

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 5 September 2022

To: Department for International Trade

**Of: Old Admiralty Building
Admiralty Place
London
SW1A 2DY**

1. The Department for International Trade ("**DIT**") is a "public authority" listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 ("**FOIA**"). FOIA provides public access to information held by public authorities.

2. DIT's obligations as a public authority under FOIA include –
 - a. Being obliged to publish certain information about its activities;
 - b. Responding to requests for information from members of the public.

3. The Information Commissioner (the "**Commissioner**") hereby issues DIT with an Enforcement Notice (the "**Notice**") under s52 FOIA. The Notice is in relation to DIT's:
 - a. Continuing non-compliance with s1(1) FOIA;
 - b. Continuing breach of s10(1) FOIA.

4. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that DIT is required to take are set out in **Annex 1**.

Legal Framework for this Notice

5. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in Section 1(1) FOIA–

"(1) 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."

6. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:

"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt."

7. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain circumstances but in all cases, the public authority must give the requestor a written response within the standard time limit for compliance.

8. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states –

"If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an "enforcement notice") requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements."

9. Section 52 FOIA has effect subject to section 53 FOIA, which provides details of the exceptions from the duty to comply with a decision notice or enforcement notice.

Background

10. The Commissioner takes into account internal and external evidence on public authorities' compliance with FOIA. The Freedom of Information statistics for central government bodies from January to March 2022 were published on 15 June 2022. These showed that DIT had issued late responses to over 50% of the requests it had received which is in breach of both s1(1) and s10(1) of FOIA. A review of previous statistics confirmed that DIT's timeliness had declined during 2021 and for the period of January to March 2022 DIT has the lowest timeliness figures of all central government monitored bodies.
11. On 29 June 2022 the Commissioner wrote to DIT drawing attention to these results. The Commissioner requested quantitative data about the outstanding requests and qualitative information about the reasons for the delays and any patterns identified. He asked DIT to set out how it is improving and/or intends to improve response times as well as any deadlines it has set for doing so.

12. DIT responded on 21 July 2022. It provided quantitative information regarding its outstanding requests as per **Annex 2**.
13. From the figures provided by DIT, the Commissioner notes that, following the performance indicated in the last set of government statistics referred to at §10 above, 37% of active cases are outside the 20 working day statutory timeframe for responding. The Commissioner is also concerned to note that 100% of internal reviews are also outside of the recommended reasonable time for the completion set out in the Code of Practice issued under section 45 of FOIA.
14. In its letter of 21 July 2022 DIT told the Commissioner that it takes its obligations under FOIA and the Environmental Information Regulations 2004 ("**EIR**") seriously. It said that it has made considerable investment in the Freedom of Information Team and to increase knowledge, awareness and wider compliance with the FOIA and EIR over recent years. It explained that the point of delay that has resulted in the current timeliness figures is the final stage of its internal clearance. DIT clarified that there is no pattern of delay associated with any particular type of request. It also said that it has a robust process in place to efficiently manage FOIA and EIR requests from receipt, location of information within scope through to consideration and sensitivity review in relation to any applicable FOIA exemptions/EIR exceptions, and up to the point of final review. It advised that this process helped ensure DIT responded to 95% of information requests within statutory deadlines for Q1 and Q2 2021.
15. In relation to how it intends to improve, DIT informed the Commissioner that, in June 2022, it amended internal processes to ensure that clearances for FOIA and EIR requests are given the appropriate visibility and priority at the point of final clearance. It said

that it has seen an immediate improvement in compliance figures following these changes.

The Contravention and reasons for this Enforcement Notice

16. The FOIA requires public authorities to advise people whether it holds information they have requested and to have it communicated to them within 20 working days of receipt of the request.
17. For the period of January to March 2022, DIT has the lowest figure for timeliness of all the central government monitored bodies. The Commissioner considers that it is appropriate to take the external Freedom of Information statistics for central government bodies into account when making decisions as to regulatory action as he only sees a small percentage of the overall information requests made to public authorities via casework. He has begun to see casework examples of DIT's non-compliance with its FOIA obligations in the complaints received about DIT.
18. The figures show that for Q1 (Jan-Mar 2022) DIT received a total of 129 FOIA requests, they met the Section 10(1) response time of 20 days for 19% of those requests and 45% with an extension: 55% of FOIA requests were not responded to within prescribed time limits.
19. As of 21 July 2022, DIT has 17 FOI requests (37% of all active cases) which have fallen outside of the statutory 20 day period for a response.
20. The Commissioner considers it unacceptable for any government department to fail to meet its statutory duties in more than half of the requests for information it received for the quarter to 31 March 2022 ("Q1"). This is a significant drop in performance and the Commissioner

notes that the number of requests the DIT received in this period was only marginally above the average for the previous 3 years. The average number of requests received from Q1 2019 to Q1 2022 was 123. DIT received 129 in Q1 2022.

