

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2019

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

Decision (including any steps ordered)

1. The complainant requested information relating to the Criminal Finances Bill. The Home Office refused to disclose the requested information, citing sections 27(1)(a) and 27(2) (international relations) of the FOIA. During the course of the Commissioner's investigation, it additionally cited section 35(1)(a) (formulation of government policy) and 40(2) (personal information) of the FOIA.
2. The Commissioner has investigated its application of sections 27 and 35.
3. The Commissioner's decision is that the Home Office correctly applied section 35(1)(a) in respect of some of the withheld information. However, the Commissioner also concluded that the remaining information in the scope of the request is not exempt from disclosure on the basis of section 27 or 35. She also found procedural breaches.
4. The Commissioner requires the Home Office to take the following step to ensure compliance with the legislation:
 - provide the complainant with a copy of the requested information, excluding the information described in the annex to this decision notice, with personal information redacted in accordance with the Commissioner's guidance on third party personal data.
5. 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 the Act and may be dealt with as a contempt of court.

Background

6. By way of background to the request in this case, the Home Office explained:

"The Criminal Finances Act 2017 provided new powers to enable law enforcement agencies to identify and recover corrupt and criminal funds from those seeking to hide, use or move them in the UK".

7. The Criminal Finances Bill received Royal Assent on 27 April 2017.

Request and response

8. On 28 April 2017, the complainant wrote to the Home Office and made the following request for information under the FOIA, by way of ten separate requests. The requests were identically worded except for the reference to the particular country:

"I would like to request copies of all email or written correspondence between government ministers and/or officials of the [Crown Dependencies and Overseas Territories] and government ministers and/or officials at the UK Home Office during the period beginning 1st September 2016 up to and including the 28th April 2017 with reference to the "Criminal Finances Bill."

9. The Crown Dependencies (CDs) and Overseas Territories (OTs) referred to in the individual requests were the Isle of Man, Jersey, Guernsey, Gibraltar, Cayman Islands, British Virgin Islands, Montserrat, Bermuda, Turks and Caicos and Anguilla respectively.
10. Following the Commissioner's intervention, the Home Office ultimately responded on 23 August 2017.
11. It provided some information within the scope of the requests, namely information relating to the Isle of Man and Bermuda, but refused to provide the remainder. It cited the following exemptions as its basis for doing so:
- sections 27(1)(a) and 27(2) (international relations).
12. The complainant requested an internal review on 7 November 2017.
13. However, it was not until 6 July 2018, that the Home Office eventually sent him the outcome of its internal review. It upheld its original position, specifying 'would be likely' in relation to the likelihood of prejudice occurring.

Scope of the case

14. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation, on 24 July 2018, to support his complaint about the way his request for information had been handled.
15. In order to progress her investigation, the Commissioner wrote to the Home Office asking to be provided, without delay, with a copy of the withheld information. She also asked the Home Office for its substantive response regarding its handling of the request, allowing more time for the Home Office to respond to that aspect of her investigation.
16. Having not been provided with any of the information she required by the dates she had specified, on 13 September 2018 the Commissioner issued the Home Office with an Information Notice (IN) in accordance with her powers under section 51 of the FOIA. By way of that Notice the Commissioner formally required the Home Office to furnish her with a copy of the withheld information and, in order to provide context to the request and response, a brief explanation of the Criminal Finances Bill.
17. The Home Office responded in accordance with the terms specified in the IN. However, there was a further lengthy delay before the Home Office provided its full submission to the Commissioner.
18. In that submission, the Home Office confirmed that it considered that the whole of the withheld information was covered "*by either section 27(1)(a) or 27(2) or both*". In addition, the Home Office told the Commissioner that it considered that section 35(1)(a) (formulation of government policy) was engaged in respect of all the withheld information. For completeness, it said that it considered that section 40(2) (personal information) of the FOIA also applied in this case.
19. The Home Office wrote the complainant advising him of its revised position. With respect to section 40(2) of the FOIA, it told him that, while the original response did not cite section 40(2) in relation to the names and personal contact details contained within the withheld correspondence, the Home Office considered such personal data exempt from disclosure.
20. The complainant confirmed that he remained dissatisfied with the Home Office's handling of his request. He disputed its application of both sections 27 and 35.
21. Accordingly, the analysis below considers the Home Office's application of those exemptions to the withheld information. That information comprises correspondence dated between January 2017 and April 2017.

