

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2018

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information about a decision to release data about a cancelled procurement process.
2. The Commissioner's decision is that the Cabinet Office 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 FOIA.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The Cabinet 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 FOIA and may be dealt with as a contempt of court.

Background

5. In September 2017, Crown Commercial Service cancelled part of a tendering process for management consultancy services known as RM3745.
6. Crown Commercial Service is an executive agency of the Cabinet Office. Whilst the request was notionally made to the Crown Commercial

Service, this organisation is not a separate public authority for the purposes of the FOIA – it is part of the Cabinet Office. Therefore the Commissioner is issuing this decision notice to the Cabinet Office.

Request and response

7. On 4 June 2018, the complainant wrote to Crown Commercial Service and requested information in the following terms:

"In FOI325872 you indicated that a decision had been made to release the names and scores of the winning suppliers on all lots of RM3745 following the award of RM6008 has been awarded by then. In IR325872 I questioned when that decision had been taken, and was assured that a genuine decision had been made to release the information in December 2018 providing RM6008 had been awarded.

"Please can you send me under the Freedom of Information Act any emails or other documentation evidencing the decision to release the information in December 2018. As you have conducted a thorough review and confirmed that the decision had been taken, I presume as part of this you will already have identified this documentation. I did ask when requesting an Internal Review of FOI325872 for evidence that a decision had been made at the time of my original request to release the information but this was ignored, hence this request specifically for the information. I am happy for you to redact names for data protection reasons."

8. The Crown Commercial Service issued a response to the request on 2 July 2018. It confirmed that it held information relevant to the request but considered that a qualified exemption applied (Section 43 – prejudice to commercial interest) and that it required further time to consider the balance of the public interest.
9. The Crown Commercial Service had not issued any further response by the date of this decision notice.

Scope of the case

10. The complainant contacted the Commissioner on 1 October 2018 to complain about the failure, by the Cabinet Office, to respond to the request.

11. In line with her usual practice, the Commissioner contacted the Cabinet Office on 15 October 2018 to highlight the outstanding response. She requested that the Cabinet Office respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
12. The complainant contacted the Commissioner on 30 October 2018 to complain that he had still not received a substantive response to his request.
13. Given the delays that have occurred in this case, despite her intervention, the Commissioner considers that a decision notice is appropriate.
14. The scope of this notice and the following analysis is to consider whether the delay in responding to the request is reasonable in the circumstances.

Reasons for decision

15. 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.

16. 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.

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

18. 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.*"
19. Section 10(3) of the Act states that, where a public authority is considering the balance of the public interest, it can extend the 20 working day deadline "*until such time as is reasonable in the circumstances.*"
20. 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.
21. At the point of issuing this decision notice, the Cabinet Office has already had more than 80 additional working days to respond to this request. It has not provided, to either the complainant or the Commissioner, any explanation or justification as to why such a lengthy delay is "reasonable in the circumstances."
22. The Commissioner therefore concludes that the Cabinet Office has failed to complete its deliberations on the balance of public interest within a reasonable timeframe and has thus breached Section 17(3) of the FOIA.

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 1234504

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

**Ben Tomes
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SK9 5AF**