

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2022

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

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office about preparations made for the possible election of a Conservative government in 2001. By the date of this notice the Cabinet Office had not issued a substantive response to this 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 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 Cabinet 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.

Request and response

5. On 19 August 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Dear Cabinet Office,

Please provide me with the following

1. All information prepared in 2000 or 2001 for [name redacted] to read by him in the event he became prime minister
2. Copies of all information still held relating to preparations made for the possible election of a Conservative government in 2001.

Yours faithfully,

[name redacted]"

6. The Cabinet Office acknowledged the request on 20 August 2021.
7. On 17 September 2021, the Cabinet Office 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 in respect of an exemption under section 10(3) of the FOIA. The Cabinet Office have extended their deadline for completing its public interest test a further four times.

Scope of the case

8. The complainant contacted the Commissioner on 18 December 2021 to complain about the delay in the Cabinet Office's consideration of the public interest test.
9. On 6 January 2022 the Commissioner wrote to the Cabinet Office, 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 Cabinet Office 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 Cabinet Office 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 Cabinet Office has not complied with section 17(3).
16. 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

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

Catherine Fletcher
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