Reasons for decision

22. The Commissioner has first considered the Home Office's application of section 35(1)(a).

Section 35 formulation of government policy

23. Section 35(1)(a) of the FOIA provides that information held by a government department is exempt if it relates to the formulation or development of government policy.
24. The Commissioner takes the view that the formulation of government policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to a minister. Development of government policy, however, goes beyond this stage to improving or altering already existing policy such as monitoring, reviewing or analysing the effects of existing policy.
25. The request in this case relates to correspondence about the Criminal Finances Bill.
26. With respect to the subject matter of the request, the Home Office told the complainant:

"The withheld correspondence relates to the handling of a government bill. Almost by definition, that means that the correspondence relates to the formulation or development of government policy..."

In terms of the policy development process, the correspondence dates from a period when the Bill was progressing through Parliament. The Bill had its first reading on 13 October 2016 and received Royal Assent on 27 April 2017. The correspondence dates between 31 January and 21 April 2017."

27. Specifically with regard to which government policy it considers the withheld information relates to, the Home Office told the Commissioner:

"In this case the policy matter is the establishment of registers of beneficial ownership information of companies registered in the CDs and OTs, and other matters covered in what is now the Criminal Finances Act 2017".

28. The complainant disputed that the exemption applied. He told the Commissioner:

"The Criminal Finances Bill received Royal Assent on April 27, 2017. The policy is no longer being formulated. It is now law".

29. In her guidance on section 35¹, the Commissioner accepts:

"Section 35 is class-based, meaning departments do not need to consider the sensitivity of the information in order to engage the exemption. It must simply fall within the class of information described. The classes are interpreted broadly and will catch a wide range of information".

30. It is only necessary for the withheld information to 'relate to' the formulation or development of government policy for the exemption to be engaged. In accordance with the Tribunal decision in *DfES v Information Commissioner & the Evening Standard* (EA/2006/006, 19 February 2007) the term 'relates to' is interpreted broadly. Any significant link between the information and the process by which government either formulates or develops its policy will be sufficient to engage the exemption.

31. On that basis, the Commissioner is satisfied that the exemption is engaged in this case.

Public interest test

32. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.

33. The Commissioner's guidance on section 35 states:

"Public interest arguments under the section 35 exemptions often relate to preserving a 'safe space' to debate issues away from external scrutiny, preventing a 'chilling effect' on free and frank views in future, and preserving the principle of collective responsibility".

34. The Commissioner's guidance also states:

"The relevance and weight of the public interest arguments will depend entirely on the content and sensitivity of the particular

¹ <https://ico.org.uk/media/for-organisations/documents/2260003/section-35-government-policy.pdf>

information in question and the effect its release would have in all the circumstances of the case."

Public interest arguments in favour of disclosure

35. The complainant argued that the public has a right to know more about the UK's relationships with the UK's Crown Dependencies and Overseas Territories (OTCDs) and the way it interacts with them.
36. The Home Office acknowledged that there is a public interest in the disclosure of information. It told the complainant:

"Disclosure may further the understanding and participation in the public debate of issues relating to the Criminal Finances Act and promote accountability and transparency by public authorities for decisions taken by them".

37. The complainant also suggested that the Home Office would only wish to withhold the requested information if it showed that it was seeking not to promote and enhance corporate transparency and integrity. If that was the case, he argued, the public had a right to know.

