

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 September 2020

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office about a specified contract.
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 and has therefore breached section 17(3) of the FOIA.
3. The Commissioner requires the Cabinet Office to take the following step to ensure compliance with the legislation.
 - Having confirmed that information is held within the scope of the request: either disclose the requested information or issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The Cabinet Office must take this step 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 9 October 2019, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I am making a request under the Freedom of Information Act for the following information, regarding the Crown Commercial Service's award of its Supplier Early Payment Solutions contract (Framework ID: RM6001):

The identities of the three bidders for the contract (there were two unsuccessful bidders aside from the winning bidder Taulia).

The prices the bidders offered for the contract and whether the bidders improved their prices throughout the tender process and at what stages.

Any internal or external correspondence – including but not limited to email, mail, letters, texts as well as reports or memos between November 2017 and November 2018 relating to the fact that Crown Commercial Service's former [name and title redacted] was at the time a board member of Greensill, the funding partner of the winning bidder Taulia.

A copy of the Crown Commercial Service's conflict of interest policy."

6. On 7 November 2019, the Cabinet Office wrote to the complainant to explain that it held information relevant to the complainant's request, but that it would need to extend the time taken to complete its public interest test considerations in respect of section 43(2) (prejudice to commercial interests) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 5 May 2020 to complain about the delay in the Cabinet Office's consideration of the public interest test.
8. On 17 June 2020 the Commissioner wrote to the Cabinet Office, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 20 working days. The Commissioner also invited the Cabinet Office to inform her if it was unable to comply with the FOIA due to any difficulties posed by the Covid-19 crisis. The Cabinet Office did not reply to the Commissioner's correspondence.

9. The Commissioner has considered whether the Cabinet Office has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

10. 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."

11. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
12. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
13. Although the FOIA does not define what constitutes a reasonable time, 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. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
14. In this case, the total time taken by the Cabinet Office has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the Cabinet Office has not complied with section 17(3).
15. The Cabinet Office is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

Other matters

16. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.
17. The Commissioner notes, however, that a response to a request for information made on 9 October 2019 would have been due well before the coronavirus disruption began. This has been a necessary consideration in her decision to issue this notice.
18. When invited to do so by the Commissioner in June 2020, the Cabinet Office did not submit any mitigating arguments to justify its continuing failure to comply with the FOIA in relation to this request. This lack of engagement by the Cabinet Office has also informed the Commissioner's issuing of this notice.

Right of appeal

19. 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@justice.gov.uk

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

20. 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.
21. 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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