

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 December 2011

**Public Authority:** The Foreign and Commonwealth Office

**Address:** King Charles Street  
Westminster  
London  
SW1A 2AH

### Decision (including any steps ordered)

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1. The complainant requested information from the Foreign and Commonwealth Office (FCO) about UK official reactions and assessments in response to a Council of Europe report.
2. The FCO confirmed that it held information within the scope of the request but ultimately advised that it would exceed the cost limit to comply with the request. The complainant asked the Information Commissioner to consider the procedural aspects of the FCO's handling of the request.
3. The Information Commissioner's decision is that the FCO breached the requirements of section 17(1)(b) and (c) and section 17(5) in this case. He requires no remedial steps to be taken.

### Request and response

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4. The complainant wrote to the Foreign and Commonwealth Office (FCO) on 29 May 2011 and requested information in the following terms:

*"I wish to see copies of documents held by FCO which mention and refer to the Council of Europe Report, 'Inhuman treatment of people and illicit trafficking in human organs in Kosovo' written by Dick Marty.*

*In particular I am interested in seeing UK official reactions and assessments in response to the Marty report."*

5. The FCO responded on 27 June 2011. It confirmed that it held information within the scope of the request, but stated that it required further time to consider the public interest.
6. The complainant wrote to the FCO on 28 June 2011 expressing dissatisfaction that it had requested additional time to consider the public interest test without saying which exemption(s) it was considering.
7. On 25 July 2011, the FCO wrote to the complainant advising him that it would exceed the appropriate limit to comply with his request (section 12 of FOIA). It did however provide assistance about how the complainant could bring his request within the cost limit, suggesting how the scope of the request could be narrowed.
8. The complainant agreed to his request being reconsidered in terms of the suggested scope. The Information Commissioner is considering that refined request in a separate case (reference FS50421724).
9. At the same time, the complainant asked the FCO to conduct an internal review into its "*appalling*" handling of his original request.
10. Following that internal review, the FCO wrote to the complainant on 16 August 2011. In that correspondence, it explained why, having initially extended the time for responding in order to consider the public interest test, it had subsequently cited the costs exemption.

## **Scope of the case**

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11. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular, he complained about the FCO extending the time for responding in order to consider the public interest and then, because it cited section 12 (costs), not in fact relying on a qualified exemption.
12. The Commissioner considers the scope of his investigation to be with respect to the FCO's procedural handling of the request.

## **Reasons for decision**

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13. Section 10(1) of FOIA requires that a public authority complies with its obligations under section 1(1)(a) (to confirm whether or not relevant recorded information is held) and section 1(1)(b) (providing the requester with information that is not exempt) in 20 working days.

14. Where any additional time beyond the initial 20 working days is required to consider the public interest, the public authority must still serve a "refusal notice" under section 17 of FOIA within 20 working days of a request, even in those cases where it is relying on a qualified exemption and has not yet completed the public interest test. That notice must state the exemption(s) being relied on and, if not apparent, why. The notice must include an estimate of the time by which this decision will be made.
15. In this case, although the FCO told the complainant that it was extending the time for responding in order to consider the public interest, and gave an estimate of when it expected to provide its substantive response, it did not explain which exemption(s) applied in this case.
16. In failing to issue a valid refusal notice stating the relevant exemption, the Commissioner finds the FCO in breach of section 17(1)(b) and (c) of FOIA.
17. The complainant wrote to the FCO on 28 June 2011:

*"You have taken 20 days to advise me that a PIT is required! And you have not even advised me which qualified exemption/s you are considering in your PIT! Can you please, at least inform me which qualified exemption/s you are considering?"*
18. During the course of his investigation, the FCO confirmed to the Commissioner:

*"that there was no response to [the complainant]'s enquiry of 28 June about which qualified exemptions we were considering".*
19. Having next been advised by the FCO that it was relying on section 12, the complainant wrote to the FCO on 26 July:

*"The handling of my request has been appalling. First I was advised a PIT was being carried out. Then the following reply I received mentioned nothing about the PIT but engaged section 12. This is clearly a deceitful manner for the public authority to gain extra time to respond to my request".*
20. In its correspondence of 15 July 2011, the FCO explained to the complainant that it had extended the time for replying rather than refuse the request on a "guesstimate" that it would exceed the limit of section 12 without knowing the full extent of the information held.
21. Section 17(5) provides that:

*"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."*

22. As the FCO did not did not notify the complainant that it was relying on the costs limit (section 12) in relation to his request within the statutory time for compliance, the Commissioner finds that it breached section 17(5) in its handling of the request.

## Right of appeal

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23. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

24. 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.
25. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**