Public interest in favour of maintaining the exemptions

38. In favour of maintaining the exemption, the Home Office emphasised the need to protect the policy development process.
39. The Home Office argued that it would not be in the public interest if disclosure undermined the policy development process or if co-operation with the CDs and OTs was prejudiced.
40. In relation to safe space arguments, the Home Office recognised the Commissioner's guidance that the need for a safe space will be strongest when an issue is still live. It also acknowledged the timing of the request in this case.
41. In that respect, the Home Office told the complainant:

"Your request was received the day after Royal Assent, so to that extent the policy formulation process was complete. We have nevertheless made the point that, although the primary legislative process may be complete, that is not always and not necessarily the end of the policy development process, in that the policy may continue to be developed in the light of experience".

42. Similarly, it told the Commissioner:

"... this information is still relatively recent and consists of candid exchanges on the way in which policy in relation to the Bill was being developed. It took place within a context which all

participants would reasonably have been considered to be a 'safe space' for policy-related discussions of this nature".

43. With respect to chilling effect arguments, the Home Office argued that the importance of maintaining the confidentiality of communications with the CDs and OTs on the subject matter is a relevant public interest consideration.

Balance of the public interest

44. The Commissioner is satisfied that the exemption at section 35(1)(a) is engaged. However, there is no inherent or automatic public interest in maintaining the exemption.
45. While the information may be caught by the exemption at section 35(1)(a), the Home Office cannot withhold it unless the public interest in maintaining that exemption outweighs the public interest in disclosure. This is widely referred to as the public interest test.
46. The Commissioner considers that public interest arguments under section 35(1)(a) should focus on protecting the policymaking process. This reflects the underlying purpose of the exemption.
47. The weight to be attached to the public interest arguments will depend entirely on the content and sensitivity of the particular information in question and the effect its release would have in all the circumstances of the case.
48. More often than not, in the Commissioner's view the enactment of a policy signals the end of the policy formulation or development process. She considers that in most cases, the formulation or development of policy is likely to happen as a series of discrete stages, each with a beginning and end, with periods of consultation and implementation in between. She does not accept that there is inevitably a continuous process or seamless web of policy review and development.
49. In this case, while the Commissioner accepted that the withheld information *relates* to a policy making process whereby she found the exemption was engaged, she must also take into account the evidence available to her that suggests that the withheld information relates to an ongoing, live policy making process.
50. The Commissioner considers the timing of the request to be very important in the circumstances of this case and more generally with respect to the balance of the public interest in relation to the application of section 35(1)(a). This is because, in her view, if information reveals details of policy options, and the policy formulation or development process is still ongoing at the time a request for that information is received, the public interest in maintaining a safe space and in not

inhibiting free and frank discussions will carry significant weight. The public interest in preserving a safe space for deliberation is, however, likely to carry less weight once the policy process is no longer live. The importance of maintaining a safe space starts to wane once the policy has been finalised and announced but that may not necessarily be the case with respect to a chilling effect on future related deliberations.

51. In the circumstances of this case, the request was made the day after the Bill received royal assent. At the time, therefore, there was a possibility of future development, such as monitoring, reviewing, analysing or recording the effects of the newly enacted policy.
52. The Commissioner accepts that, while she was not provided with any evidence that the Home Office had planned to undertake any such activity, the possibility could not be ruled out at the time of the request.
53. Accordingly, she recognised the public interest argument in favour of maintenance of the exemption in order to protect a safe space for an ongoing policy process.
54. As regards the chilling effect argument, which is concerned with the loss of candour in future discussions, the Commissioner has found that, having reviewed the withheld information, some of it amounts to candid exchanges which were still recent at the time the request was received. She accepts that such information is particularly sensitive and clearly comprises information where the parties involved would not expect their contributions to be disclosed.
55. In the circumstances, the Commissioner is of the view that disclosure of that information could discourage the CDs and OTs from contributing to future discussions regarding the Criminal Finances Bill and other areas of related policy. That information is described in a confidential annex to this decision notice, a copy of which will be provided to the Home Office only.
56. However, with respect to the remaining information withheld by virtue of section 35(1), having viewed the information and considered the arguments, the Commissioner is not satisfied that the Home Office has demonstrated that the weight of the public interest in maintaining the exemption outweighs the public interest in disclosure.
57. The Commissioner's decision, therefore, is that the Home Office was not entitled to withhold that information by virtue of section 35.
58. As the Commissioner was not satisfied that all of the withheld information was exempt on the basis of section 35(1)(a), she has next considered whether the section 27 exemptions cited might apply.

