

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 February 2012

**Public Authority:** Department for Communities and Local Government

**Address:** Eland House  
Bressenden Place  
London  
SW1E 5DU

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the legal advice sought on a particular case and the details of the members of staff within the Department for Communities and Local Government (DCLG) who had been consulted in relation to a previous request.
2. The Commissioner's decision is that the DCLG failed to comply with the timelines for dealing with the request and in so doing breached 17(3) of FOIA.
3. The Information Commissioner does not require any steps to be taken; however, he draws the attention of DCLG to its obligations under FOIA in respect of what is reasonable when extending the time to consider the public interest.

#### Request and response

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4. On 14 April 2011, the complainant wrote to DCLG and requested information in the following terms:

*'1) Did the Secretary of State and/or CLG Ministers and/or DCLG seek legal advice in relation to the implications of allegations that a DCLG source was quoted in The Times as saying that [named individual] (a member of the Audit Commission Board) had "built her career on incompetence", "milked the taxpayer" and was "not fit for the role".?*

*2) Who was consulted in relation to my FOI request dated 3<sup>rd</sup> March 2011, concluding in the response set out in your letter of 1<sup>st</sup> April 2011.'*

5. DCLG initially responded on 18 May 2011. It stated that the member of staff previously dealing with the request had now left the department and also that it did hold the information requested. However, DCLG told the complainant that it considered that the information would be exempt under section 42 of FOIA and that it required additional time to consider the public interest arguments.
6. DCLG wrote to the complainant again on 16 June 2011, 15 July 2011 and 28 July 2011 each time explaining that it was extending the time to respond to the request in order that it could consider its public interest arguments.
7. The complainant wrote to DCLG to complain about the length of time it was taking to respond to his request and DCLG wrote to the complainant again on a number of occasions to confirm that it was still considering the public interest arguments relevant to the request.

### **Scope of the case**

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8. The complainant contacted the Information Commissioner on 28 July 2011 to complain about the way his request for information had been handled. He told the Information Commissioner that DCLG had failed to respond to his request within a reasonable time period.
9. During the period of time that the Information Commissioner was scoping his investigation DCLG again wrote to the complainant on a number of occasions informing him that it was still considering the public interest test.
10. The Commissioner contacted DCLG to ask it to provide details of its handling of the request and to confirm whether it had now responded to the request.
11. The Information Commissioner was informed that DCLG had not responded to the request and accordingly he accepted the complaint for investigation. DCLG provided the Information Commissioner with details of its handling of the request.
12. During the Information Commissioner's investigation on 23 January 2012 the complainant informed him that he had received a letter from DCLG dated 20 January 2012 in which it had finally provided a response to his request of 14 April 2011. DCLG told the complainant that it was

relying on section 42(2) in respect of the first part of the request and also provided some information in respect of part two of the request.

13. If the complainant is dissatisfied with the grounds of refusal he can request that DCLG conduct an internal review. If he remains dissatisfied he will be entitled to complain to the Information Commissioner in accordance with the published procedure.
14. The Information Commissioner has not therefore considered the application of section 42 in this case. The scope of his investigation has therefore focussed solely on whether DCLG's time extension to consider the public interest test is reasonable.

### Reasons for decision

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15. Section 10(1) of the FOIA requires public authorities to comply with a request for information within 20 working days following the receipt of a request. In cases where a public authority is considering the application of an exemption which is subject to a public interest test (known as a qualified exemption), section 10(3) of the FOIA requires the authority to reach its decision "*within such time as is reasonable in the circumstances*".
16. The FOIA does not define the word reasonable and accordingly the Information Commissioner has published his guidance (Good Practice Guidance number 4) on his view of what is reasonable. In his guidance the Information Commissioner states that only where the circumstances of the case are exceptionally complex may it be reasonable for a public authority to take longer than 20 working days, but that in any event the total time should not exceed a total of 40 working days.
17. Where additional time is required to consider the public interest test the public authority must still issue a refusal notice in compliance with section 17(1) within 20 working days of receiving the request, stating the exemption being relied on together with the fact that more time is required to consider the public interest test. The public authority must provide a likely timescale for response and then either disclose the information or issue a revised refusal notice.
18. During the investigation DCLG told the Information Commissioner that it was applying section 42 to the information that fell within the scope of the request. Section 42 is engaged where the information is subject to legal professional privilege and as it is a qualified exemption is subject to the public interest test.

19. DCLG argued that the time it required in order to consider the public interest test was reasonable in the circumstances of the case. It argued that the subject matter of the request was particularly sensitive and that the member of staff previously dealing with it had left the department. It argued that the new member of staff dealing with the request was not familiar with it and so this had also caused a delay. Finally DCLG argued that senior figures needed to be consulted on the response and it needed to ensure that any response was completely accurate. Accordingly additional consultation and consideration of the response was necessary and this had also caused some delay.
20. The Information Commissioner notes that the request was made on 14 April 2011 and that it was only whilst drafting this notice that DCLG provided a response to the request refusing to disclose the requested information. This is a period of approximately ten months.
21. Having considered the arguments by DCLG the Information Commissioner does not accept that in the circumstances of this case it is by any measure reasonable to have taken such an extended period of time to consider the public interest test. Accordingly he has determined that DCLG has failed to comply with its obligations under FOIA. This is a breach of section 17(3) of FOIA.

## **Other matters**

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22. On 22 February 2007, the Commissioner issued guidance on the time limits for considering the public interest test. This recommended that public authorities should aim to respond fully to all requests in 20 working days. Although it suggested that it may be reasonable to take longer where the public interest considerations are exceptionally complex, the guidance stated that in no case should the total time exceed 40 working days. The Commissioner is concerned that in this case it is over ten months since the request was made to the authority and that it did not communicate the outcome of the public interest to the complainant until 20 January 2012, despite the publication of his guidance on the matter.

## 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**