

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2018

Public Authority: Foreign & Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested copies of documentation related to the processing of a previous information request.
2. The Commissioner's decision is that the Foreign & Commonwealth Office ("the FCO") has failed to complete its deliberations on the balance of the public interest within a reasonable time period and has therefore breached Section 17(3) of the Freedom of Information Act ("the FOIA").
3. The Commissioner requires the FCO to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The FCO 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 14 July 2017, the complainant contacted the FCO via the whatdotheyknow.com website and requested information in the following terms:

"please provide me with all documentation related to the processing of Freedom of Information request 0416 - 17 (including its associated Internal Review with the same reference number).

By documentation, I mean internal emails, notes, meeting records, and potentially submissions to senior civil servants or ministers connected with the request and its subsequent Internal Review, i.e. its processing, the decision-making as to whether information should be released or not, etc.

I obviously exclude from the present request the actual information sought (but refused access to) in request 0416 - 17 itself."

6. The FCO replied to the complainant on 19 October 2017 to confirm that it held information within the scope of the request but it considered this to be exempt from disclosure on the basis of Section 27 (prejudice to international relations) and Section 42 (Legal Professional Privilege). However the FCO explained that it needed more time to consider the balance of the public interest in respect of those exemptions. The FCO sent a similar letter on 13 September 2017.
7. The FCO sent two further replies, on 16 October 2017 and 8 November 2017, to a different whatdotheyknow.com thread. Both these letters claimed that the FCO was considering the balance of public interest only in respect of Section 27.
8. On 24 November 2017, the FCO sent a further letter, now claiming that it was considering the balance of public interest in relation to both Section 27 and 42. The letter stated that the FCO also considered that Section 40 (Personal Data) applied to the requested information. The Commissioner notes that a public authority is only required to consider the balance of public interest in relation to information withheld under Section 40 where that information would also engage an exemption from disclosure if the request had been made under the Subject Access Provisions of the Data Protection Act 1998.
9. The FCO's FOI unit sent further emails via whatdotheyknow.com on 2 February 2018 and 18 May 2018. In the latter email it advised the

complainant that it had been "*assured by the department responsible that you will receive our response by 31 May*".

Scope of the case

10. The complainant contacted the Commissioner on 18 May 2018 to complain about the failure, by the FCO, to respond to the request.
11. The Commissioner contacted the FCO on 25 May 2018. She highlighted the fact that the FCO had set itself a target of 31 May 2018 to complete its public interest deliberations and stated that she expected a substantive response to have been issued to the complainant by close of business on that date.
12. The FCO responded to the Commissioner and the complainant on 31 May 2018 to say that it was still unable to issue a response.
13. Given the substantial delays in responding to this request, the Commissioner considers that a decision notice is appropriate. The scope of this notice is to determine whether the delay in responding to the request is reasonable in the circumstances.

Reasons for decision

14. Section 1(1) of the 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.*

15. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such 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.*

16. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
17. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
18. Section 10(3) of the Act states that, where a public authority is considering the balance of public interest, it can extend the 20 working day deadline "*until such time as is reasonable in the circumstances.*"
19. 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 justify the time taken fully.
20. At the date of issuing this decision notice the FCO has had ten and a half months to respond to this request but has not done so. The Commissioner would struggle to imagine prevailing circumstances which would render such a delay "reasonable" and the FCO has not made any attempt to explain them.
21. In the Commissioner's opinion the FCO has failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that the FCO has not complied with Section 17(3) of the Act.

Other matters

22. In addition to the statutory breaches she has identified above, the Commissioner considers the handling of this request by the FCO to have been deeply unsatisfactory. Correspondence has been sent to the wrong place, exemptions have been applied, disapplied, then reapplied and, since December, the FCO has only provided updates in response to chasing from the complainant.
23. As a basic principle of good customer service, the Commissioner would expect a public authority to be in regular communication with a requestor whenever it needs further time to respond.

Right of appeal

24. 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

25. 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.
26. 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

[Name of signatory]

[Job title of signatory]

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF