is to consider whether the Cabinet Office holds information falling within the scope of the request.

Reasons for decision

13. 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.

The complainant's position

14. The complainant's position is that they have received conflicting information from MyCSP and the Cabinet Office regarding whether the requested information is held. The Commissioner has had sight of correspondence the complainant received from MyCSP indicating that guidance is used when processing applications for CSIB:

"The guidance advises how to process Injury Benefit applications from a technical point of view, it does not contain scheme rules or any advice regarding how the application should be considered from a medical point of view."

The Cabinet Office's position

15. The Cabinet Office explained that, after discussing with the relevant service area and MyCSP, it had concluded that neither MyCSP nor the Cabinet Office hold the requested information. The Cabinet Office owns the policy for CSIB, which is contained within the scheme rules and explained in the preceding Civil Service Pensions Manual² under

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<https://webarchive.nationalarchives.gov.uk/ukgwa/20140712140858/http://www.civilservice.gov.uk/pensions/guidance-for-administrators/pensions-manual>

'Members Benefits'. MyCSP use this information when employers request CSIB payments.

16. The Cabinet Office explained the process for assessing eligibility for CSIB in the following terms:

"In the case of Civil Service Injury Benefit Scheme (CSIBS), the individual employed by a department refers them to HML (Health Management Ltd) for assessment against the criteria set out in CO set policies. The individual makes the referral through MyCSP, as they are the delegated authority for deciding whether injuries are qualifying or not. Medical professionals make the recommendations and MyCSP sends decisions to the employer. HML refer to the CSIBS rules and the available medical evidence to assess whether a member meets the scheme criteria. That assessment is entirely medical, so it is for HML as the medical experts, to determine how they consider cases. Neither the Cabinet Office, nor MyCSP can instruct nor guide them in that process. Thus, explaining why no such internal guidance exists...

In summary, the scheme rules define the requirements, then MyCSP use HML's advice as the basis for determining whether a member is eligible under the rules of CSIBS. MyCSP do not have internal guidelines, as they refer to the CSIBS rules to assess and process Injury Benefit applications. The CSIBS rules are in the public domain and can be found on the website as previously advised to the applicant."

The Commissioner's view

17. The Commissioner's view is that the Cabinet Office does not hold the requested information for the reasons outlined at paragraph 15 and 16 above. It is clear from the response that there is no requirement for the Cabinet Office, in its capacity as scheme manager, to hold guidance additional to the CSIB scheme rules as it is not practically involved in any assessment process.
18. The Commissioner is satisfied that MyCSP is not a public authority for the purposes of FOIA, nor does it hold the requested information on behalf of the Cabinet Office as per the definition provided at section 3(2)³. This is because the explanation provided above sufficiently

³ <https://www.legislation.gov.uk/ukpga/2000/36/section/3>

demonstrates why the information sought by the request is also not held by MyCSP.

19. The Commissioner is aware that his decision calls into question the statements made by MyCSP regarding the inappropriateness of disclosing guidance it uses to process CSIB from a technical standpoint. However, as it is not a public authority the Commissioner is not positioned to arbitrate on MyCSP's information management practices and it would be inappropriate for him to do so.
20. The Commissioner considers that, on balance, the representations made by the Cabinet Office provide a plausible and rational explanation for why the information is not held by its own offices or by MyCSP on the Cabinet Office's behalf.
21. For clarity, the Commissioner is not expected to prove categorically whether the information is held by the Cabinet Office, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

Right of appeal

22. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**