

Department for Work and Pensions (DWP)
Central Freedom of Information Team

freedom-of-information-request@dwp.gsi.gov.uk

Our reference: IR543

Date: 13th January 2017

Dear Mr Carter,

Thank you for your e-mail of 21 December 2016, requesting a review of our Freedom of Information (FOI) response provided under the terms of the Freedom of Information Act 2000 (FOIA).

I have completed an internal review and I am in a position to inform you of the outcome. I can confirm that I was not connected with the consideration of your original request.

You asked:

Please note that the none of FOI requests have been satisfactory answered. I appreciate your effort but these were not the answers I were seeking. As such please can you provide the answers to the same questions with the assistance of my responses as listed below.

For a public body tasked with administering services for the public, paid for by the public, we would expect as a minimum clear guidelines, targets (figures, numbers) for responding to letters regarding matters of child support, general complaints and relative matters, and for these to reasonably and practicably available in terms of clarity and general availability.

Q 1 & 2 We are aware of information on the public domain including Government protocol given at www.gov.uk/child-maintenance/complaints-and-appeals. The questions are reference to information that is not available on the public domain.

Q. 1 is a simple yes or no answer; rationale and correlating legislation to back up answer would also be sufficient in this instance (as per DWP guidelines).

Q. 2 is also a relatively simple figurative answer. My request is for a definitive answer/working protocol as opposed to the Charters subjective statements, e.g.:

“Responsive... We will answer your questions and sort out any issues as quickly as we can. If your needs change, we’ll change with you. And we’ll use your feedback to improve how we do things.”

Q.3 Once again this is a figurative answer that may correlate to your given Annexe. Time-scale e.g. 7 days? 14 days? Etc.

For such serious matters, the public would expect it reasonable and practicable that the body tasked with administering this public service is working to a time scale.

Q. 4 & 5 You make reference to legislation when clearly asked for the Law.

There is a difference between legal, which is civil law and is contractual, and Lawful, which is common law. Common law trumps civil law, for example you cannot write legislation that allows a person to commit murder, fraud or theft, which under common law is a criminal offence. No contract is required as common law is the same for all as opposed to legislation which may benefit or dis-benefit certain members of the public.

I would advise that you to seek the basic understanding prior to responding and to also gain better understanding for future reference. I look forward to a response.

Our Response:

It may be helpful if I start by clarifying the remit of the Freedom of Information Act (FOIA). The FOIA gives any person legal right of access to any and all recorded information which is held by a public authority. The FOIA does not oblige a public authority to create new information to answer questions; nor does it require a public authority to give advice, opinion or explanation in relation to issues/policies under question.

I can advise that I find the original decision to be partly correct. The reasoning behind this decision is as follows, and additional information has been provided where necessary.

Questions 1 & 2:

The DWP Customer Charter does set out the expectations we have of clients and the service we promise to provide to clients. This was therefore provided to illustrate that it would not be within our customer service protocol to refuse to escalate a complaint.

On every case we handle, at every stage in the process, we will explain to the client what we are doing, how long it will take and honour our commitment. Each individual case is different but our caseworkers will use their knowledge and judgement to determine what action is required and a date by when the client will either receive an outcome or contact from us to update them.

Depending on the nature of the request received we have specified time scales for dealing with requests and changes. These time scales range from 2 days to 42 days.

There are different time scales associated with the different types of correspondence received to the Child Maintenance Service (CMS).

(i) Complaints:

CMS are part of DWP and operate a two tier complaint process. However In the first instance if a complaint is raised via the normal business as usual route it is treated as a dissatisfaction (specific part of the process) which we aim to clear in 5 days.

If the complaint has not been resolved at this stage it can be progressed to the Tier Complaints Resolution team where the target is 90% of complaints dealt within 30 days.

Annex 1, attached with this response, details the dissatisfaction process a caseworker will follow.

Annex 2, attached with this response, is taken from the procedures a caseworker must follow on receipt of a complaint.

If their complaint is not resolved at Complaints Resolution a client can escalate their complaint to the Complaints Review Team. A client can ask the Complaints Review Team to see if the initial complaint was dealt with properly and if anything else can be done to help; again this has a target of 30 days. Where the internal complaints process has been exhausted, a client can write to the Independent Case Examiner or they can request their MP write to the Parliamentary and Health Service Ombudsman on their behalf. More information can be found at:

<https://www.gov.uk/child-maintenance/complaints-and-appeals>

(ii) Subject Access Requests:

The Data Protection Act (1998) requires that all Subject Access Requests (SAR) are completed within 40 calendar days from the date of receipt of a valid request. The date of receipt is calculated from the day the request is received in any DWP office. The Department's policy is to make all personal data available to individuals on receipt of a SAR request, unless covered by a specific exemption or it contains third party information. You can find more information at:

<http://www.legislation.gov.uk/ukpga/1998/29/contents>

(iii) Freedom of Information Act Requests:

Under the Freedom of Information (FOI) Act 2000, responses have to be provided within 20 working days from the date of receipt. The date of receipt is calculated from the day the request is received in any DWP office. More information can be found at:

<http://www.legislation.gov.uk/ukpga/2000/36/contents>

Question 3:

The information provided to you in our initial response regarding the time scales associated with a parentage dispute is correct. The DNA test itself usually takes around 10 days to be completed, however the whole process including gathering of information and system action, pre and post test, can mean this takes longer.

Questions 4 & 5:

The Child Support Act 1991 creates a statutory obligation upon a non-resident parent to pay maintenance. The Act also provides statutory powers to enable the CMS to enforce those maintenance obligations. As you rightly say, there is no contractual obligation on such a parent to pay maintenance. What exists is an enforceable obligation to pay maintenance which has been created by Parliament, and non-resident parents are required to comply with this obligation.

You make the distinction between contractual and common law obligations. This distinction is not relevant here, what we are concerned with is a statutory obligation. Whilst a requirement to pay maintenance may be perceived to be a dis-benefit to a person who does not wish to pay, in enacting child support legislation, Parliament has acted to benefit children. Under section 4 of the Child Support Act 1991 all non-resident parents are required to support their children and no parent is treated any differently in this respect.

If you have any queries about this letter please contact the Department quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwpgsi.gov.uk or by writing to: DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF www.ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745