

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2018

Public Authority: Department for International Development

Address: foi@dfid.gov.uk

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for International Development (DFID) concerning allegations about Development Aid from People to People (DAPP). DFID confirmed that it held information falling within the scope of the request but explained that it needed additional time to consider the balance of the public interest test. To date, DFID has failed to complete its public interest test deliberations in relation to the request. By failing to complete these deliberations within a reasonable timeframe the Commissioner has concluded that DFID has breached section 17(3) of FOIA in respect of its handling of this request.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a substantive response to his information request of 22 December 2017. If DFID decides to withhold any information in response to this request then the complainant should be provided with a refusal notice giving a full explanation as to why information will not be disclosed, including details of any public interest test considerations.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. The complainant submitted the following request to DFID on 22 December 2017:

'We write on behalf of our client...

- 1. To request under the Freedom of Information Act 2000 (FOIA) the DfID internal assessment in early August 2016 of allegations concerning DAPP to which DfID refers in items 10.a and 12 of its Information Note from Anthony Garnett and another of 29 July 2016 (Disclosure 4 to DfID's letter to us of 28 November 2017);*
 - 2. To ask you please to confirm whether DfID funding to DAPP Malawi remains suspended or has been terminated, and if it was terminated, the date on which decision to terminate it was taken; and*
 - 3. If it is the case that funding to DAPP Malawi remains suspended or has been terminated, then we make a further request under FOIA for any final report which underpins the decision to continue to suspend or terminate such funding.'*
5. DFID contacted the complainant on 25 January 2018 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 31 (law enforcement), 36 (prejudice to the effective conduct of public affairs) and 43 (commercial interests) of FOIA but it needed additional time to consider the balance of the public interest.
 6. DFID sent the complainant similar letters further extending the time it needed to consider the public interest test on 8 February, 23 February and 8 March 2018.

Scope of the case

7. The complainant contacted the Commissioner on 12 March 2018 in order to complain about DFID's failure to provide him with a substantive response to his request.

Reasons for decision

8. Section 1(1) of FOIA 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.'

9. Section 10(1) of FOIA 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.
10. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.
11. In the circumstances of this request DFID has taken more time than the Commissioner's guidance recommends for public interest test considerations. In the Commissioner's opinion DFID has therefore failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that it has not complied with section 17(3) of FOIA in respect of its handling of the complainant's request.

Right of appeal

12. 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

13. 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.
14. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF