

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 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 the Department for Work and Pensions' (DWP) current version of its Unacceptable Behaviour policy and guidance. DWP withheld some of the requested information under section 36(2)(c) (prejudice to the effective conduct of public affairs) and considered that the balance of the public interest lay in maintaining the exemption.
2. The Commissioner finds that DWP has breached sections 10(1), 17(1) and 17(7) as it failed to adequately respond within the statutory timeframe or provide details of its internal review procedure in its refusal notice.

Request and response

3. On 16 May 2023, the complainant wrote to DWP and requested information in the following terms:

"Please provide the current version of your Unacceptable Customer Behaviour policy and guidance. If no policy or guidance is available under this name, your response should include any policies and guidance which relate to unacceptable behaviour by customers/claimants."

4. On 14 June 2023, DWP issued an interim response which confirmed that it held the requested information but required further time to consider the public interest. DWP confirmed that it considered that section 36(2)(c) of FOIA was engaged.
5. On 14 June 2023, the complainant requested an internal review of DWP's interim response on the grounds that it could not reasonably believe that the Unacceptable Customer Behaviour policy would engage section 36(2)(c) of FOIA.
6. On 29 June 2023 DWP provided a response to the complainant's internal review request of 14 June 2023. It stated that, in the reviewer's opinion, DWP had handled the request correctly. It considered that a small amount of the requested information would engage section 36(2)(c) and therefore it had applied an extension of time under section 10(3) of FOIA to consider the public interest. This was because it needed the reasonable opinion of the qualified person to confirm the engagement of section 36(2)(c).
7. On 30 June 2023 DWP provided a response to the complainant's original request. It disclosed the requested information except for some information, namely internal group e-mail addresses, which it redacted under section 36(2)(c).
8. The complainant requested an internal review on 3 July 2023 on the grounds that DWP had stated that section 36(2)(c) was engaged prior to having obtained the opinion of the qualified person.
9. DWP provided the outcome of its internal review on 28 July 2023 and upheld its position that it had handled the complainant's request correctly under FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 15 June 2023 to complain about the handling of their request for information, specifically the inconsistencies in DWP's position regarding the extension of time for the public interest test and the timing of the application of section 36(2)(c).
11. The complaint does not include the actual application of section 36(2)(c) to a small amount of the requested information, as the complainant accepts this.

12. The Commissioner considers that the scope of this investigation is to determine whether DWP handled the request for information incorrectly under FOIA.

Reasons for decision

Procedural matters

Sections 10 & 17

13. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled, subject to the exemptions:
 - 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.
14. Section 10(1) of FOIA provides that public authorities must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
15. Under 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. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total.
16. The extension to the statutory timeframe provided by section 17(3) applies only to the consideration of the balance of the public interest. Public authorities must, within the statutory timeframe of 20 working days, confirm that the information is held and confirm what exemption it considers is engaged.
17. The extension to the statutory timeframe cannot be used to determine whether an exemption is engaged.
18. As set out above, DWP initially confirmed that it considered that section 36(2)(c) was engaged on 14 June 2023, however, it did not obtain the Qualified Person's opinion until 29 June 2023, after it had extended the timeframe to consider the balance of the public interest.

19. It is clear that when extending the statutory timeframe, DWP had not yet ascertained which exemption was engaged. DWP was not therefore entitled to rely on section 17(3) to extend the statutory timeframe.
20. Section 17(7)(a) of FOIA provides that a public authority in a refusal notice must provide particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information, or state that the authority does not provide such a procedure. In DWP's response of 30 June 2023, it did not provide details of its internal review procedure.
21. For the above reasons, the Commissioner finds that DWP breached sections 10(1), 17(1) and 17(7) of FOIA by failing to respond adequately or within the statutory timeframe.
22. The Commissioner has previously issued a Practice Recommendation regarding DWP's request handling. He expects DWP to take steps to improve its handling of section 36 cases such that its responses represent the quality expected of a large governmental department with the knowledge and expertise available to DWP.

Right of appeal

23. 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

24. 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.
25. 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

Deirdre Collins
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Cheshire
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