

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 May 2013

Public Authority: Department for Work and Pensions
Address: Caxton House
6 – 12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant made a freedom of information request to the Department for Work and Pensions for pension information relating to a deceased individual. The DWP refused the request under the exemptions in section 41 and 44 of FOIA but failed to issue this response within the statutory working day deadline. The complainant has asked the Commissioner to consider the DWP's delay in handling his request and he has found that it breached section 10(1) by failing to issue a refusal notice within 20 working days of receiving the request.
2. The Commissioner requires no steps to be taken.

Request and response

3. On 6 September 2012 the complainant wrote to the Department for Work and Pensions (DWP) to request pension information relating to the complainant's late mother who had been the victim of a fraud.
4. The complainant did not receive a response to his request and so contacted the DWP on 9 October 2012 enclosing his request again.
5. The DWP responded to the complainant on 17 October 2012. It said that the request of 9 September had been received on 10 September 2012 and it was investigating why there had been a delay. As regards the substance of the request the DWP confirmed that the information was held but said that this was exempt from disclosure under the exemptions in section 41 and section 44 of FOIA. Section 41 provides for

an exemption for information where disclosure could give rise to an actionable breach of confidence. Section 44 provides for an exemption where disclosure is prohibited under any other law or enactment. In this case the DWP said that the relevant statutory prohibition was section 123 of the Social Security Administration Act 1992. However, the DWP said that whilst it believed the information to be exempt from disclosure under FOIA it could provide information about deceased people to an administrator or executor of the deceased person's will. It said that it would consider whether the complainant was entitled to this information under its deceased person's disclosure policy which is handled separately from requests received under FOIA.

6. On 21 December 2012 the complainant asked the DWP to carry out an internal review of its handling of the request.
7. The DWP presented the findings of its internal review on 8 January 2013. At this point the DWP upheld the decision to refuse the request under FOIA by relying on the section 41 and section 44 exemptions. As regards the delay in handling the request it said that it had ascertained that the original request had been received but that no action was taken for which it apologised.

Scope of the case

8. The complainant initially contacted the Commissioner about the DWP's failure to respond to his request. The Commissioner subsequently contacted the DWP about this and the complainant was advised to seek an internal review before the Commissioner could consider any complaint.
9. Following the completion of the internal review the complainant contacted the Commissioner again. After discussion with the complainant, the Commissioner has agreed to consider the length of time taken to respond to the request. The complainant does not wish for the Commissioner to consider the DWP's decision to refuse the request under the section 41 and 44 exemptions.

Reasons for decision

10. Section 17(1) provides that a public authority which, in relation to any request for information, is to any extent relying on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-
 - (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
11. The time for compliance with section 1(1) is set out in section 10(1) of FOIA which provides that 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.
12. In this case the complainant made his request on 9 September 2012 and the DWP has confirmed in its refusal notice and internal review that the request was received the following day. However, a refusal notice was not issued until 17 October 2012, outside of the 20 working day deadline. Therefore the DWP has breached section 17(1) for failing to provide a valid refusal notice within 20 working days of receiving the request.

Right of appeal

13. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

14. 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.
15. 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

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**