

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2024

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant wrote to the Cabinet Office, asking three questions in relation to the minimum five-week period that individuals must wait after applying for Universal Credit before receiving their first payment.
2. The Commissioner's decision is that question three of the request did not meet the criteria of section 8(1)(c) of FOIA and was therefore not a valid request. He is also satisfied that the Cabinet Office met its obligation under section 16 to offer reasonable advice and assistance.
3. The Commissioner requires no steps to be taken as a result of this decision notice.

Request and response

4. On 27 October 2023, the complainant submitted the following request for information to the Cabinet Office:

"I am writing to make a formal request for information under the Freedom of Information Act 2000. My enquiry pertains to the actions of your office concerning the minimum five-week waiting period for the first Universal Credit payment—a subject of considerable public interest. A separate FoI request on this matter has already been issued to the DWP pertaining to any information they may hold.

To ensure compliance with the cost limitations set forth by the Act, I have narrowed my request to the following key questions:

- 1) What specific measures has your office undertaken to alleviate the detrimental impact of the five-week waiting period on Universal Credit claimants?
 - 2) Has your office evaluated or acted upon recommendations from external bodies, such as the Joseph Rowntree Foundation, to mitigate the hardships associated with the five-week waiting period? If so, could you summarise this from your recorded information?
 - 3) Is the government cognisant of the need to reassess or modify the existing five-week waiting period for Universal Credit? If affirmative, could you summarise this from your recorded information?"
5. On 30 October 2023, the Cabinet Office responded and said:
- “Unfortunately your email does not constitute a valid request for information as outlined in section 8(1)(c) of the Freedom of Information Act 2000. The Act does not require public authorities to create new information or to provide opinion or explanation in order to respond to a request or query. The purpose of the Act is to consider the confirmation or provision of recorded information that already exists. Advice on how to make a valid request can be accessed on the Information Commissioner’s website at: [link provided]
- Alternatively, if you would like your email treated as correspondence, you can contact the Cabinet Office by accessing its web form at the following website: [link provided]”
6. On 30 October 2023, the complainant asked the Cabinet Office to conduct an internal review of its response to their request for information.
 7. Following an internal review, the Cabinet Office wrote to the complainant on 31 October 2023, maintaining its original position.

Scope of the case

8. The complainant initially contacted the Commissioner on 31 October 2023 to complain about the way their request for information had been handled.
9. Having considered the wording of the complainant’s request, the Commissioner was of the view that questions one and two were valid

requests for information as they clearly described distinguishing characteristics of the information the complainant wanted (specific measures taken by the Cabinet Office in the case of question one and any evaluation conducted in the case of question two). The Commissioner wrote to the Cabinet Office on 14 November 2023 to confirm this and advised it to respond to questions one and two of the request before the 20 working day time limit from receipt of the request expired. He also confirmed that it was his initial view that question three was unlikely to be a valid request for information under FOIA. The Commissioner also wrote to the complainant to explain his position and the action he had asked the Cabinet Office to take.

10. The complainant responded to the Commissioner on 14, 15 and 16 November 2023, stating their view that question three was a valid request for information under FOIA and providing a more detailed breakdown of the information that they would have expected the Cabinet Office to have considered providing in relation to that question. The complainant asked the Commissioner to provide this more detailed breakdown to the Cabinet Office in explanation of what information it should consider when responding to question three.
11. The Commissioner responded to the complainant on 17 November 2023, advising that he remained of the view that question three was not a valid request for information, as originally worded, to the Cabinet Office. The Commissioner also advised the complainant that it was not his role to provide the detailed breakdown (referred to in paragraph 10 of this decision notice) to the Cabinet Office on the complainant's behalf and that if they wished, they could submit it themselves as a new request for information.
12. The Commissioner understands that the complainant did this on 18 November 2023, rewording question three as follows:

"Please undertake a focused search within the Cabinet Office for internal documents, reports, or correspondence that explicitly address or acknowledge the necessity to evaluate or alter the existing five-week waiting period for Universal Credit. These documents should encompass any government awareness, deliberations, or dialogues pertaining to potential adjustments of the waiting period.

