

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2023

Public Authority: Advisory, Conciliation and Arbitration Service
Address: Windsor House
50 Victoria Street
Westminster
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant has requested details of independent experts. The above public authority ("the public authority") stated that it held no further information beyond that already in the public domain – which was exempt under section 21 of FOIA (reasonably accessible).
2. The Commissioner's decision is that, on the balance of probabilities, the public authority holds no further information beyond that already in the public domain.
3. The Commissioner does not require further steps.

Request and response

4. On 20 March 2022, the complainant wrote to the public authority and requested:

"details of the names of all persons who were formerly members of the panel of independent experts (as referred to in section 131(8) of the Equality Act 2010) but who have ceased to be members of that panel since 2010."
5. The public authority responded on 20 June 2022. It relied on section 21 of FOIA as the lists were already in the public domain.

6. Following an internal review the public authority wrote to the complainant on 26 July 2022. It stated that it held no further information beyond that already published.

Reasons for decision

7. As the complainant has not disputed that they have access to the current lists and to the lists published prior to 2013 (the public authority stopped publishing the information as part of its annual report in 2014), the Commissioner has only considered whether the public authority holds any additional information beyond that which can already be derived from public sources.
8. Where there is a dispute about the extent of the recorded information that the public authority holds, the Commissioner will assess whether it is more likely than not that further information is held.
9. During his investigation, the Commissioner highlighted areas where, in his view, any further information the public authority held might be indicated. These included HR records, details of work commissioned and any expense records held by the Finance department. As the public authority had already noted in its earlier submissions that the roster of experts changed infrequently, he asked whether it was possible that no new experts had both joined since the last published list in 2013 and had left prior to the current list being published (as all other experts would have been captured on one or other of the lists).
10. The public authority responded to say that:

“The Employment Tribunal issues an order to Acas requesting the services of an Independent Panel Expert. Acas provides names and CVs of suitable experts from the panel from which the tribunal appoints an expert after consultation with parties’ representatives.

“Acas are sometimes informed by the Employment Tribunal as to who has been appointed, but not in all cases. Thereafter, Acas is not involved in that case. All matters relating to a case, including the payment of fees and expenses, are dealt with by the Tribunal throughout the duration. Acas does not receive any responses regarding the work of the Independent Panel Expert as this is held by the Tribunal. Since Acas is not involved in any payment to Independent Experts, no other part of the business holds information or records.”
11. Regarding the addition of new panel members, the public authority stated:

"Regarding the panel members from 2013 who appeared in the annual report, I can confirm that those who have since left have not been replaced on the panel. No replacement, additional, or new panel members have joined since 2013."

12. The complainant was not happy that all the information had been disclosed. They noted that some individuals were listed on the most recent list who were not included on the 2013 list – which would contradict the public authority's claim that no new members had joined since 2013.
13. The Commissioner has considered the relatively small number of individuals currently serving as independent experts and notes that this has halved since 2013. He considers it more likely than not that no individual has both joined and left the roster since 2013. Therefore all the names that fall within the scope of the request are captured on the 2013 list, but do not appear the current one – both of which the complainant has access to.
14. Any individual whose name appears on the first list but not the second, can be assumed to have left since 2013. Those whose names appear on the second list do not fall within the scope of the request as the request specifically seeks the names of those who have ceased to be members since 2010.
15. In the unlikely event that any further information exists, the Commissioner considers it more likely that the information would be held by the Employment Tribunal – which is a separate public authority.
16. Therefore, whilst the public authority could have been clearer in explaining its position, the Commissioner is satisfied that, on the balance of probabilities, the public authority holds no further information beyond that already published.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Roger Cawthorne
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