

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2021

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 PPE contracts. By the date of this notice the Cabinet Office had not issued a substantive response to this request.
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 15 January 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

"This is a request made under the FOI legislation for the following information.

- 1. The names of 47 PPE suppliers awarded contracts to supply PPE to the government after being placed in the "high priority lane" established by the Cabinet Office's PPE procurement team. The National Audit Office Investigation into government procurement during the COVID-19 pandemic (November 2020) reported that the cross-government PPE team (run from the Cabinet Office) "established a high-priority lane to assess and process potential PPE leads from government officials, ministers offices, MPs and members of the House of Lords, senior NHS staff and other health professionals. The NAO report found that by 31st July 2020 - 47 out of 493 suppliers processed through this high-priority lane were awarded contracts.*

Please provide the names of the 47 suppliers/vendors who were assessed and processed through the high priority lane who then won contracts. The government has publicly stated that it has now published all the PPE contracts it directly awarded (without competition) before 31st July 2020. It cannot therefore be argued that the information requested in this application is commercially sensitive. The public interest is manifestly served by the release of this information. As the NAO's report has made clear without the public knowing the identities of these companies it is impossible for the public to be certain that vast sums of public money were not awarded through a process that improperly favoured those who had undeclared connections to the procuring public body.

- 2. The positions of the individuals whose referral placed these companies into the high priority lane In reference to the 47 contracts referenced in point (1), Alex Chisholm, Permanent Secretary, Cabinet Office stated in evidence to the Public Accounts select committee that "Looking at the breakdown of the 47 suppliers that actually got contracts, 12 were introduced from MPs, seven from peers and 18 from officials, NHS, SCCL, FCO, DIT and overseas posts saying, "Look, I've found a Chinese supplier who's got some stock. Would you be interested?" Of course, yes; other suppliers as well, in other cases, were five unknown and one an error.*

His answer makes clear the Cabinet Office holds information relating to the full identities of 37 people who provided the leads for names of potential suppliers of PPE that ultimately won contracts to supply PPE after being processed and assessed through the high priority lane.

Please provide

(i) A breakdown of which political party the 12 MPs mentioned by Alex Chisholm belong to (or whether any are independent)

(ii) A breakdown of which political party the 7 peers mentioned by Alex Chisholm belong to (or whether any are independent or crossbench)

iii) Of the 12 MPs mentioned by Alex Chisholm please confirm if, at the time the referral was made, any of those were (a) government ministers and (b) in the cabinet.

If so please state how many were government ministers and how many were cabinet ministers and how many were Secretary of States.

iv) Please confirm whether or not one of these twelve MPs was the Prime Minister, Boris Johnson MP

(v) Please confirm whether or not one of these twelve MPs was the Health Secretary, Matt Hancock MP vi) Please confirm whether or not one of these twelve MPs was the Minister for the Cabinet Office Michael Gove MP.

(vi) Please provide the job titles and department for the 18 officials mentioned in Alex Chisholm's evidence to the select committee.

(vii) Please confirm whether or not Lord Deighton is one of the officials mentioned in Alex Chisholm's evidence to the select committee.

(viii) The sources of introduction in point (2) total 37 so please confirm if any of these individuals introduced more than one PPE supplier into the "high priority lane" who then were successfully directly awarded a contract to supply PPE. If any individual introduced more than one successful supplier into the high priority lane please say which of Alex Chisholm's categories they came from.

(ix) Please confirm for how many of these 47 suppliers no information has been retained about the identity of the individual whose referral place them into the high priority lane."

6. The Cabinet Office wrote to the complainant on a series of occasions 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 an exemption under section 43 (commercial interests) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 14 June 2021 to complain about the delay in the Cabinet Office's consideration of the public interest test.
8. On 14 June 2021 the Commissioner wrote to the Cabinet Office, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. To date, a substantive response has still not been provided.
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.

Right of appeal

16. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

17. 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.
18. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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