

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 August 2012

**Public Authority:** The Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested copies of the responses submitted to the Home Office in response to the government's consultation in 2011 on ending age discrimination in access to goods and services. The Home Office refused to provide the responses on the basis of section 35(1)(a). During the course of the Commissioner's investigation, the Home Office explained that it now considered the policy in question to be complete and consequently section 35(1)(a) was no longer engaged (albeit it maintained its position that this information was exempt from disclosure at the time of the request).
2. In light of this development the Home Office provided the complainant with the responses he had requested. The Commissioner has concluded that the Home Office breached section 10(1) of FOIA by not providing these responses within 20 working days of the complainant's request.

#### Request and response

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3. On 9 February 2012 the complainant wrote to the Home Office and submitted the following request:

*'I request, under the Freedom of Information Act, a copy of:*

*a) all consultation responses submitted to the Home Office in response to the Government's consultation in 2011 on ending age discrimination in access to goods and services.'*

4. The Home Office responded on 23 February 2012 and confirmed that it held the information requested but considered it to be exempt from disclosure on the basis of section 35(1)(a) of FOIA.
5. The complainant contacted the Home Office on 24 February 2012 and asked it to conduct an internal review of this decision.
6. The Home Office informed him of the outcome of the internal review on 23 March 2012; this upheld the decision set out in the refusal notice.
7. In June 2012, during the course of the Commissioner's investigation of the Home Office's reliance on section 35(1)(a), the Home Office informed him that it now considered the policy in question to be complete and consequently this exemption was no longer engaged. The Home Office informed the Commissioner that it therefore had no objections to the consultation responses being provided to the complainant. (Nevertheless, the Home Office maintained its position that the information was exempt from disclosure at the time of the request.)
8. The complainant was subsequently provided with the consultation responses. The Home Office redacted a small amount of information from the responses in question on the basis of section 40(2) of FOIA, namely the personal data of third parties.

### **Scope of the case**

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9. The complainant originally contacted the Commissioner on 23 March 2012 in order to complain about the Home Office's decision to rely on section 35(1)(a) to withhold the consultation responses falling within the scope of his request.
10. As noted above, during the scope of the Commissioner's investigation the complainant was provided with the consultation responses, albeit with redactions made on the basis of section 40(2).
11. The Commissioner established with the complainant that whilst he did not dispute the application of section 40(2) to the various redactions, he still wished the Commissioner to issue a decision notice which made a determination as to whether the Home Office was entitled to rely on section 35(1)(a) of FOIA when originally refusing his request.
12. The Commissioner explained to the complainant that his approach in situations such as this where the disputed information is disclosed during the course of his investigation is to invite the complainant in question to withdraw their complaint. If they refused to do so, the Commissioner would simply issue a decision notice which found that the

public authority in question had breached section 10(1) of FOIA by failing to provide the requested information within 20 working days.

13. The complainant informed the Commissioner that he did not wish to withdraw his complaint. Rather he wanted a decision notice to be issued, with his strong preference for such a notice to include a decision in respect of section 35(1)(a) not simply section 10(1) of FOIA. The complainant argued that a decision on the substantive matter of section 35(1)(a) was necessary because it would have broader implications for the correct interpretation of FOIA and for access to consultation responses more generally when they are withheld by government departments on the basis that the subject matter is still under consideration.
14. However, despite the complainant's preference for such a notice being issued, as explained the Commissioner's approach in such cases is simply to issue a decision notice which makes a finding in respect of section 10(1).

### **Reasons for decision**

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15. Section 10(1) of FOIA requires public authorities to disclose information promptly and in any event within 20 working days following the date of the request.
16. In this case the complainant submitted his request on 9 February 2012 and the Home Office did not provide him with the information he requested until June 2012.
17. The Commissioner has therefore concluded that the Home Office breached section 10(1) of FOIA.

## Right of appeal

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18. 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)

19. 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.
20. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**