

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 May 2023

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

Decision (including any steps ordered)

1. The complainant has requested information relating to DWP's public sector equality duty under section 149 of the Equality Act 2010.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) has breached section 16(1) of FOIA as the request did not have a single objective reading and DWP did not seek clarification of the request under section 1(3) of FOIA.
3. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with advice and assistance by requesting clarification of the request.
4. 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 19 May 2022, the complainant wrote to DWP and requested information in the following terms:
- “Under the new plans for excessive powers and the implications of such under HRA and EQA legislation please provide the following:
1. The figure of £8.3billion has been given as the fraud figure by the DWP. Please provide the evidence of such in light of convictions, duly processed investigations showing such fraud?
 2. What assessments have been done under the HRA or public sector duty in terms of these new powers planned to show they align themselves with such legislation?”
6. On 7 June 2022, DWP provided its response. In relation to request 1, DWP stated that it did not recognise the figure used in the request but believed that it may have been misquoted and that the correct figure is £8.2 billion. DWP explained that every year it estimates the levels of fraud and error in the benefit system in Great Britain. DWP explained that the estimates show how much money it incorrectly pays, either by overpayments or underpayments. DWP explained that it calculates this as a percentage of the total amount of benefit paid. DWP explained that in 2020/21, it estimated that £8.4 billion had been over paid, however, it had recently recalculated this sum and the figure had been restated as £8.2 billion. DWP confirmed that the 2021/22 data could be found online¹ and this showed that Fraud and Error overpayments now amount to £8.6 billion.
7. With regards to request 2, DWP confirmed that it was withholding the information it had located on the basis of section 35(1)(a), formation or development of government policy. DWP confirmed that it considered the balance of the public interest lay in maintaining the exemption.
8. DWP upheld its original position at internal review.

¹ <https://www.gov.uk/government/statistics/fraud-and-error-in-the-benefits-system-financial-year-2021-to-2022-estimates>

Scope of the case

9. The complainant contacted the Commissioner on 13 June 2022 to complain about the handling of their request for information, specifically DWP's reliance on section 35(1)(a) in relation to request 2.
10. During the course of the Commissioner's investigation, it became clear that DWP's interpretation of request 2 differed significantly from the complainant's interpretation.
11. The Commissioner will therefore consider whether the request has a clear objective meaning and whether DWP has complied with its obligations under section 16 of FOIA.

Reasons for decision

Section 16: Advice and assistance

12. Section 16(1) of FOIA states that:

It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".

13. Section 1(3) of FOIA states:

"Where a public authority -

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information".

14. When a public authority receives an unclear or ambiguous request, it has a duty under section 16 to provide advice and assistance and it must go back to the requester under section 1(3) of FOIA to ask for clarification.
15. Under section 1(3) of FOIA, once the public authority has informed the requester that it requires further clarification, it will not be under any further obligation to respond until that clarification has been provided.

16. The Commissioner's guidance on interpreting and clarifying requests² sets out that where a request does not have a single objective reading a public authority is obliged to seek clarification from the requester. It should not proceed with responding to the request until that clarification has been received.

17. The Commissioner asked DWP to confirm how it had interpreted the request and DWP provided the following explanation:

"[complainant]'s request coincided with DWP's publication of our Fraud Plan – Fighting Fraud in the Welfare System – GOV.UK (www.gov.uk)³. The plan was widely publicised at the time, with a number of newspapers and other publications putting different slants on what these plans meant for the public (both as claimants and taxpayers). An example of some of the headlines being used at the time can be found here - Fears over impact of DWP's 'horrific' and 'sinister' anti-fraud plan – Disability News Service⁴.

Given the timing of the request we therefore interpreted [complainant]'s use of the phrase "new and excessive powers" as referring to [their] perception of the measures contained within the plan".

18. The Commissioner asked the complainant to confirm what was meant by "new and excessive powers". He also provided DWP's explanation of how it had interpreted the request and asked them to confirm whether this was correct.

19. The complainant responded to the Commissioner's request for clarification of "new and excessive powers" by explaining:

"Furthermore the **excessive new plans** add further burdens to disabled people who need social security funds to live and function at a basic level.

1. The government as announced in the latest budget is due to make the burden of gaining employment hours increase via the Administrative Earnings threshold whereby many claimants will be forced to attend a two-week programme to try and get them back

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/>

³ <https://www.gov.uk/government/publications/fighting-fraud-in-the-welfare-system/fighting-fraud-in-the-welfare-system--2>

⁴ <https://www.disabilitynewsservice.com/fears-over-impact-of-dwps-horrific-and-sinister-anti-fraud-plan/>

into work or they could have their benefits stopped. There is no indication how such measures for those who are disabled is to be managed.

2. It is the requirement and conditionality of payments made to those who have substantial disability under s6 EQA 2010 which considers what the law means by such.
 3. The excessive force is sanctioning whereby if a claimant misses a meeting for whatever valid reason including hospital admissions or appointments, payments can be stopped for three months leaving huge danger and suffering to those already struggling."
20. In response to the confirmation of how DWP had interpreted their request, the complainant stated:

"The excessive powers are the new policy directions this government takes in conditionality of receipt of social security payments. There were a raft mentioned in the last budget and it is to successive conditionality and sanctioning which the EQA 2010 duties must have been applied.

In 2015 the then DWP Minister Esther McVey noted that no such steps were taken to see how those sanctioned with protected characteristics were fairing. Clearly the Court of Appeal details sent to you shows why the basic s149 duties are a legal necessity and not something to be applied after the event.

By excessive policies I mean any new change the DWP has adopted since 2010 onward as all should have had a thorough examination of EQA 2010 & HRA 1998 alignment".

The Commissioner's conclusion

21. The question for the Commissioner here is whether request 2 had a single objective meaning. If it did not, then DWP should have responded to the complainant to seek clarification about the scope of the request.
22. Having considered the wording of request 2, the Commissioner's view is that it is not sufficiently specific about the information sought to have a single objective reading. Although the complainant does reference fraud in request 1, the request does not specify which 'powers' the request is about.
23. The Commissioner's finding is therefore that DWP was obliged to seek clarification from the complainant on the scope of request 2, and in not doing so it breached section 16(1) of FOIA.

24. The Commissioner requires DWP to respond to the complainant seeking clarification on the scope of the request with the aim of reaching a single objective reading of this request.

Other matters

25. The Commissioner recommends that, when DWP seeks clarification of this request, the complainant ensures that they are as specific as possible when clarifying the request. Providing specific policy names or areas and confirming the timeframe of the request will aid DWP in locating the information they are seeking.
26. In light of the passage of time that has elapsed since this request was made, should the complainant be dissatisfied with DWP's eventual response, the Commissioner will not require them to seek a further internal review before submitting a complaint.

Right of appeal

27. 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

28. 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.
29. 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

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF