

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2024

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 statistics relating to the managed migration of benefit claimants to Universal Credit.
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 30 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 11 December 2023, the complainant wrote to DWP and requested information in the following terms:

“DWP published statistics on the ETS cohort of the initial Discovery phase of managed migration to Universal Credit:
<https://www.gov.uk/government/publications/completing-the-move-to-universal-credit-learning-from-the-discovery-phase>

The Discovery phase also cohorts Alpha-Foxtrot, but DWP has not published any statistics on these cohorts.

DWP may, perhaps, intend to publish some statistics on these cohorts as part of the UC Programme Board publication scheme. Please note that even if this were the case s.22 FOIA would not be engaged – paras. 68&69 of *DWP v Information Commissioner & Anor* [2023] UKFTT 822 (GRC).

Cohort Alpha included all benefit types apart from ESA. Cohort Beta included all benefit types except Housing Benefit. Cohort Delta included all benefit types. Charlie, Echo and Foxtrot included Tax Credits only.

Please provide documents including data on cohorts Alpha, Beta and Delta. The data should show the number of people that made claims by their original deadline for doing so, the number of people that made claims by their extended deadline (ideally showing how long after their original deadline they claimed e.g. the number of people that claimed UC by their original deadline + 1 week, + 2 weeks, etc), the number of people that claimed by their final deadline, and the number of people that did not claim by their final deadline. If it is possible to do so then please provide this information broken down by benefit type”.

6. DWP provided its response on 20 December 2023 and confirmed holding the requested information. DWP withheld the information citing section 22(1), information intended for future publication. DWP upheld this position at internal review.

Scope of the case

7. The complainant contacted the Commissioner on 9 January 2024 to complain about the way their request for information had been handled, specifically DWP’s reliance on section 22(1) to withhold the requested information.

8. During the course of the investigation, DWP published information relevant to the complainant's request. However, the complainant disputed that the information published was exactly what was requested. DWP confirmed that it considered the published information is the information that was requested.
9. 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

10. 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".

11. 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".

12. 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.
13. 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.

14. The Commissioner's guidance on interpreting and clarifying requests¹ 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.

15. The complainant explained to the Commissioner:

"If DWP's response is accurate, and I assume that it is, then the response still does not yet fully answer the question. My request included a request that the information show "the number of people that claimed UC by their original deadline + 1 week, + 2 weeks, etc." The 'etc' was meant to indicate an ongoing series i.e. '+ 3 weeks, + 4 weeks, + 5 weeks' and so on".

16. DWP explained:

"We believe that the published data meets the ask of the initial FOI. Should the requestor require a more detailed breakdown, they are advised to raise a new FOI that sets out their specific ask".

The Commissioner's position

17. The question for the Commissioner here is whether the request 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.

18. The Commissioner notes that the published information² is broken down into five categories:

- Original deadline
- Of which claimed by + 1 week
- Of which claimed by + 2 weeks
- Of which claimed by + 3 weeks or more
- Did not claim Universal Credit

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/>

² <https://www.gov.uk/government/publications/move-to-universal-credit-insight-on-tax-credit-migrations-and-initial-discovery-activity-for-wider-benefit-cohorts/move-to-universal-credit-insight-on-tax-credit-migrations-and-initial-discovery-activity-for-wider-benefit-cohorts>

19. Having considered the wording of the request, the Commissioner's view is that it is not sufficiently specific about the timeframe and breakdown of the information requested. Although the complainant has subsequently explained what the request was "meant to indicate", this is not explicitly set out in the request. The Commissioner considers that the request's end date and how the information should be broken down is open to interpretation.
20. The Commissioner requires DWP to respond to the complainant to seek clarification on the scope of the request with the aim of reaching a single objective reading of this request.

Other matters

21. 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

22. 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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria Parkinson
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