

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2023

Public Authority: Foreign, Commonwealth & Development Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information relating to certificates issued under section 275 of the Trade Union and Labour Relations (Consolidation) Act 1992. By the date of this notice the Foreign, Commonwealth & Development Office ("FCDO") had not issued a substantive response to this request.
2. The Commissioner's decision is that the FCDO has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the FCDO to take the following step to ensure compliance with the legislation.
 - The FCDO must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The FCDO 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 30 May 2023, the complainant wrote to the FCDO and requested information in the following terms:

"I am writing to request advice and assistance in reframing a previous Freedom of Information (FOI) request I made, reference FOI2023/01340.

I remind you that you are required to provide me with advice and assistance under section 16 of the Freedom of Information Act 2000, and section 2 of the FOI Code of Practice.

In this request for advice and assistance I will refer to the Trade Union and Labour Relations (Consolidation) Act 1992 as the "Act" and certificates issued under section 275 as "exemption certificates".

In my previous request I was told that my request exceeded the cost limit. Therefore, to reframe my request to be under the cost limit I am asking:

1. Who in the FCDO may issue exemption certificates (the Act allows other people to issue certificates on behalf of Ministers of State)
2. For those who may issue exemption certificates, do they or their offices keep records of the exemption certificates they issue or the requests for those certificates
3. Does the FCDO keep records or statistics of issued exemption certificates centrally
4. How does the FCDO store exemption certificates, for example, within individual personnel files or all in a single repository
5. If the FCDO stores exemption certificates within individual personnel files, is it possible to perform a search of all of these for any exemption certificates, or would each personnel file have to be individually checked

By providing this information I will have a better understanding of the effort required to retrieve certificates and I will be able to reframe my original request to not exceed the cost limit."

6. On 31 May 2023, the FCDO acknowledged receipt of the request
7. To date, a substantive response has not been issued.

Reasons for decision

8. 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.”

9. 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".
10. On 18 July 2023 the Commissioner wrote to the FCDO, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
11. Despite this intervention the FCDO has failed to respond to the complainant.
12. From the evidence provided to the Commissioner in this case, it is clear that the FCDO did not deal with the request for information in accordance with FOIA. The Commissioner finds that the FCDO has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Right of appeal

13. 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

14. 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.
15. 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
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