

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2019

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) seeking information about a trip the then Foreign Secretary, Boris Johnson, had made to Afghanistan. The FCO confirmed that it held information falling within the scope of the request but explained that it considered the requested information to be exempt from disclosure on the basis of section 38 (health and safety) of FOIA and it needed additional time to consider the balance of the public interest test. To date, the FCO has failed to complete its public interest test deliberations in relation to the request. By failing to complete these deliberations within a reasonable timeframe the Commissioner has concluded that the FCO has breached section 17(3) of FOIA in respect of its handling of this request.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a substantive response to his information request of 27 July 2018. If the FCO decides to withhold any information in response to this request then the complainant should be provided with a refusal notice giving a full explanation as to why information will not be disclosed, including details of any public interest test considerations.
3. The public authority 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

4. The complainant submitted the following request to the FCO on 27 July 2018:

'I would like to request details of the trip by Boris Johnson to Afghanistan which was made public on 25 June 2018. My questions are as follows:

- 1. What was the full itinerary of the trip?*
- 2. How much did the trip cost (please provide a breakdown of costs if possible)*
- 3. When was contact with Afghani officials or ministers first made to propose the trip and when was it confirmed?*
- 4. When was contact first made with the UK Prime Minister to inform her of the trip?'*

5. The FCO contacted the complainant on 24 August 2018 and confirmed that it held information falling within the scope of the request but it considered section 38 (health and safety) of FOIA to apply and it needed additional time to consider the balance of the public interest test.
6. The FCO continued to send the complainant similar letters at monthly intervals further extending the time it needed to consider the balance of the public interest test. In a letter dated 18 December 2018 the FCO explained to the complainant that the FCO anticipated completing its public interest considerations by 17 January 2019.
7. However, that date has passed and the FCO has failed to complete its public interest considerations.

Scope of the case

8. The complainant contacted the Commissioner on 19 November 2018 about the FCO's failure to provide him with a substantive response to his request.

Reasons for decision

9. Section 1(1) of FOIA provides 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.'

10. Section 10(1) of 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.
11. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. 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, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.
12. In the circumstances of this request the FCO has taken more time than the Commissioner's guidance recommends for public interest test considerations. In the Commissioner's opinion the FCO has therefore failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that it has not complied with section 17(3) of FOIA in respect of its handling of the complainant's request.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Jonathan Slee
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Wilmslow
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SK9 5AF