

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 December 2012

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information about immigration at Glasgow International Airport. Although the Home Office confirmed it was considering applying section 31(1)(e) (immigration controls) to the request and would need to extend the time to fully consider the associated public interest test, it has yet to provide the complainant with a substantive response.
2. The Information Commissioner finds a delay of over five months in carrying out a public interest determination to be an unreasonable delay in breach of section 17(3).
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a notice compliant with section 17(3) setting out its conclusion about where the balance of the public interest lies. If the public authority concludes that the balance of the public interest favours disclosing the information or no longer considers the exemption to apply, the information should be provided to the complainant.
4. The public authority 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 Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 11 July 2012 the complainant wrote to the Home Office and requested information in the following terms:  
  
*"For the month of June 2012 can you please provide the following:*
  - (a) *all recorded information held by the Home Office relating to the time taken for passengers to clear immigration at Glasgow International Airport*
  - (b) *the total number of foreign nationals refused entry to the UK upon arrival at Glasgow International Airport."*
6. The Home Office responded on 8 August 2012. It stated that it believed the exemption provided by section 31(1)(e) (operation of immigration controls) of FOIA may be engaged in relation to the information. No explanation as to why this exemption was believed to be engaged was given. The Home Office also informed the complainant that this is a qualified exemption and that it needed to make a public interest determination. It then set a target response time of 6 September 2012 to complete this public interest determination.
7. On 6 September 2012 the Home Office wrote again to the complainant to inform him that the public interest determination was still to be carried out and set a new target response date of 4 October 2012.
8. Following the complainant's complaint to the Information Commissioner, the Home Office wrote to the complainant on 30 October 2012 to further extend the time for it to consider the public interest test with a revised target date of 20 November 2012.
9. At the date of this notice the Home Office has not provided the complainant with either a substantive response to his request, nor with details of its consideration of the public interest test.

## **Scope of the case**

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10. The complainant initially contacted the Information Commissioner on 6 September 2012 to complain about the way his request for information had been handled. He specifically asked the Information Commissioner to consider the facts that no substantive response had been provided and that the time taken to consider the public interest test was unreasonable.

11. On 30 October 2012 the Information Commissioner wrote to the Home Office reminding of the need to respond to the request and asked it to provide its response within 10 working days. The complainant was also advised of this.
12. After the complainant advised he had still not received a response to his request, the Information Commissioner wrote to the Home Office again on 6 November 2012 to advise that the complaint would now be investigated.
13. On 4 December 2012 the Information Commissioner wrote to the Home Office to ask it whether it had now completed its public interest test determination and to provide him with a copy of its response, should it have done so. The Home Office did not respond.

## Reasons for decision

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### Section 17(3)

14. Section 17(3) allows the public authority to provide its public interest determination in a separate notice "*within such time as is reasonable in the circumstances*". The Information Commissioner has issued publicly available guidance on this point<sup>1</sup>.
15. The guidance includes the following:

*"...our view is that public authorities should aim to respond fully to **all** requests within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but, in our view, in no case should the **total** time exceed 40 working days."*
16. In this case the Information Commissioner notes that the Home Office has significantly exceeded the maximum 40 working days to consider the public interest test. The Information Commissioner believes this to be unacceptable. No reasons have been given for the ongoing delay.
17. The Information Commissioner therefore finds that the Home Office has breached section 17(3) of FOIA because it has not provided the

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[http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/FOI\\_GOOD\\_PRACTICE\\_GUIDANCE\\_4.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/FOI_GOOD_PRACTICE_GUIDANCE_4.ashx)

complainant with its public interest determination within such time as is reasonable. As stated in the Information Commissioner's guidelines, he considers 40 working days to be the maximum time for carrying out a public interest determination. At paragraph 3 above the Home Office is now required to respond with its public interest conclusion.

## 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 .....**

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