

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2015

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information about awards or titles relating to the late Cyril Smith. The Cabinet Office wrote to advise that further time was required to consider the balance of the public interest test in relation to the application of section 37(1)(b). By the date of this notice the Cabinet Office had yet to provide a substantive response to the request. The Information Commissioner's decision is that the Cabinet Office breached section 17(3) of the FOIA.
2. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with a substantive response to the request for information. In the event that the Cabinet Office decides to withhold any information then the complainant should be provided with a refusal notice giving a full explanation as to why the information is not being disclosed, including details of any public interest 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. On 28 April 2014, the complainant wrote to the Cabinet Office and requested information in the following terms:

"1...Can you please supply copies of all correspondence between the Cabinet Office and the late Cyril Smith which in any way relates to the issue of honours and or titles. The correspondence could relate to an honour(s) or title(s) which was actually awarded or it could relate to honours and titles which were either refused or not awarded. Please do include all correspondence and communications including emails.

2...Can you please supply copies of all correspondence between the Cabinet Office/Downing Street and any of Sir Cyril Smith's representatives and/or employees which relates to the issues of honours and titles. This correspondence could relate to an honour(s) or title(s) which was actually awarded or it could relate to honours and titles which were either refused or not awarded. Please do include all correspondence and communications including emails.

3... Can you please supply copies of all correspondence sent by and on behalf of a Prime Minister or Cabinet Minister which in any way relates to the subject of honours and or titles for Sir Cyril. This documentation will include but will not be limited to correspondence with the honours committee as well as correspondence with Civil Servants.

4...Can you please provide a list of government departments and or public bodies which have recommended Sir Cyril Smith for an honour. I am interested in receiving information even if the honour was refused or not awarded. In the case of each department, each public body and each recommendation, can you please supply copies of all correspondence with the Cabinet Office. I am interested in receiving both sides of the correspondence.

5...Did the Cabinet Office carry out a research of any kind and or seek the advice of any third party about the suitability of Sir Cyril Smith for an honour. If so can you provide copies of this correspondence and associated documentation held by the Cabinet Office.

6...Can you please supply copies of any complaints received and or held by the Cabinet Office which relate to decision to award an honour to Sir Cyril Smith. Please feel free to redact the name of any complainant if that complainant is a member of the public. Please do include those complaints received after Sir Cyril's death and or in the light of recent allegations. The complaints could relate to honours that were actually awarded or to honours that were turned down or refused."

5. The Cabinet Office wrote to the complainant on 25 June 2014 advising that it was considering the application of the exemption at section 37(1)(b). It stated that in accordance with section 10(3) it would not be complying with the request within the time limit as further time was

needed to consider where the balance of the public interest lay. The Cabinet Office wrote further letters to the complainant stating that more time was needed to consider the public interest test. To date, a substantive response to the request has not been issued

Scope of the case

6. The complainant contacted the Commissioner on 24 October 2014 to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the fact that no substantive response had been provided and the Cabinet Office had failed to meet its own deadlines set out in its correspondence.
7. The Commissioner wrote to the Cabinet Office on 30 October 2014 asking for a response to be issued within 10 working days. In the absence of any response, the Commissioner contacted the Cabinet Office again on 21 November 2014 to advise that the complaint would be investigated. He spoke to a member of the Cabinet Office's staff on 22 January 2015 but at the time of this notice, the Cabinet Office had still not issued a response to the request for information.
8. The scope of the case is therefore to determine whether the Cabinet Office has complied with its obligations under FOIA.

Reasons for decision

Section 1 – General right of access

9. Section 1(1) of FOIA states that:

1(1) Any person making a request 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.*

10. Section 8(1) of FOIA states:

8(1) 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.

11. The Commissioner considers that the request in question fulfilled these criteria, and therefore constituted a valid request for recorded information under the FOIA.

Section 10(1) – Time for compliance

12. Section 10(1) of the FOIA states 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.

13. Section 10(3) states:

“If, and to the extent that-

(a) Section 1(1)(a) would not apply if the condition in section 2(1)(b) [consideration of the public interest test] were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) [consideration of the public interest test] were satisfied, the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) [provision of refusal notice] must be given.

Section 17 – Refusal of a request

14. Section 17(1) –(3) states

“(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must,

within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2)Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

15. In this case, the practical consequence of the above is that the Cabinet Office, by virtue of section 10(3), could extend the 20 working day limit up to a 'reasonable' time where it required more time to consider whether or not the balance of the public interest lay in maintaining the exemption at section 37(1)(b).
16. The FOIA does not define what might constitute a 'reasonable' extension of time in such circumstances. However, in the Commissioner's view, a public authority should take no more than an additional 20 working days to consider the public interest, meaning that the total time spent dealing with the request should not exceed 40 working days.
17. Once a final decision has been reached, the public authority must either disclose the information to the requester or issue a second refusal notice explaining why it has found the public interest to favour maintaining the exemption.
18. In this case, the Cabinet Office wrote to the complainant 41 working days after the request was made, to advise that it held information relevant to the request. In the same letter, it stated that the information was exempt under section 37(1)(b) but that it needed further time to

consider whether the balance of public interest lay in favour of maintaining the exemption or not.

19. In the Commissioner's view, as set out above, a public authority can take up to a further 20 working days (beyond the statutory timeframe of 20 working days) to consider the balance of public interest in such cases. The Commissioner considers this to be a period that is reasonable in most circumstances such that it accords with the requirements of section 10(3). At the time of its initial response, the Cabinet Office had taken 41 working days.
20. The Commissioner accepts that exceptional circumstances may prevail in a very limited number of cases whereby it may be reasonable to take longer than the further 20 working days to consider the balance of public interest. However, even if exceptional circumstances prevailed in this case (and the Commissioner has received no arguments from the Cabinet Office to suggest that this is the case), the Commissioner's position is that no public authority should still be deliberating about the balance of the public interest test after almost 10 months of the request being made.
21. From the information provided to the Commissioner it is evident that the Cabinet Office did not respond to the complainant within the statutory timeframe in respect of this request.
22. The Commissioner's decision is that the Cabinet Office did not deal with the request for information in accordance with the FOIA. It contravened the requirements of section 17(3) when it failed to respond in full to the request within a reasonable time. As it has still not responded to the request, the Cabinet Office is now formally required by the Commissioner to respond to the request of 28 April 2014.

Right of appeal

23. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

24. 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.
25. 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

Alexander Ganotis
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SK9 5AF