

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 March 2013

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

### Decision (including any steps ordered)

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1. The complainant made a freedom of information request to the Department for Work and Pensions (DWP) for information about the Employment and Support Allowance and Work Capability assessments. The DWP complied with the request but responded outside of the 20 working day deadline.
2. The Commissioner has found that the DWP breached section 10(1) of the Act by failing to respond to the request within 20 working days but requires no steps to be taken.

### Request and response

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3. On 23 September 2012 the complainant made a request to the DWP for information about the Employment and Support Allowance and Work Capability assessments. The request read as follows:

*"For new ESA claimants a WCA will be arranged within 13 weeks, during which time the claimant will be paid the assessment rate.*

*If there is a delay beyond 13 weeks through no fault of the claimant, several Tribunal decisions have stated that DWP must pay at least the WRAG rate from week 14 until the WCA takes place and an initial assessment decision is made.*

*Please confirm this is the case and indicate where the process is recorded."*

4. The complainant received an automated acknowledgement of the request on the same day, a Sunday.
5. The complainant calculated that the 20 day deadline for his response had expired and so on 20 October 2012 he complained to the DWP that it had failed to respond within 20 working days and asked that it conduct an internal review.
6. The DWP responded to the request on 22 October 2012 when it provided the requested information.
7. On 19 November 2012 the DWP contacted the complainant with the result of an internal review on the length of time taken to respond to the request. It said that it was satisfied that it had dealt with the request in accordance with section 10 of FOIA by responding within 20 working days.
8. On the same day the complainant contacted the DWP as he disputed its claim that it had responded within 20 working days. It asked that it complete a new internal review.
9. The DWP presented the findings of its internal review on 21 December 2012 when it again said that it was satisfied that it had responded to the request within 20 working days.

### **Scope of the case**

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10. On 13 January 2013 the complainant contacted the Commissioner to complain that the DWP had failed to respond to his request within 20 working days.

### **Reasons for decision**

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11. Section 1(1) of the FOIA provides that any person making a request for information to a public authority 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.

12. 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.
13. In this case the request was submitted on 23 September 2012, a Sunday, and was acknowledged on the same day. In this case the dispute would appear to focus on when the request was received and when the 20 working day deadline starts for the purposes of section 10.
14. The DWP has said that it "calculates the first working day on which a request is received as 'day zero' with the following working day 'day one' and so on up to 20 working days". By this calculation the deadline for response would have been 22 October 2012 which the DWP complied with.
15. However this approach is not correct as section 10(6) of the Act makes it clear that the "date of receipt" is the day on which the public authority receives the request. There is no requirement for this to be a working day. The date of receipt could be on a weekend, a bank holiday or any other time when an office is closed. Therefore, in this case the request will have been received on the Sunday and the time for compliance would have begun on the Monday following, 24 September 2012. A deadline of 20 working days means that the public authority should have responded to the request by 19 October 2012. By failing to meet this deadline the public authority breached section 10(1) of the Act.

## Right of appeal

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16. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

17. 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.
18. 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**