

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 November 2017

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

### Decision (including any steps ordered)

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1. The complainant has requested from the Home Office (HO) the ticket cost for overseas escorts over the past five years. The HO required additional time in which to consider the public interest in disclosure but, to date, has failed to complete its deliberations. The Commissioner's decision is that the HO breached Sections 1 and 10 of the FOIA in that it failed to provide a valid response to the request within 20 working days of receipt. Furthermore, by failing to complete its public interest deliberations within a reasonable timeframe, the Commissioner finds that it has breached Section 17(3) of FOIA.
2. The Commissioner requires the HO to comply with the request or issue a valid refusal notice as set out in Section 17 of the FOIA.
3. The HO 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 10 April 2017 the complainant wrote to the HO and requested information in the following terms:

*"I would like to know the ticket cost for overseas escorts over the past five years. I would like the figures as a year by year breakdown".*

5. On 11 May 2017, the HO responded to the complainant and advised that it needed more time in which to consider the public interest in disclosure. It told him:

*"We are considering your request. Although the Act carries a presumption in favour of disclosure, it provides exemptions which may be used to withhold information in specified circumstances. Some of these exemptions, referred to as 'qualified exemptions', are subject to a public interest test. This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information. The Act allows us to exceed the 20 working day response target where we need to consider the public interest test fully.*

*Some of the information you have requested is being considered under the exemption in section 43 of the Act, which relates to commercial confidentiality. This is a qualified exemption and to consider the public interest fully we need to extend the 20 working day response period. We now aim to let you have a full response by 8 June."*

6. Having heard nothing by 12 June 2017 the complainant contacted the HO again to request an internal review regarding the time taken to respond to his request.
7. The HO office responded 27 June 2017 and acknowledged that it had breached Section 10(1) of the FOIA by failing to advise whether the requested information was held and if so, disclosing it within 20 working days. The HO went on to apologise for the delay in fully responding and informed the complainant that his request was under active consideration and was being treated as a matter of priority. It added that a response was being drafted and would be sent out shortly.
8. To date, the Home Office has not responded to the complainant.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 3 August 2017 to complain about the lack of response to his information request.
  10. Having ascertained that a response remained outstanding, the Commissioner contacted the HO on 31 October 2017 and asked it to issue a response within seven days.
  11. No substantive response to the request had been provided by the date of this notice.
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## **Reasons for decision**

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### **Section 10 – time for compliance**

12. 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.
13. 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. The HO has already accepted that it did not comply with Section 10(1) of the Act.

### **Section 17 – refusal notice**

14. 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. The HO has failed to offer such justification in this case.
15. The Commissioner's decision is that the HO did not deal with the request for information in accordance with the FOIA. In this case it has breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days, and section 17(3) by exceeding a reasonable time in which to consider the public interest. The HO is now required to respond to the request of 10 April 2017.

### **Other matters**

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16. As well as finding above that the HO is in breach of the FOIA, the Commissioner has also made a record of the delay in this case. This may form evidence in future enforcement action against the HO should evidence from other cases suggest that there are systemic issues within the HO that are causing delays.

## Right of appeal

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17. 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)

18. 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.
19. 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 .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**