21. It is noted that DIT suggests that it has identified the point of delay and has put measures in place to improve which have had a positive impact in increasing the numbers of requests responded to within the statutory timeframe. It has provided data to support this.
22. However, the Commissioner is satisfied that DIT has failed to comply with sections 1(1) and 10(1) of the FOIA in respect of those requests for information identified in its letter of 21 July 2022.
23. Taking into account the significant drop in performance, and that this was driven not by resource issues or unexpected volume increases but internal process failings, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice requiring DIT to comply with section 1(1) of FOIA in respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied. It is essential that the improvements that DIT has indicated it has seen in recent weeks are sustained, which compliance with this notice will support.
24. The Commissioner also considers it a proportionate regulatory step to require the DIT to devise and publish an action plan, which formalises measures to mitigate delays and close at least 89% of requests within the statutory deadline of 20 working days, in line with the average performance of Departments of State across central government in 2021. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays in

the requests at Q1, from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan.

Other Matters - Internal Review

25. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in an enforcement notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the Code of Practice issued under section 45 of the FOIA.
26. Sections 5.4 and 5.5 of the Code set out that a reasonable time for the completion of an internal review is 20 working days following the receipt of the request for review, and that, usually, no more than 40 working days will be required.
27. The Commissioner is satisfied that DIT failed to conform with the Code and recommended best practice in relation to the requests identified at **Annex 3**.
28. He recommends that DIT should ensure that internal review requests are responded to in a timely manner. He is therefore also recommending in line with his powers under s.48(1) of FOIA that the action plan he has required under this enforcement notice, also captures the activity DIT will take to bring its handling of Internal Reviews in line with the section 45 Code of Practice. He recommends the root cause analysis of first instance requests that is required as part of the Enforcement Notice is extended to also cover the Internal Review cases currently delayed.
29. The Commissioner considers that the DIT may benefit from using

his [self-assessment toolkit](#) which is designed to help public authorities assess their current FOI performance and provide indicators of where efforts should be focused in order to improve. Topic 1 is particularly relevant as it deals with timeliness.

Terms of this Notice

30. The Commissioner therefore exercises his powers under section 52 FOIA to serve an Enforcement Notice requiring DIT to take specified steps to comply with FOIA. The specified steps are set out in **Annex 1** of this Notice.

31. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of the FOIA. Upon consideration and inquiry by the Court, DIT may be dealt with as if it had committed a contempt of court.

Right of Appeal

32. By virtue of Section 57 of the FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

33. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Reference: ENF0987654

Tel: 0203 9368963

Email: GRC@justice.gov.uk

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

34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Enforcement Notice is sent.

**Deborah Clark
Manager - FOI
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES DIT TO TAKE THE FOLLOWING STEPS BY NO LATER THAN 35 CALENDAR DAYS FROM THE DATE OF THIS NOTICE:

- (i) In respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, to comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:
 - (ii) communicate it pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.
 - (iii) Devise and publish an action plan, supported by a lessons learned exercise identifying the root cause of delays, which formalises measures to mitigate delays, to close 89% of requests within the statutory deadline of 20 working days.

Annex 2

FOIs:

- Total active cases: 46
- Over 20 working days: 17
 - 20-40 working days: 6
 - Over 40 working days: 11

Internal reviews:

- Total active cases: 10
- Over 20 working days: 10
 - 20-40 working days: 4
 - Over 40 working days: 6

Annex 3

INTERNAL REVIEWS OVER 40 WORKING DAYS:

Case Reference	Received Date
IR2022/01663	11-Apr-2022
IR2022/01581	5-Apr-2022
IR2022/02163	11-May-2022
IR2021/06342	3-Nov-2021
IR2021/06269	28-Oct-2021
IR2021/06268	28-Oct-2021