Section 27 international relations

59. During the course of the Commissioner's investigation, the Home Office confirmed to the complainant that it considers that sections 27(1)(a) and 27(2) also apply in this case.

60. Section 27(1)(a) of the FOIA provides that:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) relations between the United Kingdom and any other State,"

61. Section 27(2) provides that:

"Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court."

62. In other words, section 27(1) focuses on the effects of the disclosure of the information, while section 27(2) relates to the circumstances under which it was obtained and the conditions placed on it by its supplier, and does not relate primarily to the subject of the information or the harm that may result from its disclosure. In the Commissioner's view, such information is confidential for as long as the state, organisation or court expects it to be so held.

63. Section 27(5) defines the terms used in the exemption elsewhere.

Are the specified Crown Dependencies and Overseas Territories 'States' for the purposes of FOIA?

64. The complainant disputed that the CDs and OTs fell within the definition of 'State' for the purposes of section 27 of the FOIA.

65. He told the Home Office:

"While the Overseas Territories are largely self-governing they aren't independent states, they remain British territories, many by choice, and Queen Elizabeth II is their reigning monarch.

As for the Crown Dependencies, the UK Ministry of Justice guidance is quite clear:

"The Crown Dependencies are not recognised internationally as sovereign States in their own right but as "territories for which the United Kingdom is responsible"."

66. The Home Office responded, saying:

"The Crown Dependencies (CDs) and Overseas Territories (OTs) do fall within the definition of "State" for the purposes of Section 27 of the Freedom of Information Act. This is made clear in section 27(5) of the Act which provides that "references to a State other than the United Kingdom include references to any territory outside the United Kingdom". This includes the OTs and CDs".

67. The Home Office referred the complainant to the Commissioner's published guidance² on section 27 which states:

"States and organs of States: *the government of any state and any organ of its government and will include for example, states with a government structure; the overseas territories of the UK and of other countries; and Crown Dependencies such as the Channel Islands. Under section 27(5), 'state' also includes 'any territory', outside the UK which would include territories which are not recognised as states in international law but which may be the subject of international law or international agreements. An example is Antarctica. In addition, the exemption includes the 'organs' of any government, for example, a state's legislature and executive*

68. The Commissioner is satisfied that the specified geographic areas do fall within the definition of 'state'.

Is the exemption engaged?

69. In correspondence with the complainant, the Home Office presented joint arguments in respect of both section 27(1)(a) and 27(2). It told the complainant that disclosure of the information:

"... would be likely to damage relations between the UK and the other states, as the information was provided in confidence, or the circumstances in which it was obtained make it reasonable for the state to expect that it will be so held. Disclosure would be likely to prejudice the implementation of existing arrangements on the sharing of beneficial ownership information and negatively impact on law enforcement's ability to investigate financial crime".

² https://ico.org.uk/media/for-organisations/documents/1184/awareness_guidance_14_-_international_relations.pdf

70. Furthermore, it considered that disclosure might also affect the UK's wider policy in this area and prejudice the outcome of the UK's efforts to further promote and enhance corporate transparency and integrity.

71. In correspondence with the Commissioner, the Home Office said:

"The UK Government respects the autonomy of the CDs and OTs and the constitutional relationship between us. It is therefore right that we continue to work consensually and collaboratively with each jurisdiction, and to withhold any information which they might provide, or be reasonably expected to have provided, in confidence".

72. It also told the Commissioner:

"...We consider that it is entirely reasonable for the CDs and OTs to expect that correspondence in which their candid views on the handling of a government bill were sought and were provided would be held in confidence, because that is the basis on which any information in the correspondence would have been provided..."

The Commissioner's view

73. Confidential information, as defined in section 27(2), is not subject to a test of prejudice. The matter for the Commissioner to determine is whether the information requested is, as a matter of fact, confidential.

74. With respect to section 27(2), the Commissioner's guidance states that this subsection relates:

"... not primarily to the subject of the information, nor the harm resulting from its disclosure, but to the circumstances under which it was obtained and the conditions placed on it by its supplier".

75. In other words, the Commissioner recognises that the context in which information was obtained may imply a duty of confidence.

76. Her guidance also states:

"Public authorities relying on the confidentiality provisions in section 27(2) and (3) should take appropriate legal advice on general questions of law, such as the law of confidence and the interpretation of international agreements".

77. In this case, the Home Office has not provided any evidence that there is a formal confidentiality agreement or that it has consulted with the CDs and OTs on this matter. Nor has it demonstrated that it has taken legal advice regarding a duty of confidence.

78. In the absence of such evidence, and having considered the content of the withheld information, the Commissioner is not satisfied that the exemption at section 27(2) is engaged.
79. The Commissioner has next considered the application of section 27(1)(a) to the same information.
80. The Commissioner recognises that section 27(1) focuses on the effects of the disclosure of the information and that section 27(1)(a) provides for information to be exempt if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other state. Her published guidance states:

"... the important point to note is that prejudice must be to the interests of the UK itself rather than simply to the public authority which holds the information".

81. In order for a prejudice based exemption, such as that set out in section 27(1), to be engaged the Commissioner considers that three criteria must be met:
- firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance;
 - thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; there must be a real and significant risk. With regard to the higher threshold, this places a stronger evidential burden on the public authority.
82. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the Home Office clearly relates to the interests which the exemption contained at section 27(1)(a) is designed to protect.
83. With regard to the second criterion, having considered the content of the withheld information, the Commissioner is satisfied that the Home Office has demonstrated that there is a causal link between disclosure of this

information and prejudice occurring to the UK's relations with the CDs and OTs.

84. Furthermore, she is satisfied that the resultant prejudice would be real and of substance. Moreover, the Commissioner is satisfied that there is a more than hypothetical risk of prejudice occurring and therefore the third criterion is met.
85. She therefore finds the exemption engaged in relation to the remaining information withheld by virtue of section 27(1)(a) and has carried this lower level of likelihood through to the public interest test.

The public interest test

86. Section 27(1) is a qualified exemption and is subject to a public interest test. This means that, even where its provisions are engaged, it is necessary to decide whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.

Public interest arguments in favour of disclosing the requested information

87. In favour of disclosure in this case, the complainant told the Home Office:

"Both the so-called Panama Papers and the recent Paradise Papers both raise serious questions about the UK's relationship with these territories that have allegedly allowed UK or international companies and wealthy UK individuals to avoid UK taxes. These matters are of clear public interest to the UK general public".

88. He told the Home Office that he considered that the public has the right to know more about its relationships with the OTCDs and the way it interacts with them:

"...particularly on topics such as these in light of recent revelations".

89. He also argued that it was in the public interest to know what the territories said to the UK government *"during a period in which the UK government considered implementing legislative change in the OTCDs"* and what role, if any, they had in the law making process.
90. The complainant recognised the Home Office's concern that disclosure in this case *"would make the Overseas Territories or Crown Dependencies uncooperative in the sharing of beneficial ownership information"*. However, in that respect, he argued:

"But the OTCDs have already publicly committed to do this".

91. The Home Office acknowledged that disclosure may further the understanding and participation in the public debate of issues relating to the Criminal Finances Act and promote accountability and transparency by public authorities for decisions taken by them.

Public interest arguments in favour of maintaining the exemption

92. In favour of maintaining the exemption, the Home Office told the complainant:

"Disclosure may prejudice the implementation of existing arrangements on the sharing of beneficial ownership information and negatively impact on law enforcement's ability to investigate financial crime. Disclosure might also affect the UK's wider policy in this area and prejudice the outcome the UK's efforts to further promote and enhance corporate transparency and integrity [sic]".

93. In its correspondence with the Commissioner, the Home Office confirmed its view that it was in the public interest to maintain good relationships with the CDs and OTs. It argued that it was not in the public interest to risk affecting relationships with the CDs and OTs or to compromise existing arrangements on the sharing of information.

Balance of the public interest arguments

94. When balancing the public interest arguments in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
95. Although the FOIA does not list the factors that would favour disclosure, the Commissioner has suggested that among the factors that would weigh in favour of disclosure are:
- furthering the understanding and participation in the public debate of issues of the day;
 - promoting accountability and transparency of public authorities for decisions taken by them; and
 - promoting accountability and transparency in the spending of public money.

96. She has also taken into account the premise running through the FOIA that openness is, in itself, to be regarded as something which is in the public interest.
97. In the circumstances of this case, the public interest in maintaining the exemption is that in avoiding prejudice to international relations, in this case with respect to the CDs and OTs. The relevant considerations in reaching a judgement on the balance of the public interest therefore extend beyond the actual content of the withheld information itself.
98. In the Commissioner's view, it is clearly in the public interest that the UK maintains good international relations. In that respect she recognises the importance of good relations between the UK and the CDs and OTs.
99. However, in the circumstances of this case, having considered the arguments put forward by both parties, and assessed their relative weight, she is not satisfied that the Home Office has demonstrated that the public interest in maintaining the exemption outweighs the public interest in disclosure.
100. The Commissioner has concluded that, notwithstanding the timing of the request in relation to the age of the information and the harm that may be caused, the public interest in maintaining the exemption does not outweigh the public interest in disclosure.

Section 40 personal data

101. The complainant did not raise objections to the Home Office's application of section 40(2) to the names and contact details within the withheld information. The Commissioner accepts that such information should be withheld in accordance with her guidance "*Requests for personal data about public authority employees*".³
102. As the Home Office applied the exemption after 25 May 2018, the date the new Data Protection Act 2018 (DPA) and General Data Protection Regulation (GDPR) legislation came into force, the Commissioner considers that the DPA/GDPR applies.

³ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

Section 10 time for compliance

103. Section 10 of the FOIA sets out the timeframes within which a public authority must respond to an FOIA request. Authorities must respond to requests promptly, and by the twentieth working day following the date of receipt of the request.

104. Section 10(3) enables an authority to extend the 20 working day limit up to a 'reasonable' time in any case where it requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption.

105. In this case, the Home Office wrote to the complainant on 30 May 2017 to extend the response period to 27 June 2017, in order to consider the public interest test.

106. The Home Office acknowledged in subsequent correspondence that it had missed that deadline. Apologising for the delay, the Home Office told the complainant that his request:

"... is under active consideration and is being treated as a matter of priority".

107. However, it was not until 23 August 2017 that the Home Office provided its substantive response.

108. The Commissioner's Guidance '*Time limits for compliance under the FOIA*'⁴ indicates that public authorities should normally take no more than an additional 20 working days to consider the public interest test, meaning that the total time spent dealing with the request should not exceed 40 working days.

109. The Commissioner therefore finds the Home Office in breach of section 10(3).

Other matters

110. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision 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

⁴ <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that in her view internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.

111. In this case, the internal review that the complainant requested on 7 November 2017 was not completed in accordance with that guidance.
112. The Commissioner expects the Home Office to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

Right of appeal

113. 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

114. 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.

115. 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

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