

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 02 August 2012

**Public Authority:** The Department of Energy and Climate Change  
**Address:** 3 Whitehall Place  
London  
SW1A 2AW

#### Decision (including any steps ordered)

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1. The complainant has requested copies of all correspondence and emails between Ministers and officials and a named individual since May 2010. The Department for Energy and Climate Change ("DECC") confirmed to the complainant that it held information that fell under her request. However, it also informed her that it was unable to give her a full response as it was still considering the public interest test in relation to sections 35 and 43 of the FOIA. Subsequently the DECC contacted the complainant on several occasions and informed her (on each of these occasions) that it needed additional time in order to consider the public interest on this case.
2. By failing to provide the complainant with a full response within a reasonable time period, the Commissioner's decision is that the DECC has breached section 10(1) of the FOIA. Although the DECC has complied with section 17(1) in stating which exemptions are being relied upon, it has failed to comply with section 17(3) by failing to communicate the outcome of the public interest consideration within a reasonable time.
3. The Commissioner requires the DECC to take the following steps to ensure compliance with the FOIA:
  - it must respond to the complainant's request, either by disclosing the requested information or by issuing a refusal notice which includes the outcome of the public interest considerations.

4. The DECC must take these steps 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. The complainant contacted the DECC on 3 November 2011 and made the following request:

*"Copies of all correspondence and e-mails between Ministers and officials and Miriam Maes since May 2010."*

6. The DECC acknowledged this request on 7 November 2011. On 30 November the DECC wrote to the complainant and advised her that it was unable to respond within the statutory time limit, as it was still considering the public interest test in relation to sections 35 and 43 of the FOIA. It hoped to be able to respond by 15 December 2011.
7. On 15 December 2011 the DECC wrote to the complainant again and advised her that it was still considering the public interest test. It hoped to be in a position to respond by no later than 29 February 2012.
8. On 29 February 2012 the DECC wrote to the complainant again and advised her that it was still considering the public interest test. It hoped to be in a position to respond by no later than 28 March 2012.
9. On 28 March 2012 the DECC wrote to the complainant again and advised her that it was still considering the public interest test. It hoped to be in a position to respond by no later than 25 April 2012.
10. On 25 April 2012 the DECC wrote to the complainant again and advised her that it was still considering the public interest test. It hoped to be in a position to respond by no later than 24 May 2012.
11. On 24 May 2012 the DECC wrote to the complainant again and advised her that it was still considering the public interest test. It hoped to be in a position to respond by no later than 25 June 2012.
12. On 25 June 2012 the DECC wrote to the complainant again and advised her that it was still considering the public interest test. It hoped to be in a position to respond by no later than 23 July 2012.
13. On 23 July 2012 the DECC wrote to the complainant again and advised her that it was still considering the public interest test. It hoped to be in a position to respond by no later than 28 September 2012.

## Scope of the case

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14. The complainant contacted the Commissioner to complain about the DECC's failure to respond to her request.

## Reasons for decision

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15. Section 1(1)(b) of the FOIA states that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
16. Section 10(1) states that a public authority must comply with section 1(1) promptly and in any event no later than 20 working days after the date the request is received.
17. Section 17(1) states that where a public authority refuses a request for information it must provide the applicant with a refusal notice explaining the exemption or exemptions relied upon. This notice must be provided within the timescale set out in section 10(1), i.e. 20 working days.
18. Section 17(3) states that if a public authority decides that the requested information is exempt by virtue of a qualified exemption, it may extend the time for compliance in order to consider the public interest. The authority may take such time as is "reasonable in the circumstances", and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
19. Although the FOIA does not define what a reasonable time is, it is the Commissioner's view that public authorities should aim to complete their consideration of the public interest within the normal 20 working days. In exceptional circumstances the Commissioner accepts that it may require up to 40 working days to complete this consideration, but in no case should it take longer than this.<sup>1</sup>
20. In this case the DECC has informed the complainant that it considers that sections 35 and 43 of the FOIA apply to the requested information. However, it originally advised the complainant that it would require an

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/foi\\_good\\_practice\\_guidance\\_4.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_4.pdf)

additional 11 working days, which would extend the time for compliance until 15 December 2011. As set out at paragraphs 7 to 12 above, the DECC has subsequently contacted the complainant on several occasions, and has continued, on each occasion, to further extend the estimated time as to when it expects to have completed its consideration of the public interest.

21. Taking into account the amount of time since the request was made, the Commissioner does not consider that the time taken by the DECC to consider the public interest test to be reasonable in the circumstances.
22. Therefore, the Commissioner finds that the DECC has breached section 10(1) of the FOIA. Although the DECC has complied with section 17(1) in stating which exemptions are being relied upon, it has failed to comply with section 17(3) in failing to communicate the outcome of the public interest consideration within a reasonable time.
23. The Commissioner requires the DECC to complete its consideration of the public interest and communicate the outcome to the complainant. Therefore the DECC must either disclose the requested information, or explain why the public interest in maintaining the exemptions claimed outweighs the public interest in disclosing the requested information.

## Right of appeal

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24. 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)

25. 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.
26. 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** .....

**Pamela Clements**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**