



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA.2017.0171

**Decided without an oral hearing
On 26 February 2018**

Before

JUDGE CLAIRE TAYLOR

Between

IAN HOWGATE

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION

The Tribunal finds that:

1. The Department for Work and Pensions (DWP) breached s.1(1)(a) and (b) FOIA, in failing to inform the Appellant whether the information requested was held and failing to provide all the information it held.
2. DWP did not comply with s.10 FOIA, in failing to provide a response under the FOIA within 20 working days.
3. DWP breached s.17(1)(a) and (b) FOIA in failing to state reliance on section 21 and to do so within the time for statutory compliance.

The appeal is therefore allowed. No further steps are required to be taken. My reasons are set out below. (*In particular, see para.s 11, 18 and 19 below.*)

REASONS

The Request

1. On 17 June 2016, the Appellant wrote to a section of DWP:

“Can I just thank you sincerely for your careful attention to this matter for me. It is a great relief to find someone who is able to deal with a matter so simply, painlessly and clearly.

Whilst I am on conversing with you, 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?”

2. On 23 June 2016, DWP provided a copy of the letter that would have been sent to the complainant and also offered to book an appointment with the Appellant to discuss his query further.
3. On 25 June 2016, the Appellant emailed DWP that he would like to write to DWP to have the decision to apply the benefit cap reviewed. He requested help with this process. (He has explained during this appeal that this email concerned a telephone conversation he had had with an officer at DWP a few days earlier.)
4. On 29 June 2016, DWP provided further information regarding the benefits system. He was provided with a helpline number. On the same day, the Appellant replied asking for his email to be treated as a complaint against the decision to apply the benefits cap and of the lack of available information for those seeking to have a cap reviewed.
5. The Appellant’s appeal letter informs us that on 9 August 2016, the Appellant’s claim for ESA was terminated. On 16 October 2016, he contacted DWP’s central correspondence team, complaining of a failure to provide the requested information and to respond to his complaint. He stated that he considered his request to fall under FOIA.
6. On 24 October 2016, DWP advised that his complaint was being dealt with. The Appellant then again requested the information.
7. On 11 November 2017, DWP replied providing an explanation of how eligibility for benefit was determined. The Appellant replied that the information supplied by the DWP was not what he had sought. He had requested information on what the processes were for challenging or appealing the imposition of the benefits cap. The Appellant proceeded with a complaint to the Information Commissioner (IC). The IC asked for DWP to respond to the request.
8. On 16 December 2016, DWP responded to the Appellant that if benefits have been calculated incorrectly the individual could ask for the decision to be looked at again but that the imposition of the benefits cap carried no right of appeal.
9. On 6 January 2017, DWP provided a further response after a more senior officer had reviewed the matter. It explained that there was no right of appeal against a decision to apply the cap and provided a link to the relevant legislation. It explained the right to apply for a review of the calculation and provided a link to the relevant legislation. It

provided links to guidance 'about revision', and general information about changes of circumstances, appeals and reconsiderations. It also explained that a legal challenge, such as an application for judicial review could be a means of challenging decisions and provided a link to further information.

10. The Appellant complained to the IC that he had been given a 'portion of the information required'. He complained that he had not been given an explanation of how to request a review of the application of the benefits cap. Her Decision Notice of 17 July 2017, that on the balance, DWP did not hold information falling within the scope of the request beyond that already provided.
11. The Appellant now appeals the matter. During this process of this appeal, the IC has conceded:
 1. DWP did not recognise the need to deal with the request under FOIA. It breached s.1(1)(a) FOIA, in failing to inform the Appellant whether the information requested was held.¹
 2. DWP did not comply with section 10 in failing to provide a response under the FOIA within 20 working days.²
 3. DWP breached s.17(1)(a) and (b) FOIA in failing to state reliance on section 21 and to do so within the time for statutory compliance.³

