

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2022

Public Authority: Foreign, Commonwealth & Development Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information from the Foreign, Commonwealth & Development Office ("the FCDO") about correspondence between the FCDO and a number of British overseas territories. By the date of this notice the FCDO had not issued a substantive response to this request.
2. The Commissioner's decision is that the FCDO 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 FCDO to take the following step 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 FCDO 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.

Request and response

5. On 12 October 2021, the complainant wrote to the FCDO and requested information in the following terms:

"This is a request for information under the Freedom of Information Act 2000.

Please could you provide me with all correspondence between the Foreign, Commonwealth and Development Office and the following British overseas territories or crown dependencies that contain the keywords "register of company beneficial ownership": Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Jersey.

Please limit the search to this calendar year.

I define "correspondence and communications" as including (but not limited to) the following:

- Emails (and their attachments)
- Letters
- Memos
- Briefings
- Research documents
- Notes taken during telephone conversations
- Minutes taken during meetings/invitations"

6. The FCDO acknowledged the request on 12 October 2021.
7. On 9 November 2021, the FCDO wrote to the complainant to explain 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.

Scope of the case

8. The complainant contacted the Commissioner on 17 January 2022 to complain about the delay in the FCDO's consideration of the public interest test.
9. On 24 January 2022 the Commissioner wrote to the FCDO, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 20 working days. To date, a substantive response has still not been provided.

10. The Commissioner has considered whether the FCDO has complied with its obligations in relation to 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 respond to a request promptly and "not later than the twentieth working day following the date of receipt".
13. 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.
14. 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.
15. In this case, the total time taken by the FCDO 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 within a reasonable time frame, the FCDO has not complied with section 17(3).
16. The FCDO is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

Right of appeal

17. 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

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

18. 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.
19. 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
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