

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2013

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

Decision (including any steps ordered)

1. The complainant has requested correspondence and emails exchanged between the Department of Energy and Climate Change (DECC) and [named individual]. The DECC said that section 35 and section 43(2) of the Freedom of Information Act 2000 (FOIA) were applicable however it required further time to consider the public interest in this case and therefore to determine whether or not the requested information should be withheld or disclosed. The DECC has still not provided the complainant with a full refusal notice nor has it disclosed the requested information.
2. Although DECC has complied with section 17(1) in stating which exemption is 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's decision is that DECC has breached section 10(1) of FOIA as it has not provided the complainant with a full refusal notice within the statutory time for compliance. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The DECC should either provide a response to the complainant which complies with section 1(1) of FOIA or issue a full refusal notice including public interest considerations as required under section 17(1) of FOIA.
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

5. On 17 September 2012, the complainant wrote to the DECC and requested information in the following terms:

"On 5 Sept 2012, DECC released all "correspondence and emails" exchanged between DECC and [named individual] since May 2010...

However, the last email is dated 31 October 2011. [named individual] continued working for DECC until March 2012. Having already released the emails up to 31 Oct 2011, please could you now supply the correspondence and emails covering the remaining period up to the end of her contract with DECC (particularly the climate minister Greg Barker) in March 2012?"

6. The DECC responded on 15 October 2012. It stated that section 35 and section 43 FOIA were applicable however it required further time to consider the public interest in this case. It provided the complainant with two further holding responses dated 12 November 2012 and 10 December 2012.
7. On 10 January 2013 the DECC wrote to the complainant to explain that it still had not reached a decision in terms of the balance of public interest in this case. It said it was aiming to provide a full response by 7 February 2013.

Scope of the case

8. The complainant contacted the Commissioner on 11 December 2012 to make a complaint as he had not received an adequate refusal notice from the DECC in response to his request within the statutory time for compliance.

Reasons for decision

9. Section 10 of FOIA states that, "Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

10. The DECC should have issued a full refusal notice or disclosed the requested information within 20 working days. Under section 17(3) a public authority can extend the time to respond fully to a request to consider the public interest test. The Commissioner considers that it would be reasonable to extend the time to provide a full response including public interest considerations by a further 20 working days, which would allow a public authority 40 working days in total.
11. In this case the DECC has taken significantly longer than 40 working days to consider the public interest test. As the Commissioner does not consider this to be a reasonable timescale it has not complied with section 17(3) and accordingly it has therefore breached section 10(1) in relation to its handling of this request.

Right of appeal

12. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

13. 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.
14. 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