

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

### **Decision notice**

**Date:** 24 July 2013

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

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

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1. The complainant requested information held by the Cabinet Office about its handling of an earlier request for information he had made to it. Despite the Information Commissioner's (the Commissioner's) intervention the Cabinet Office has failed to respond fully to the request. The Commissioner's decision is that the Cabinet Office has breached section 10(1) and 17(3) of the FOIA. The Commissioner requires the Cabinet Office to respond to the complainant's request by communicating the outcome of its public interest considerations. If the Cabinet Office has concluded that the public interest favours disclosure, the Commissioner requires the Cabinet Office to disclose the information that it has identified as falling within the scope of the request.
2. 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.

#### **Background**

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3. The complainant had submitted an earlier request for information to the Cabinet Office on 21 September 2012, which the Cabinet Office refused. The complainant had asked for an internal review of that decision, but by March 2013 the review had still not been completed. This prompted the complainant to ask for information about how that request had been handled.

## Request and response

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4. On 8 March 2013, the complainant wrote to the Cabinet Office and made the following request for information:

*"Needless to say, we have serious concerns about the delays that have occurred in dealing with both our original FOI request and, subsequently, the internal review. In particular, we are extremely concerned to hear that the Cabinet Office may delay providing us with the outcome of its internal review until 3 April 2013. We should be grateful, therefore, if you could provide us with copies of all internal communications relating to the handling of our request and the internal review, including but not limited to those documents relating to: the precise steps taken and when; the officials within and outside the Cabinet Office who were consulted and upon what; and any advice and instructions from others in the department as to how to deal with the request."*

5. The Cabinet Office responded on 10 April 2013. It confirmed that it held information which was covered by the request, but that it was exempt under section 31(1) and 42(1) of the FOIA. Both exemptions are subject to a public interest test, and the Cabinet Office stated that it required additional time to consider whether the balance of the public interest favoured disclosure of the information or maintenance of the exemption. It explained that it would attempt to let the complainant have a substantive response by 8 May 2013. Alternatively, if it needed further time to consider the public interest, it would write to the complainant and let him know.
6. The complainant responded on 12 April 2013, expressing concern that the Cabinet Office required more time to consider the public interest test and asking that it respond as soon as possible. The complainant did not receive a response on 8 May 2013 and heard nothing further from the Cabinet Office.

## Scope of the case

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7. On 10 May 2013 the complainant notified the Commissioner that the Cabinet Office had failed to provide him with the outcome of its consideration of the public interest test and that it had not provided a revised estimate as to when he might expect it.
8. On 10 June 2013 the Commissioner wrote to the Cabinet Office to remind it of its obligations under the FOIA. The Commissioner asked the Cabinet Office to complete its consideration of the public interest test and respond to the complainant with the results, sending the

Commissioner a copy of anything that it sent to the complainant. He asked for this to be done straight away. However, if for any reason this could not be done straight away, the Commissioner asked the Cabinet Office to explain why by 8 July 2013.

9. The Cabinet Office replied on 17 July 2013. It explained that a final response to the request had been prepared, but that it was still awaiting clearance before it could be released. It did not indicate when it expected to be in a position to obtain this clearance and issue the response.

## **Reasons for decision**

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### **Section 1: General right of access**

#### **Section 10(1): Time for compliance**

#### **Section 17: Refusal notice**

10. 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.
11. 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.
12. 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), ie 20 working days.
13. 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 test. 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.
14. Although the FOIA does not define what is a "reasonable" time, 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.

15. In this case the Cabinet Office has issued a refusal notice stating that the requested information is exempt under sections 31 and 42 of the FOIA, both of which are qualified exemptions. The Cabinet Office originally advised the complainant that it would require an additional 20 working days to consider whether the balance of the public interest favoured disclosure or maintenance of the exemptions, which would extend the time for compliance to 8 May 2013. However, the Cabinet Office has not met this deadline, nor did it provide the complainant with any estimate as to when it expected to have completed its consideration of the public interest. As of 17 July 2013, when the Cabinet Office replied to the Commissioner's letter, 89 working days had elapsed since it received the request for information. This is significantly in excess of the overall limit of 40 working days described in paragraph 14, and the Cabinet Office has given no indication as to when it expects the outcome of its deliberations to be communicated.
  
16. By failing to provide a complete response to the request the Commissioner finds that the Cabinet Office has breached section 10(1) of the FOIA. Although the Cabinet Office 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.

## Right of appeal

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17. 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)

18. 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.
19. 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 .....**

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