

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 May 2016

**Public Authority:** Foreign and Commonwealth Office

**Address:** King Charles Street  
London  
SW1A 2AH

#### **Decision (including any steps ordered)**

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1. The complainant has requested specific files from The Foreign and Commonwealth Office's (FCO's) 'Special Collections'. The FCO confirmed that it holds information relevant to the request. It repeatedly advised the complainant that it required further time to consider the public interest test. To date, the FCO has failed to provide the complainant with a substantive response. By failing to do so, the Commissioner has concluded that the FCO has breached section 17(3) of FOIA.
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. If the FCO decides to withhold any information then the complainant should be provided with a refusal notice giving the full explanation as to why the information will not be disclosed, including details of any public interest test consideration.
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

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4. On 7 July 2015, the complainant wrote to the FCO and requested information in the following terms:

*"I request all papers dated 1967-1972 inclusive – from File 2562 British Indian Ocean Territory (BIOT): working papers."*

5. The FCO acknowledged receipt of the request on 9 July 2015 stating that it had received the request on 8 July 2015.
6. On 5 August 2015, the FCO contacted the complainant advising him that it had yet to reach a decision on the balance of the public interest test with respect to the exemption at section 26 – defence and section 27 – international relations.
7. The FCO subsequently sent seven further, almost identical, letters to the complainant in consecutive months. To date no substantive response has been received.

## Scope of the case

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8. The complainant contacted the Commissioner on 11 April 2016 to complain about the way his request for information had been handled. He explained that since making his request, he had received numerous letters referencing the public interest test and the requirement for further time.

## Reasons for decision

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9. 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."*

10. 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.
11. 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 by up to a further 20 working days, which would allow a public authority 40 working days in total. Any extension beyond 40 working days would require there to be exceptional circumstances, fully justified by the public authority.

12. In the circumstances of this case, although the FCO has repeatedly informed the complainant of the delay while the public interest is considered, the total time taken has well exceeded 40 working days. Even if exceptional circumstances may prevail, the Commissioner's position is that no public authority should still be deliberating about a substantive response nine months from the date of receipt. As the Commissioner does not consider this to be a reasonable timescale, he finds the FCO has not complied with section 17(3).

## Right of appeal

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13. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

14. 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.
15. 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**