To ensure compliance with cost constraints and manage the volume of information, I respectfully request that the search be confined to documents dated within the past one year. During the search, please utilise the following keywords: 'Universal Credit waiting period review,' 'modification of five-week waiting period,' and 'government awareness.' However, please limit the

collection of results for each keyword to a maximum of five documents.”

13. On 24 November 2023, the Cabinet Office responded to the complainant as follows:

“We are writing to inform you that the Cabinet Office is unable to comply with your request. Section 12(2) of the Freedom of Information Act relieves public authorities of the duty to comply with a request for information if the cost of dealing with it would exceed the appropriate limit. The appropriate limit has been specified in regulations, and for the Central Government this is set at £600. This represents the estimated cost of one person spending 3 1/2 working days in determining whether the Department holds the information, and locating, retrieving and extracting it.

Your request exceeds the cost limit because we estimate that extensive searches would need to be undertaken to determine whether this information is held by the Cabinet Office. The Cabinet Office is not the lead department for this policy area so ascertaining whether or not any information is held would require us to conduct searches across a large number of teams across the department as no one single area will hold the information in scope of the request, if it is held.

If you wish, you may refine your request so that the cost of determining whether the Cabinet Office holds relevant information, locating, retrieving and extracting it would not exceed the appropriate limit. For example, you may wish to specify a particular area of the department or provide a time scale for your request.”

14. Whilst the Cabinet Office did not explicitly state which parts of the originally worded request this response related to, the Commissioner takes it to be in response to parts one and two of the request (and not part three), and sent in order to conform to the advice he provided to it on 14 November 2023.
15. On 24 November 2023, the complainant responded to the Cabinet Office’s correspondence of the same date, narrowing the time frame of the information they were seeking to limit the amount of information that needed to be considered, and providing further clarification of the information they were seeking in relation to all three of the questions in the original request. This included further detail on the information they were seeking in response to question three of the original request.

16. On 18 December 2023, the Cabinet Office responded to the complainant's correspondence of 18 November 2023 (reworded question three) as follows:

"We are writing to advise you that following a search of our paper and electronic records, we have established that the information you requested is not held by the Cabinet Office.

We advise that you redirect your request to the Department for Work and Pensions: Freedom-of-information-request@dpw.gov.uk."

17. On 27 December 2023, the Cabinet Office responded to the complainant's correspondence of 24 November 2023, confirming "that the information [the complainant] requested is not held by the Cabinet Office. On the same date, the complainant confirmed to the Commissioner that they had now received a response, from the Cabinet Office, to all three questions, that they were satisfied with.
18. However, the complainant contacted the Commissioner again on 7 January 2024 to complain that the Commissioner should, in their view, have instructed the Cabinet Office to "respond" to the originally worded question three "even if that meant providing reasonable advice and assistance per s16."
19. Following these and further exchanges with the complainant regarding their dissatisfaction (including confirmation from the complainant that they wished to be issued with a decision notice), the Commissioner considers that the scope of this case is to consider whether question three, as originally worded on 27 October 2023, is a valid request for information and whether the Cabinet Office complied with any duty to provide advice and assistance under section 16 of FOIA in respect of it.

Reasons for decision

Section 1 - general right of access

20. Section 1(1) of 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.

21. Whether a person is "making a request for information" depends on whether the request meets the requirements of section 8 of FOIA.

Section 8 - request for information

22. Section 8(1) of FOIA defines a valid request for information under FOIA as a request which:

- a) is in writing,
- b) states the name of the applicant and an address for correspondence, and
- c) describes the information requested.

23. Section 84 (Interpretation) of FOIA defines "information" as "...information recorded in any form".

24. Therefore, in order to constitute a valid request for information under FOIA, not only must the complainant's request satisfy the criteria in section 8 of FOIA, but it must also be a request for recorded information.

