

Email: request-14960-51ac9641@whatdotheyknow.com

Mr Andrew Sowden

20 October 2009

Dear Mr Sowden

FOI 09/1040 - Request for Internal Review under the Freedom of Information Act 2000

Thank you for your email of 14 August, requesting a review of the Department's decision not to release the information you requested under the Freedom of Information Act in your email of 21 July, seeking information relating Employment Agency Standards Inspectorate (EAS) activity in the Manchester and surrounding areas

We have considered your request carefully and are now in a position to inform you of the Department's decision. I apologise for the delay in replying.

In your email of 21 July to EAS, you requested specific information to be disclosed to you regarding the names of the agencies that EAS inspectors visited as part of a targeted exercise in May 2009 and a list of all infringements that EAS inspectors found.

It may be useful to you for us to explain the process involved in an investigation. After an inspection is carried out the agency are given a specific time frame in which to demonstrate to EAS that they have changed their practices and now comply with the regulations. Most agencies, with the support and advice of the Inspectorate, amend their practices post-inspection and demonstrate compliance, within a period of approximately 6 weeks of the warning letter being sent to them.

It is our policy that we work with the industry to educate business, in the first instance, and provide them with the help and advice they need in order to meet the requirements of the Regulations. EAS will, however, consider legal action where it is judged that the severity of the offences warrants it or where the agency cannot, or refuses to, provide evidence that it has acted upon the warning letter. This course of action is necessary in a small proportion of our cases. At that point the identity of any agency is made public.

The information you request was obtained during an investigation by the EAS Inspectorate, using their powers under section 9 of the Employment Agencies Act 1973. Section 30 of the Freedom of Information Act exempts the disclosure of information that is held by a public authority for the purposes of any investigation which the public authority has a duty to conduct. As Paula Lovitt's email of 14 August explains, while there is a public interest in people having background information into investigations, it is also important that information related to the carrying out of investigations remains confidential. If agencies being investigated were aware of material being released they might be less willing to hand over information to inspectors which could impede an investigation. This would undermine the ability of the department to investigate and where necessary enforce the Employment Agencies Act 1973.

I have also considered whether the Department could disclose any other information that may not be covered by these exemptions. I needed to consider whether to release this information under Section 31 of the Freedom of Information Act. This section exempts the disclosure of information that is held by a public authority for the purposes of ascertaining whether any person has failed to comply with the law or ascertaining whether to take regulatory action in pursuance of any enactment. There is a public interest in people having background information into investigations, as it may assist public confidence in the impartiality of the process. However there is also the public interest in ensuring that complaints can be fully investigated without agencies refusing to be fully co-operative or withholding information from inspectors that they fear will be disclosed under FOI.

It is important that information related to the carrying out of these investigations remains confidential. If this information were to be released it could well prejudice our ability to fully progress possible further investigations into these, or any other complaints about employment agencies. In this case I have concluded that the balance lies in withholding information about the investigation.

In summary I have decided to uphold the initial decision not to disclose the specific information that you requested.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

John Alty

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Director General, Fair Markets