

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 April 2017

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested statistical information regarding pregnancies at Yarl's Wood Immigration Removal Centre from the Home Office. By the date of this notice, the Home Office has yet to provide a substantive response to this request.
2. The Commissioner's decision is that although it has complied with section 17(1) in stating which exemption is to be relied upon, by failing to complete its public interest test considerations within a reasonable time period the Home Office has breached section 17(3) of the FOIA. The Commissioner has also found breaches of sections 1 and 10 of the FOIA.
3. The Home Office is required to issue a substantive response to the complainant's request, either disclosing the requested information or issuing a valid refusal notice as set out in section 17 of the FOIA.
4. The Home Office 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

5. On 7 November 2016 the complainant wrote to the Home Office and requested information in the following terms:

"In the Service Improvement Plan for Yarls Wood Immigration Removal Centre, dated 11th August 2015, the Home Office set out that management information on the number of women who have disclosed their pregnancy and are being held in detention would from this point on be recorded centrally – see page 3, point 5.12: <http://www.justiceinspectrates.gov.uk/hmiprisonswp-content/uploads/sites/4/2015/08/2015-08-11-FINAL-AGREED-Service-Improvement-Plan-for-Yarls-Wood-IRC.pdf>

Now that this information is being recorded centrally by the Home Office, we request the following information. According to this management information:

- 1) Since the implementation of the new time limit on the detention of pregnant women on 12th July 2016 to the present date, 7th November 2016, how many women who the Secretary of State is satisfied are pregnant have been held in immigration detention?*
- 2) Of these women, how many were held for up to 72 hours; and for how many was ministerial authorisation granted to hold them for more than 72 hours?*
- 3) Of these women, how many have been detained on more than one occasion since the implementation of the new time limit?*
- 4) Of these women, how many left detention to be removed from the country; and how many were released back into the community, because they were granted leave to enter or remain in the UK, or because they were granted temporary admission or release, or bail?"*

6. The Home Office acknowledged the request on 8 November 2016, advising the complainant that it aimed to provide a full response by 6 December 2016. On 6 December 2016 the Home Office wrote to the complainant and advised her that it needed more time in which to consider the public interest in disclosure of the requested information, stating that it was considering the exemption at section 31(1)(f) of the FOIA. It gave a revised response date of 3 January 2017.
7. The complainant chased a response, unsuccessfully, on 9 January 2017.

Scope of the case

8. The complainant contacted the Commissioner on 11 January 2017 to complain about the lack of response from the Home Office.
9. The Commissioner contacted the Home Office on 23 March 2017 to query its non-response. She asked the Home Office to acknowledge her email and to provide a response within 5 working days. The Home Office did not acknowledge her correspondence. Furthermore, no substantive response to the request had been provided by the date of this notice.

Reasons for decision

Section 10 – time for compliance

Section 17 – refusal of request

10. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
11. Section 10(1) of the 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.
12. Section 17(3) states that if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is 'reasonable in the circumstances', and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosure.
13. Although the FOIA does not define what a reasonable time is, 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 means that the total time spent dealing with the request should not exceed 40 working days. Any extension beyond 40 working days would require there to be exceptional circumstances, fully justified by the public authority.

Conclusion

14. In the circumstances of this case, although the Home Office has informed the complainant of the delay while the public interest is considered, the total time taken by the Home Office has significantly exceeded 40 working days. No reasons were given for the delay and the Commissioner believes this to be unacceptable. As the Commissioner does not consider this to be a reasonable timescale she finds that the Home Office has not complied with section 17(3).
15. The Commissioner also finds that the Home Office breached sections 1(1) and 10(1) of the FOIA.
16. The Home Office is required to conclude its consideration of the public interest test and either disclose the requested information or explain why the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

Other matters

17. The delay in responding to this request will be logged as part of ongoing monitoring of the Home Office's compliance with the FOIA.

Right of appeal

18. 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

19. 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.
20. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
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SK9 5AF