

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 17 July 2017

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information on how to appeal the imposition of a benefit cap. The Department for Work and Pensions (DWP) informed the complainant that it held no information falling within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, DWP does not hold any further information falling within the scope of the request beyond that which has already been provided.
3. The Commissioner notes, however, that DWP did not confirm or deny holding the requested information within 20 working days and has, therefore, breached section 10(1) of the Act.

Request and response

4. On 17 June 2016, the complainant wrote to DWP and requested information in the following terms:

"I wonder if you could advise what the process is for a person who is exempt from the benefits cap to be registered as such and hence have their full entitlement to benefits reinstated? Do they need to make an application to the DWP or is it a process regarding an appeal to the tribunal and if so who should be approached for a mandatory assessment?"

5. DWP treated the request as a 'normal course of business' enquiry and responded on 23 June 2016, providing a copy of a letter that would have been sent to the complainant. DWP explained that the letter included

general details of the benefits cap. DWP also offered to book the complainant an appointment with a staff member to discuss his query further.

6. The complainant responded to DWP and explained that he wished to write to DWP in order to have the decision to apply the benefits cap reviewed. The complainant requested help with this process.
7. On 29 June 2016, DWP responded to the complaint. It provided him with further information regarding the benefits cap and again offered to book an appointment with a staff member.
8. On 29 June 2016, the complainant responded to DWP and requested his email be taken as a complaint regarding the decision to apply the benefit cap and the lack of information provided to a claimant seeking to have the benefit cap reviewed.
9. On 16 October 2016, the complainant contacted the central correspondence team at DWP to complain about DWP's failure to provide the requested information and to respond to his complaint. The complainant explained in this email that he considered his request to fall under the Act and should be acted upon accordingly.
10. On 21 October 2016, the complainant contacted a staff member at DWP to request a response to his email dated 16 October 2016. The staff member confirmed that they had forwarded on his email to the appropriate team.
11. On 24 October 2014, DWP wrote to the complainant to confirm that the Complaints Resolution Team had not received his original complaint but it was now dealing with his complaint.
12. On 24 October 2016, the complainant responded to DWP and requested that it provide the requested information before he made a complaint to the Information Commissioner's Office.
13. On 11 November 2016, DWP wrote to the complainant and provided an explanation regarding determining eligibility for a benefit.
14. On 11 November 2016, the complainant wrote to DWP to confirm that he did not request an explanation of how qualification for a benefit cap is determined, rather he requested information on what the processes were for challenging or appealing the imposition of the benefits cap. The complainant requested the matter was elevated for "*higher review*" and confirmed he would complain to the Commissioner.
15. On 11 November 2016, the complainant wrote to the Commissioner to complain about the handling of his request for information.

16. On 3 December 2016, the Commissioner contacted the FOI team at DWP to provide it with the complainant's request. The Commissioner set out that it appeared to have been handled outside of the Act and asked DWP to provide a response under the Act.

17. On 16 December 2016, DWP wrote to the complainant and provided the following explanation:

"If a customer believes that individual components of their benefit have been calculated incorrectly then they are able to ask for those decisions to be looked at again but the overall imposition of the benefit cap carries no right of appeal"

18. On 6 January 2017, DWP wrote to the complainant again to provide further information and apologised for its omission from the letter dated 16 December 2016. DWP confirmed that there is no right of appeal against a decision to apply the benefits cap. DWP set out that the relevant legislation is paragraph 8A of Schedule 2 to the Social Security Act 1998 and provided a link to the legislation. DWP also provided information regarding appealing the calculation of a benefit cap. DWP also explained that a legal challenge, such as a judicial review, may be a means of challenging decisions and provided a link to advice on judicial reviews.

Scope of the case

19. The complainant contacted the Commissioner on 10 January 2017 to confirm that he wished to proceed to investigation as he considered DWP held further information falling within the scope of his request.

20. The complainant also complained about DWP's handling of his request for information and requested a decision on whether DWP had breached section 10 of the Act.

21. The Commissioner considers the scope of this investigation is to determine whether, on the balance of probabilities, DWP provided all information falling within the scope of the request. The Commissioner will also consider whether DWP has handled the request in accordance with the Act and within the statutory timeframe at section 10.

Reasons for decision

Section 1: Information not held

22. Section 1(1) of the Act 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 hold information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him"*

23. In cases where there is some dispute between the amount of information provided by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities.

The complainant's position

- 24. The complainant considers that DWP must hold further information to that provided as the response stated that there was a right of review in which a decision-maker would review the application of the benefits cap, but it did not provide information on how an applicant went about requesting such a review. The complainant disputed that the process can be as simple of writing in to express concern at the application of the benefit cap.
- 25. The complainant also raised concerns that the information had not been proactively published and stated that it should not be necessary for a member of the public to have to make a request under the Act in order to obtain this information.

