

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 6 October 2021

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Cabinet Office relating to ethnicity pay gap reporting. By the date of this notice, the Cabinet Office had not issued a substantive response to the request.
2. The Commissioner's decision is that the Cabinet Office has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA.
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 Act and may be dealt with as a contempt of court.

## Request and response

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5. On 26 May 2021 the complainant wrote to the Cabinet Office and requested information in the following terms:

*"My request is in two parts. Please prioritise part one and then complete as much of part two as is possible within the statutory limits*

- 1. Please confirm whether the government will accept the recommendation to produce ethnicity pay gap reporting guidance for employers*
  - 2. Please provide all correspondence in which the recommendations of the Commission for Racial and Ethnic Disparity in relation to ethnicity pay gap reporting is discussed. For the avoidance of doubt, I am referring to all internal and external communications, including minutes and details of any relevant meetings."*
6. The Cabinet Office wrote to the complainant on 27 May 2021 to acknowledge the request.
7. On 23 June 2021, as the complainant had not received a response, he wrote to the Cabinet Office to ask for an update on the status of his request. The Cabinet Office responded on 23 June 2021 to provide the complainant with an update.
8. On 24 June 2021, the complainant wrote to the Cabinet Office again to ask for a further update on the status of the request.
9. The Cabinet Office responded to the complainant on 24 June 2021 and stated that it was extending the time to respond to the request in order to complete its public interest test.
10. The Cabinet Office stated that it was considering the public interest test in line with section 10(3) of the FOIA. It stated that it was currently assessing the public interest test in relation to section 36 (prejudice to the effective conduct of public affairs). The Cabinet Office stated that it intended to respond to the request in full by 27 July 2021.
11. The Cabinet Office wrote to the complainant again on 23 July 2021 and 23 August 2021, and stated that it required further time to complete its public interest test.

## Scope of the case

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12. The complainant contacted the Commissioner on 24 August 2021 to complain about the delay in the Cabinet Office's consideration of the public interest test.
13. The Commissioner contacted the Cabinet Office on 17 September 2021 reminding it of its responsibilities and asked it to provide a substantive response to the complainant within 10 working days.
14. The Commissioner also contacted the complainant on 17 September 2021 to explain that the Cabinet Office had been given 10 working days from that date within which to provide a response to their request.
15. The Cabinet Office wrote to the complainant on 21 September 2021 and stated that it required further time to consider the public interest test. The Cabinet Office stated that it intends to respond to the complainant's information request by 19 October 2021.
16. By the date of this notice, the Cabinet Office had not issued a substantive response to the request.
17. The scope of this notice and the following analysis is to consider whether the Cabinet Office has complied with its obligations in relation to section 17 of the FOIA.

## Reasons for decision

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18. 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."*

19. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
20. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to

consider the public interest in maintaining the exemption or disclosing the information.

21. Although the FOIA does not define what constitutes a reasonable time, 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. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
22. In this case, the total time taken by the Cabinet Office to respond to this request has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest test within a reasonable timeframe, the Cabinet Office has not complied with section 17(3).
23. The Cabinet Office is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

## **Right of appeal**

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24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**