The Task of the Tribunal

12. The Tribunal's remit is governed by section 58 FOIA. This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or whether he should have exercised any discretion he had differently. The Tribunal is independent of the Commissioner, and considers afresh the Appellant's complaint. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner. This is the extent of the Tribunal's remit in this case. Thus, the role of this Tribunal is to consider whether the Appellant's request for information of 17 June 2016 has been properly determined with under the terms of the FOIA. The Appellant raises a considerable number of points that are outside of the Tribunal's powers and remit. For instance, the Appellant's concerns as to any culture of collusion between the Commissioner and public authorities; the adequacy of DWP staff knowledge and DWP published information on the criteria of the benefits cap; the termination of the ESA claim and length of time for his related appeal to be heard; the sending of the Decision Notice by post instead of email; the handling of any SAR request; and so on are all beyond this court's remit.
13. I have benefited from informative submissions from the parties. I have also received a bundle of documents. Although not joined as a party to this appeal, I have also received submissions from DWP. I have carefully considered all material before me, even if not specifically referred to below. The parties have consented or elected for

¹ See further, para. 37 of the IC's Response on page 36 of the Bundle.

² See further, para. 37 of the IC's Response on page 36 of the Bundle.

³ See further, para,23 at pages 49 to 50 and pages 53(b) and 53(c) and 53(d) and of the Bundle.

this matter to be heard without an oral hearing. I am satisfied that I have sufficient information before me to fairly and justly reach a decision on the papers.⁴

The Law

14. Under s.1(1) of FOIA, a person making an information request to a public authority is entitled to be informed in writing whether the public authority holds the requested information and to have it communicated to him, unless it is exempt from disclosure under the Act.

Findings

15. The Appellant's grounds of appeal are very detailed. Certain failures under FOIA have now been conceded. (*See para. 11 above.*)

16. The Appellant questions whether DWP had the answer to his question posted in the Q&A section online at the time of the request. I find the IC's response⁵ to be persuasive. I note that I have seen no compelling response to refute this from the Appellant and adopt the reasoning at para.s 40 to 41 of page 37 of the Bundle.

17. The Appellant contests whether the right of review is accessed simply by writing to DWP. I find the IC's Response as to the parameters of the right of access to information under FOIA to be accurate, such that the Tribunal cannot consider the accuracy of the recorded information held by DWP⁶.

18. However, the Appellant has also argued that he had been provided with only a partial response. The IC found in her Decision Notice that no further information was held within the scope of the request, beyond that which had been provided. It now seems clear this was not correct because the Appellant has since been given further information:

- a. First, this is shown at para. 50 of pages 39 to 40 of the Bundle⁷. Based on the information before me, I find that this information was held by DWP at the time of the request and the authority's response to the request but was not provided. The Appellant states by email of 24 October 2017 that this further information is what he had been asking for.
- b. Second, as was made clear⁸, the Commissioner accepts that DWP had not explained to the Appellant that there was no right to appeal a review decision. Again, DWP did not make submissions on the point. Accordingly, based on the information before me, I find that this information was held by DWP at the time of the request and the authority's response to the request

⁴ The Appellant has raised concerns as to material redacted in the Bundle. The redactions appear to be personal data and in any case I do not find it necessary for these to be provided for me to reach a decision in this appeal.

⁵ At para.s 40 to 41 of page 37 of the Bundle.

⁶ See para.s 42 to 44 of page 38 of the Bundle.

⁷ It also appears to be referenced by link at page 53 of the Bundle. However the information found on those links is not provided in the Bundle, and I do not consider it necessary to see this for the purpose of making a decision. (In accordance with rule 2 of The Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009 S.I. 2009 No. 1976 (L. 20).

⁸ At pages 38 to 39 of the Bundle, Ground Four.

but was not provided. The information is set out at page 114 of the Bundle⁹, such that the Appellant has received it.

19. Accordingly, the IC erred in finding that no further information was held within the scope of the Appellant's request. I find it clear from what I have seen and what the Appellant has written that he now has a response to his request and as such no further steps are required by DWP.
20. The Appellant appears to complain that DWP's non-compliance in failing to comply with his request within the timeframe of FOIA meant that he was too late to apply for judicial review as this needed to be done within six months of the decision. The consequences of delay that the Appellant claims are not matters that this Tribunal can address.¹⁰ To the extent that the Appellant has raised further matters, they are issues that are beyond the court's powers and I do not address them.

Signed

Claire Taylor

Judge of the First-tier Tribunal

Date: 26 February 2018

⁹ See the last sentence of Section M.

¹⁰ The IC explains this correctly at para.61 on page 42 of the Bundle.