

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 January 2017

Public Authority: Department for Work and Pensions

Address: Caxton House, 4th Floor
6 -12 Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for Work and Pensions (DWP) for information related to the implementation of the Universal Credit Programme. DWP confirmed that it holds information relevant to the request. It advised the complainant on two occasions that it required further time to consider the public interest test. To date, DWP has failed to provide the complainant with a substantive response. By failing to do so, the Commissioner has concluded that DWP breached section 17(3) of the FOIA.
2. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with a substantive response to their information request. If DWP decides to withhold any information then the complainant should be provided with a refusal notice giving a full explanation as to why the information will not be disclosed, including details of any public interest consideration.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as contempt.

Request and response

4. On 10 September 2016, the complainant wrote to DWP and requested information in the following terms:

"RF11: Please provide me with the latest version of the Product Backlog (or comparable output) being used on the UCP

RF12: Please provide me with the latest version of the Roadmap (or comparable output) being used on the UCP"

5. DWP contacted the complainant on 7 October 2016 and confirmed that it held information falling within the scope of the first part of the request but advised that it had yet to reach a decision on the balance of the public interest test with respect to section 36(2)(b) and section 36(2)(c) – prejudice to the effective conduct of public affairs. DWP explained that it, therefore, needed an additional twenty working days to consider the balance of the public interest test. It confirmed that it did not hold a 'Roadmap' or document with this description in response to part 2 of the request.
6. DWP wrote to the complainant again on 4 November 2016 and set out that it required a further 20 working days to consider the public interest test.

Scope of the case

7. The complainant contacted the Commissioner on 5 November 2016 to complain about the way his request for information had been handled.
8. The Commissioner contacted DWP and asked it to provide the complainant with a substantive response by 5 December 2016 or provide the Commissioner with an explanation as to why it was reasonable in the specific circumstances of the request to continue to extend its public interest test considerations.
9. The Commissioner has spoken briefly with the DWP about the request by telephone but to date, no substantive response has been provided to the complainant or the Commissioner.

Reasons for decision

10. Section 1(1) of the FOIA provides that any person making a request for information 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”*
11. Section 10(1) of the FOIA 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. Under the section 17(3), a public authority can, where it is citing a qualified exemption, have a ‘reasonable’ extension of time to consider the balance of the public interest.
13. The Commissioner considers it reasonable to extend the time for compliance to provide a full response including public interest considerations by a maximum of further 20 working days, which would allow a public authority 40 working days in total. Any extension beyond 40 working days would require there to be exceptional circumstances, fully justified by the public authority.
14. In the circumstances of this case, the total time has exceeded the 40 working days; over 65 working days have now elapsed since the date of the request on 10 September 2016. DWP has not provided the Commissioner with any justification for why this timescale is reasonable.
15. The Commissioner has issued clear guidance that a further 20 working days should be sufficient when considering the public interest test and only in exceptional circumstances should this exceed a total of 40 working days from the date of the request.
16. In the absence of any justification by DWP as to why the extension is reasonable in the specific circumstances of the request, the Commissioner has no choice but to conclude that the timescale is not reasonable and that DWP has not complied with section 17(3) of the FOIA.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF