

1 June 2012

Dear John Slater,

Thank you for your Freedom of Information request received on 15 May 2012. You asked for:-

I disagree with your assertion regarding section 36 exemption.

As I am sure you are aware Section 36 requires a determination by a 'qualified person'. It is the only exemption in the Act that has this provision. The exemption under section 36 will only apply if the reasonable opinion of a qualified person is that one of the forms of adverse effect specified in paragraph 2 would follow from disclosing the information. In relation to information held by government, the qualified person must be a Minister. Therefore please provide the documentation from the relevant Minister that explains why they believe the exemption applies.

"Free and frank provision of advice, or exchange of views, for the purposes of deliberation"

Whilst I understand that the FOIA allows the term 'advice' to be interpreted widely I fail to see how the 3 documents requested could possibly be regarded as advisory in any way, they are not used for the purposes of exchanging views and certainly are not part of any deliberation. I will take each in turn:

The Universal Credit Risk Register/Risk Management Plan

This document usually contains the perceived risks or threats to the programme. In effect this is 'crystal ball gazing' to see what may 'hurt' the programme in the future. It should contain actions plans (or mitigation) that have been or are being put in place to reduce, remove, pass on, insure or accept the risk. If the risk register is being used for any of the purposes at apply to the claimed exemption then that is very worrying and raises serious doubts about how the programme is being run.

The Universal Credit Issue Register/Issue Management Plan

This document usually contains identified problems that are currently impacting the programme but are not covered by existing

plans, projects etc. This is different to risks in that this deals with problems or opportunities that are happening now and need attention by the programme team. Once again I fail to see how the section 36 exemption applies to this document. This document is a statement of factual information about the programme. Even applying the widest interpretation this document cannot be considered a vehicle for exchanging views or forming part of any deliberation.

#### The Universal Credit High Level Management Schedule

This is usually a high level representation (usually some form of Gantt chart or list of milestones) of the programme that shows progress of tasks, projects, etc against the last baselined scheduled completion dates. In effect it is the current snapshot of how the programme believes it is progressing against agreed target dates. Whilst this may form part of discussions with Ministers it is clearly wrong to claim that this is advisory, is a vehicle for exchanging views or forming part of any deliberation.

#### The effective conduct of public affairs

This exemption was added by Parliament to cover residual situations that could not be foreseen where it was necessary to withhold information in the interests of good government. As I am sure you are aware when applying legislation that has such a broad application it is usual to consider the intent of the legislator when drafting said law. Clearly if Parliament considered this exemption for situations that could not be foreseen then this implies that its application must be for very unusual requests. Clearly requesting the release of documents held by a government department relating to a programme of work being undertaken is far from unusual and cannot possibly be regarded as something that could not have been foreseen. Therefore, the DWP is clearly attempting to apply the exemption inappropriately and in my view cannot be applied to my request.

Due to the broad nature of the exemption it is also a requirement that the DWP should have explained clearly why the exemption is engaged, setting out the risk of harm or damage that could result from the release of the information in question. The DWP failed to do this in its response to my request.

#### Conclusion

The DWP have failed to apply the Section 36 exemption appropriately and in addition have failed to provide the required explanation. Once again it appears that the DWP are 'blindly' throwing FOI exemptions around without really understanding what they mean. Therefore I repeat my request for the documents and request that the DWP comply with the FOIA. If they fail to comply I will complain to the OIC.

## New Request for Data

However, given that the DWP have confirmed that it holds the documents please provide the following data:

- Start date of UC programme
- Date that each of the listed documents was created and their current version / revision number.
- What triggered the creation of the documents and how long did it take to create them from scratch.?

I note that you have attempted to employ the usual DWP technique of deflecting my question regarding Agile. I am well aware of Agile and how large complex programmes are run professionally as I have been doing it for 20 years. Please do me the courtesy of actually answering my questions which I have listed below again for your convenience:

-Please advise if Agile or similar technique has ever been successfully used by the DWP or its contractors to complete a programme as complex as the Universal Credit Programme?

-If the technique has been successfully employed previously please advise on what programmes.

-If this technique has not been used previously on a programme of this size and complexity please advise:

- Who made the decision to use it given the huge inherent risk?
- Why was a technique that at best has a dubious reputation in IT projects felt suitable for a huge change programme?

I also raise the following additional questions:

- Why has the DWP not employed MSP (Managing Successful Programmes) and Prince2 for this programme and associated projects?
- Who took the decision not to employ MSP and Prince2 given that they are regarded as the de facto standard by the Government (after all the OGC created them)?

If you refuse to provide answers to my questions or attempt to deflect them again I will raise a complaint with the OIC.

I am writing to advise you that the time limit for responding to your request for information which was received on [date] needs to be extended.

It is occasionally necessary to extend the 20 working day time limit for issuing a response. In the case of your request, I need to extend the time limit because the information requested must be considered under one of the exemptions to which the public interest test applies,

namely Section 36. This extra time is needed in order to make a determination as to the public interest.

Accordingly, I hope to let you have a response by 2 July 2012.

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

Yours sincerely,

DWP Central Fol Team

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**Your right to complain under the Freedom of Information Act**

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.gov.uk](http://www.ico.gov.uk)