

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 November 2016

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 performance and service agreement breaches at four named airports. By the date of this notice, the Home Office has yet to provide a substantive response to this request.
2. The Commissioner's decision is that the Home Office breached sections 1 and 10 of the FOIA in that it failed to provide a valid response to the request within 20 working days of receipt.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Issue a response to the request set out in paragraph 5 under the FOIA by either complying with section 1(1) or issuing a valid refusal notice.
4. The Home Office must take these steps 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 29 March 2016 the complainant wrote to the Home Office and requested information in the following terms:

"I would like to know the following information for Heathrow, Gatwick, Stansted and Manchester airports:

1. The number of reported breaches of the 2 Service Agreements (European and non-European) for the last 12 months available, month by month.

2. How queues/performance are measured at each airport - facial recognition, manual observation etc.

3. The actual performance figures against the Service Agreements for each month for the last year.

Please note that I would be disappointed if my request were to be rejected as this information has been provided previously, albeit after in [sic] Internal Review."

6. The Home Office acknowledged receipt of the request on 31 March 2016 and said it would respond by 26 April 2016 (ie within 20 working days of receipt of the request).
7. In the absence of a response, the complainant wrote to the Home Office on 6 May 2016. It apologised for the delay and told him his request was under "active consideration" and was "being treated as a matter of priority."
8. The complainant wrote again to the Home Office on the 27 July 2016 and 26 September 2016, but did not receive a response to his request.
9. To date, the Home Office has not responded to the request.

Scope of the case

10. The complainant contacted the Commissioner on 26 September 2016 to complain about the way his request for information had been handled.
11. The Commissioner contacted the Home Office on 8 and 14 November 2016 to query the non-response; the Home Office replied on 14 November and advised that its response would not be imminent although it did not explain why.

12. No substantive response to the request had been provided by the date of this notice.

Reasons for decision

13. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
14. Section 8(1) of the FOIA states that requests for information should be in writing, bear the name and address of the applicant, and describe the information requested. The Commissioner considers that the request in this case fulfilled these criteria, and therefore constituted a valid request under the FOIA for recorded information.
15. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt. From the information provided to the Commissioner it is evident that the Home Office did not respond to the complainant within the statutory timeframe in respect of this request.

Conclusion

16. The Commissioner's decision is that the Home Office did not deal with the request for information in accordance with the FOIA. In this case the Home Office has breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days. At paragraph 3 above the Home Office is now required to respond to the request of 29 March 2016 in accordance with the FOIA.

Other matters

17. As well as finding above that the Home Office is in breach of the FOIA, the Commissioner has also made a record of the delay in this case, which is currently over six months. This may form evidence in future enforcement action against the Home Office should evidence from other cases suggest that there are systemic issues within the Home Office that are causing delays.
18. On 8 November 2016 the complainant submitted some comments to the Commissioner about his request, including a refinement to parts of it, which the Commissioner in turn relayed to the Home Office with a view

to eliciting a response. However, on 14 November 2016, the Home Office advised the Commissioner that notwithstanding the complainant's refinements, it was not in a position to provide a response in the near future, although it did not offer any explanation for the continuing delay. The Commissioner therefore proceeded to issue this decision notice ordering the Home Office to provide a response.

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@hmcts.gsi.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

Carolyn Howes
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Wycliffe House
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Wilmslow
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SK9 5AF