DWP's position

- 26. The Commissioner wrote to DWP to request a submission and copies of the information provided to the complainant prior to the Commissioner's intervention.
- 27. DWP confirmed to the Commissioner that there is no appeal process regarding the application of a benefit cap. It confirmed that paragraph 8A of Schedule 2 of the Social Security Act 1998 states:

"SCHEDULE 2

DECISIONS AGAINST WHICH NO APPEAL LIES

...

8A. A decision to apply the benefit cap in accordance with regulations under section 96 of the Welfare Reform Act 2012"

28. DWP explained that it had searched for information on the gov.uk website using the search terms "benefit+cap" to retrieve publicly available information.
29. DWP confirmed that it had not performed any searches of its internal records as there is no appeal procedure for the application of a benefits cap and the links provided in its internal review are standard departmental guidance which did not require a search.
30. DWP also confirmed that as there is no appeal process, there is no statutory or business request for DWP to retain or hold the requested information.
31. The Commissioner informed DWP of the information that the complainant considered it must hold, namely:
 - How to request a review of the application of the benefits cap
 - Who to write to
 - How to phrase the request
 - What further stages of appeal are available should the customer be dissatisfied with the outcome of the review
32. DWP confirmed that it had informed the complainant of how to appeal the calculation of a benefit cap and provided the information stated by the complainant with the exception of how to phrase the request. DWP explained that as each appeal is personal to the claimant, it cannot advise on how to word a request for appeal.
33. DWP confirmed that it had not provided this information in relation to appealing the application of a benefit cap itself as there is no mechanism for review or appeal of this.
34. The Commissioner also raised the complainant's concerns that this information is not publicly available.
35. DWP confirmed that the following is included in the benefit cap frequently asked questions page¹ of the gov.uk website:

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245747/benefit-cap-faqs.pdf

“32. Is there an appeal against being capped?”

Individuals cannot appeal against the decision to apply the benefit cap. If DWP is going to cap their benefit we will write to them to inform them of this.

If they think benefit cap has been calculated incorrectly they may contact DWP to review this”

The Commissioner's position

36. Having considered the explanations provided by DWP, the Commissioner considers that, on the balance of probabilities, DWP does not hold information further to that already provided.
37. The Commissioner has considered whether it was appropriate for DWP not to undertake a search of its internal documents in response to this request.
38. The complainant clearly sets out that he is seeking information on how to appeal the application of a benefits cap only and not how to appeal its calculation. As DWP has set out, it is confirmed in legislation that there is no route of appeal regarding the application of a benefits cap. The Commissioner, therefore, considers DWP's approach to be reasonable and proportionate to the request as it is logical that an organisation would not hold information relating to a process that, by law, it does not undertake.
39. The Commissioner has also considered the information provided to the complainant during the normal course of business enquiries and she notes that the complainant was provided with internal Housing Benefit guidance on 29 June 2016 which states:

“63. The regulations do not allow for an appeal which is based solely on the application of the cap of the amount set out in the legislation”.
40. As set out at paragraph 33, the Commissioner raised the complainant's concerns regarding accessing the request information. The Commissioner's remit does not extend to deciding what information a public authority should publish, however she notes that there is a benefits cap frequently asked questions document available in which it is stated that the benefits cap itself cannot be appealed.

Section 10: Time for compliance

41. Section 1(1) of the Act 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*
42. Section 10(1) of the Act 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.
43. The complainant contacted DWP on 17 June 2016. DWP handled the request as a 'normal course of business' enquiry and responded on 23 June 2016 and again on 29 June 2016 to further correspondence from the complainant.
44. On 16 October 2016, the complainant contacted DWP and confirmed that he considered his request for information should be handled under the Act. DWP responded on 11 November 2016.
45. The Commissioner has reviewed the wording of the complainant's original request and it could be argued that he is requesting advice and guidance rather than recorded information. The Commissioner considers, therefore, that it was understandable why DWP should have initially chosen to handle the request as a 'normal course of business' enquiry.
46. In any event, once a freedom of information request has been identified section 1(1)(a) of the Act obliges a public authority to confirm or deny whether it holds the requested information. Although DWP provided a response to the complainant on 11 November 2016 and 16 December 2016 and an internal review on 6 January 2017, the complainant was not informed that DWP did not hold the requested information within the statutory timeframe set out at section 10(1) of the Act.
47. The Commissioner, therefore, finds that DWP breached section 10(1) of the Act by not complying with section 1(1)(a) by the twentieth working day following the date of receipt.

Right of appeal

48. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

49. 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.
50. 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

Alun Johnson
Team Manager
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