

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2012

Public Authority: Department for Work and Pensions
Address: IGS Directorate
The Adelphi
1-11 John Adam Street
London WC2N 6HT

Decision (including any steps ordered)

1. The complainant has asked the Department for Work and Pensions (the DWP) for information concerning the audio recording of Work Capability Assessments (WCAs) at assessment centres.
2. The Commissioner's decision is that the DWP did not deal with the request for information in accordance with the FOIA in the following way:
 - It failed to provide a response to the request within the statutory time frame of 20 working days.
3. As a response has now been provided, the Commissioner requires no steps to be taken.

Request and response

4. On 9 March 2012 with respect to WCA audio recordings the complainant wrote to the DWP and requested information in the following terms:
 - '1. *At today's date:*
 - a) *How many assessment centres are in operation?*
 - b) *How many assessment centres are fully equipped to undertake these recordings ie. have the requisite equipment permanently on site and enough staff*

fully trained to ensure that all WCAs could be recorded if required?

c) *If your plan is not to provide 100% cover in case it is required, what proportion have you decided upon and on what basis? How will you deal with the 'excess' as and when it arises?*

2. *If Atos cannot comply with a recording request from a claimant and the date has to be rearranged to whom will the postponement be attributed – Atos or claimant?*
3. *It is obviously important to track progress and value for money with this exercise. What measurement parameters have you established to ensure an accurate and objective evaluation can be performed and when is the first review scheduled? - clearly no point in continuing if it is not delivering objectives.'*
5. The DWP acknowledged the request on the same date.
6. On 11 April 2012 the complainant asked the DWP for an internal review concerning the delay in its handling of his request.
7. On 10 May 2012, the DWP responded to the request for an internal review concerning the delay. It apologised for not providing the complainant with a response and explained that the request had been passed to its Medical Services Contracts Correspondence Team (MSCCT). It explained that at the time of the request decisions regarding the audio recording of assessments had not been finalised and informed the complainant that the response was also delayed due to the increasing volume of cases the MSCCT had received since November 2011.
8. The DWP explained that it expected to provide the complainant with a response by 18 May 2012.
9. On 14 June 2012 the DWP provided a response to the complainant.
10. On 16 June 2012 the complainant requested an internal review. He asked for further explanations regarding the delay and for information about the source of a document extract which had been provided in the response.
11. The internal review was provided on 20 July 2012. This addressed the above issues.

Scope of the case

12. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically wished to complain about the delay in providing a response.

Reasons for decision

13. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days.
14. From the information provided to the Commissioner in this case it is evident that the DWP did not respond to the complainant within the statutory time frame.

Other matters

15. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
16. The Commissioner notes that the DWP's first response to the complainant was an internal review which considered the issue of the delay. It explained why the requested information had not been provided but was not a refusal notice.
17. Having received a response to the request on 14 June 2012, the complainant asked the DWP for an internal review on 16 June 2012.
18. The DWP responded to this request for a review 25 working days later on 20 July 2012. The DWP had initially attempted to post this reply on the Whatdotheyknow website on 16 July 2012; however due to technical problems it was not posted until 20 July 2012. The Commissioner notes that had the DWP successfully posted the response on 16 July 2012, it would still have missed the 20 working day deadline.
19. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be

reasonable to take longer but in no case should the time taken exceed 40 working days.

20. The complainant asked the DWP to review the case in terms of the delay on 11 April 2012 and again on 16 June 2012. The DWP recognised its failure to comply with the FOIA and in both responses apologised for the delay. However, the Commissioner is concerned that both reviews were primarily concerned with the delay in providing a response. Although he appreciates that this was requested by the complainant, the Commissioner notes that the internal review process is not intended simply to handle complaints about procedural matters.
21. Paragraph 39 of the section 45 code of practice states:

"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

Signed

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF