

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2019

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information concerning the timing of the publication of 21 contracts relating to "EU Exit".
2. The Commissioner's decision is that the Cabinet Office breached section 17(3) of the FOIA by failing to complete its public interest test considerations within a reasonable timeframe.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Having confirmed that information is held within the scope of the request: either disclose the requested information or, issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The Cabinet 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 8 May 2019, the complainant wrote to the Cabinet Office and requested information in the following terms:

"On 2 May 2019 the Cabinet Office published on the Contracts Finder website a total of 21 contracts entitled either "Cabinet Office Consultancy Support for EU Exit" or "Provision of Consultancy for Cabinet Office Programme Delivery (EU Exit)" totalling £165m.

Under the Freedom of Information Act I would like to request copies of all internal reports, communications plans and/ or correspondence (including emails) that refer to the timing of the publication of these contracts."

6. The Cabinet Office acknowledged the request on 8 May 2019. It further responded on 7 June, 4 July, and 1 August 2019 respectively, stating that it held information relevant to the complainant's request but that it would need to extend the time taken to complete its public interest test considerations in respect of section 35 of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 13 September 2019 to complain about the delay in the Cabinet Office's consideration of the public interest test.
8. The Commissioner wrote to the Cabinet Office on 25 September 2019 asking it to, within 10 working days of receipt of her letter, either provide the requested information or issue a refusal notice in accordance with the requirements of section 17 of the FOIA. Her correspondence was neither acknowledged nor responded to.
9. Despite this intervention, the complainant contacted the Commissioner again on 9 October 2019 stating that they had still not received a response from the Cabinet Office. The Commissioner therefore considers that a decision notice is appropriate in this instance.
10. The scope of this notice and the following analysis is to consider whether the Cabinet Office has met its obligations under section 17 of the FOIA.

Reasons for decision

11. Section 1(1) of the 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.*

12. Section 10(1) of the FOIA states 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.*"
13. Section 17(3) of the FOIA states that a public authority can have a "reasonable" extension of time to consider the balance of the public interest, where a qualified exemption is engaged. The Commissioner considers a "reasonable" extension to be a maximum of 20 working days beyond the initial 20 working days afforded to public authorities under section 10(1). The Commissioner's view is that any extension beyond a total of 40 working days should be granted only in exceptional circumstances.
14. Following the Commissioner's intervention on 13 September 2019, the Cabinet Office made no representations as to why the circumstances of this case should be considered exceptional in respect of section 17(3). The Commissioner therefore has no grounds to consider the circumstances of this case exceptional, and so finds that the Cabinet Office has breached section 17(3) of the FOIA.
15. At paragraph 3 above the Cabinet Office is now required to finalise its public interest considerations and respond to the complainant.

Right of appeal

16. 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@justice.gov.uk

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

17. 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.
18. 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

Pamela Clements
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