

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2023

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

Decision (including any steps ordered)

1. The complainant requested information from the Home Office about the publication of contract awards for goods and services relating to the Covid-19 pandemic. By the date of this notice the Home Office had not issued a substantive response to this request.
2. The Commissioner's decision is that the Home 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 FOIA.
3. The Commissioner requires the Home Office to take the following step to ensure compliance with the legislation.
 - Having confirmed whether or not information is held within the scope of the request: either disclose the requested information, if held, or, to the extent that information is to be withheld, issue a refusal notice in accordance with the requirements of section 17 of FOIA.
4. The Home 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 21 March 2023, the complainant made the following request for information to the Home Office:

"The then Prime Minister, Boris Johnson MP, said in a debate about Covid-19: Road Map in the House of Commons on 22 February 2021:

"Contained within that question was possibly another suggestion that we could have done things differently with the procurement of PPE. All I will say is that the contracts are there on the record for everybody to see.."

The then Parliamentary Secretary at the Cabinet Office, Julia Lopez MP, said in a debate about Covid-19 Government Contracts on 21st June 2021 in the Houses of Parliament:

"Since the High Court's judgment in relation to the DHSC's failure to publish some contracts, it has made significant progress. It has now published all known contract award notices and the contract documents for all historical covid-related contracts."

The late publication of contract documents was also discussed with Sir Chris Wormald Permanent Secretary at Department of Health and Social Care and Alex Chisholm Permanent Secretary at the Cabinet Office during the Public Accounts Committee meeting³ about the initial lessons from the Government's response to the COVID-19 pandemic on 10 June 2021.

Sir Chris Wormald subsequently wrote to the Public Accounts committee on 2nd November 2021 and said:

"As of the end of June 2021, the Department [Department of Health and Social Care] is not aware of any Contract Award Notices (and the associated Contracts and Contracts Finder Notices) which have not been published in respect of contracts awarded for the supply of goods and services in response to the COVID-19 pandemic"

Despite the above, 9 Contract Award Notices worth £9,141,200 published by the Home Office on Contracts Finder are missing the contract documents (list attached).

Under the Freedom of Information Act Regulations, I would like to request the following information:

1. Why haven't the contract documents been published on Contracts Finder for these contracts?
2. Will the Home Office take action to publish the contract documents including any contract amendments as soon as possible?
3. Have all other contract documents for all historical covid-related contracts issued by the Home Office been published?

The outstanding publication of contract documents for these contracts represents a significant gap in transparency and is concerning."

6. On 20 April 2023, the Home 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 the exemption under section 43(2) of FOIA (Commercial Interests).

Reasons for decision

7. Section 1(1) of 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."

8. Section 10(1) of 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".
9. Section 17(3) of 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.
10. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that "it is best practice for

an extension to be for no more than a further 20 working days".¹ This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.

11. On 30 May 2023 the Commissioner wrote to the Home Office, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. To date, a substantive response has still not been provided.
13. In this case, the total time taken by the Home 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 Home Office has not complied with section 17(3).
14. The Home Office is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

15. 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

16. 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.
17. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF