

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 June 2019

**Public Authority:** Department for Work & Pensions  
**Address:** 4th Floor, Caxton House  
Tothill Street  
London  
SW1H 9NA

#### Decision (including any steps ordered)

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1. The complainant has requested information regarding the introduction of Universal Credit and its effect on disabled people.
2. The Commissioner's decision is that the Department for Work & Pensions ("the DWP") holds no further information within the scope of the request, but that it failed to respond to the request within 20 working days. The DWP therefore breached Section 10 of the FOIA in responding to the request.
3. The Commissioner does not require any further steps.

#### Request and response

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4. On 18 January 2018, the complainant wrote to the DWP and requested information in the following terms:<sup>1</sup>

*"[1] I would be grateful, therefore, if you could explain exactly how the system of disability premiums will be replaced under Universal Credit, and the exact financial impact this will have on people who previously received each of those legacy premiums.*

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<sup>1</sup> The original request was not numbered. The Commissioner has added the numbering to make the following analysis easier to follow.

[2] *Please provide these financial comparisons both for those making a fresh claim for universal credit, and for those being transferred across from legacy benefits such as ESA.*

[3] *Finally, please tell me the various changes of circumstances which could cause DWP to tell a claimant that they are no longer entitled to transition protections after moving from a legacy benefit to Universal Credit.*

*"Please make the calculations by taking May 2018 as the point at which you are making the comparisons. If that is not possible, then use February 2018."*

5. The DWP responded on 9 March 2018. It provided some information in respect of elements [1] and [3] and stated that it held no information in respect of element [2].
6. Following an internal review the DWP wrote to the complainant on 19 November 2018. It stated that it now held further information within the scope of element [3] of the request (which it did not hold at the time the request was responded to), but that it was refusing to provide that information as it was already reasonably accessible. It did not appear to alter its position in respect of either element [1] or [2].

## **Scope of the case**

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7. The complainant first contacted the Commissioner on 9 March 2019 to complain about the way his request for information had been handled. At that point, the complainant had not sought an internal review. Unfortunately the Commissioner's correspondence, in which she advised the complainant to seek an internal review, was not received by the complainant and this led to a delay of seven months in the complainant seeking his internal review.
8. On 26 November 2018 following the completion of the internal review, the complainant referred the matter back to the Commissioner as he did not feel that he had been provided with all the relevant information that the DWP held.
9. At the outset of the investigation, the complainant confirmed that, whilst he was interested in viewing information within the scope of all three elements of his request, his primary interest was the information contained within element [2] and he agreed to limit the scope of his complaint to determining whether the DWP had answered that element appropriately.

10. The scope of the Commissioner's investigation has therefore been to determine whether the DWP holds further information within the scope of element [2] of the request.

## Reasons for decision

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11. Section 1(1) of the FOIA states 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. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
  13. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

### *The complainant's position*

14. The complainant argued that Universal Credit ("UC") is a major overhaul of the social welfare system and that such a reform would be likely to affect large numbers of people – many of them disabled.
15. It would therefore be logical, the complainant argued, that before embarking on such a major change, the DWP would wish to have some understanding of how individuals and families might be affected. He accepted that there would be wide variance in the circumstances of each individual transferred to, or making a fresh claim for, UC, but considered it implausible that the DWP had not carried out any indicative case studies to see how a "typical" claimant might be affected.

16. The complainant further argued that such comparisons would be necessary as a basis for the DWP to carry out an Equalities Impact Assessment on the policy.
17. In summary, the complainant felt that it was unrealistic for the DWP to claim that it did not hold any financial comparisons and that this would suggest an intent, on behalf of the DWP, to conceal "embarrassing" information.

*The DWP's view*

18. The DWP maintained that it did not hold any further information beyond that already in the public domain – although during the course of the Commissioner's investigation it did highlight additional information which was in the public domain, including the DWP's indicative benefits calculator.
19. The DWP was keen to stress the wide variance in the types of circumstances that would cause an individual or a family to make a claim for UC, noting that:

*"the variables involved are too numerous to enable us to conduct an analysis with case comparisons. In addition, as the calculations and methodologies are different, no meaningful direct comparisons can be made between Universal Credit awards and awards of benefit from a legacy system."*

20. In relation to the Equalities Impact Assessment, the DWP commented that:

*"An Equality Impact Assessment considers the overall impacts of a new policy. It does not require a comparison of all permutations of individual circumstance."*

21. The Commissioner was aware of statements that have been made by the Government in general and DWP in particular such as "Around 2.8 million households will have higher entitlements under Universal Credit"<sup>2</sup> and enquired about the statistical basis for such claims.
22. The DWP further explained that statements such as these are based on modelling from its Policy Simulation Model ("the Model"). The Model is not based on exact amounts that are paid to individual claimants, but rather takes into account the overall costs to DWP of providing the

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<sup>2</sup> <https://www.parliament.uk/documents/impact-assessments/IA11-040D.pdf>

various benefit types. The DWP argued that it did not hold information in any more granular form than that already accessible in the various reports that it had produced.

23. The DWP also pointed out to the Commissioner that its modelling was largely based on a "static state", meaning that it did not include any transitional protections. Those switching from older benefits to UC would be entitled to this transitional protection to ensure that they were not worse off under the new system. The DWP noted that the costs of transitional protection were modelled separately.

#### *The Commissioner's view*

24. The Commissioner's view is that, on the balance of probabilities, the DWP does not hold further information within the scope of the request.
25. It is not the role of the Commissioner to determine what type of information a public authority *should* (or should not) hold within the scope of an information request – only what information *is* as a matter of fact, held.
26. The complainant clearly believes that information of the type he has requested would be highly desirable (if not necessary) to be held by the DWP in order for it to understand the implications of a major policy change. The Commissioner notes only that the responses to her enquiries have indicated that the DWP had identified all the information it held within the scope of the complainant's request.
27. The Commissioner recognises that the DWP has put out, into the public domain, a great deal of information about its methodology for modelling the impacts of UC and that this has been highlighted to the complainant. Having pressed the DWP on this point, the Commissioner is satisfied that the data being used in the Model is not of the level of granularity that the complainant is seeking.
28. The Commissioner therefore concludes that, on the balance of probabilities, the DWP holds no further information within the scope of the request.

#### Procedural Matters

29. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
30. The Commissioner notes that the DWP's response was not provided within 20 working days and she therefore finds that the DWP breached section 10 of the FOIA in responding to this request.

## Right of appeal

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31. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**