25. In this case, the complainant's question was in writing, and they provided an address for correspondence. Therefore, the only issue for the Commissioner to consider is whether it describes the information requested.

26. The Commissioner considers that a request will meet the requirements of section 8(1)(c) if it contains a sufficient description of the recorded information that the requester is seeking. This description should allow the public authority to distinguish between the information being requested and any other recorded information it may hold. The public authority must also be able to make an objective assessment of what information does and does not fall within scope.

27. The Commissioner accepts that a request in the form of a question can be valid under section 8(1)(c), provided it still describes distinguishing characteristics of the information.¹
28. Having considered the original wording of question three, it is not clear how the Cabinet Office would distinguish recorded information that shows that the government is "cognisant" of any particular need. "Cognisance" is not an objective standard. The question is based around an assertion that there is a need to "...reassess or modify the existing five-week waiting period for Universal Credit". Essentially, it is asking whether the government does or does not agree that such a need exists.
29. The question does not describe any distinguishing characteristics of any recorded information that the Cabinet Office may hold. Whilst it ends with "...could you summarise this from your recorded information?", this is conditional on the Cabinet Office accepting the complainant's assertion, and that it is "cognisant" of it, in the first place.
30. This is in contrast to questions one and two of the request, which in the Commissioner's view clearly described distinguishing characteristics of the information the complainant wanted. In the case of question one, this information was any specific measures taken by the Cabinet Office to alleviate any detrimental impact that the five-week waiting period for Universal Credit may have. In the case of question two, this was any evaluation conducted or action taken by the Cabinet Office in response to external bodies. Unlike question three, questions one and two were not based on the subjective element of whether the Cabinet Office was "cognisant" of a particular need asserted by the complainant, nor were they conditional on the Cabinet Office's response to any such assertion.
31. The Commissioner is therefore satisfied that the original wording of question three is not a valid request for recorded information under section 8(1)(c) of FOIA. The Cabinet Office was therefore under no obligation to respond to question three, as originally worded, under section 1 of FOIA.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/recognising-a-request-made-under-the-freedom-of-information-act-section-8/#arerequestsframed2>

Section 16 - duty to provide advice and assistance

32. Section 16(1) of FOIA states that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or who have made, requests for information to it.
33. In its response to the complainant of 30 October 2023, the Cabinet Office explained that FOIA does not require public authorities to create new information or to provide opinion or explanation in order to respond to a request or query. It added that the purpose of FOIA is to consider the confirmation or provision of recorded information that already exists. The Cabinet Office also provided the complainant with advice on how to make a valid request by reference to information available on the Commissioner's website.
34. The Freedom of Information section 45 Code of Practice² only requires a public authority to clarify a request if it is genuinely unsure what information the requester is seeking (ie it cannot distinguish the requested information from the remaining information it holds).
35. In this case, the Commissioner is satisfied that the request was not unclear; it was invalid. Therefore, the Cabinet Office cannot reasonably have been said to have failed to conform to the Code of Practice in respect of its duty to clarify the request. The issue is therefore whether the Cabinet Office provided reasonable advice and assistance in order to enable the complainant to submit a revised version of question three which would constitute a request for recorded information which meets the terms of section 8(1)(c).
36. In the particular circumstances of this request, whilst the advice and assistance provided was not appropriate in relation to questions one and two of the originally worded request (due to them being valid as per section 8 as explained earlier in this notice), the Commissioner is satisfied that the advice and assistance provided by the Cabinet Office in its response of 30 October 2023 was reasonable in relation to question three.

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https://assets.publishing.service.gov.uk/media/5bacc7eb40f0b62dbe5321ba/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

37. Notwithstanding this conclusion, the Commissioner notes that the complainant was able to subsequently submit a valid request in relation to it.
38. The Commissioner is therefore satisfied that the Cabinet Office has complied with its obligations under section 16 of FOIA in respect of question three as it was originally worded.
39. The Commissioner does not therefore require the Cabinet Office to take any further steps in this case.

Right of appeal

41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

42. 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.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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