

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2014

Public Authority: Foreign & Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested the contents of seven specific files relating to Libya. The Foreign & Commonwealth Office applied the "neither confirm nor deny" exemptions in sections 23 (information relating to bodies dealing with security matters) and 24 (national security), and sections 27 (international relations), 38 (health and safety), 40 (personal information), 41 (information provided in confidence) and 43 (commercial interests).
2. The Commissioner's decision is that the Foreign & Commonwealth Office took an unacceptable length of time to consider the public interest and answer the request in full, and that it therefore has not complied with sections 10 and 17 of FOIA.

Request and response

3. On 30 November 2012, the complainant wrote to the FCO and requested the following:

"Following my FOI request of 29 May, and the information disclosed by the FCO on 20 September (your ref: 0605-12) I would like to submit a further request: I would like to see the contents of files NFB01/001/04; NFB014/002/04; NFB020/001/04; NFB026/001/04; NFB026/002/04; NFB027/001/04; and NFB121/001/04."
4. The FCO responded on 2 January 2013. It stated that it was applying section 27 (international relations) to the requested information and needed a further 20 working days to consider the public interest.

5. Subsequently, the FCO contacted the complainant on the 29 January 2013, explaining that it would also be relying upon the following additional exemptions: section 26 (defence), 30 (investigations and proceedings conducted by public authorities), 31 (law enforcement), 35 (formulation of government policy), 36 (prejudice to effective conduct of public affairs), 37 (communications with her Majesty, with other Members of the Royal Household), 38 (health and safety), 42 (legal professional privilege) and 43 (commercial interests). The FCO also stated that it would take another 20 working days to consider the public interest.
6. The FCO then contacted the complainant on 26 February 2013, 26 March 2013, 26 April 2013 and 28 May 2013, extending the time to consider the public interest by 20 working days each time.
7. Following an internal review the FCO wrote to the complainant on 24 June 2013. It stated that it had to consider numerous exemptions in relation to the request and that it did not have a dedicated resource within its Libya team to deal with FOI requests. The FCO also explained that it had completed all of its consultations with interested departments but needed to obtain final clearance for its response from senior FCO managers.
8. The FCO went on to explain that, given the volume of material requested and other pressing foreign policy work these individuals were dealing with, it was likely to be several months before clearance was given. The FCO proposed that it should provide a response based on one file at a time and that it should be in a position to disclose the first file in about a week's time. The FCO asked the complainant to confirm whether he was content with this approach.
9. The FCO then contacted the complainant on 25 June 2013 stating that it needed a further 20 working days to consider the public interest.

Scope of the case

10. The complainant contacted the Commissioner on 11 July 2013 to complain about the way his request for information had been handled. He complained that the FCO had issued six letters saying it needed a further 20 working days to consider the public interest. The complainant also complained about the time taken by the FCO to deal with his request.
11. In its initial response of 2 January 2013, the FCO explained that it would need a further 20 working days to consider the public interest. By the time the complainant had complained to the Commissioner, the FCO had

sent him a further six letters, stating that it needed 20 additional working days to consider the public interest.

12. During the Commissioner's investigation, the FCO disclosed the contents of one of the requested files: NBF014/001/04. The FCO withheld some information under sections 23 (Information supplied by or relating to bodies dealing with security issues), 24 (national security) 27 (international relations), 38 (health and safety), 40 (personal information) and 41 (information provided in confidence). The FCO also confirmed that it was no longer relying upon section 43 (commercial interests) to withhold some information, but was withholding that information under section 41. The complainant asked the Commissioner to also consider the application of the exemptions to the file and the Commissioner agreed.
13. The Commissioner considered whether the exemptions were applied appropriately. He considered that further information withheld under section 40(2) could be disclosed and the FCO did this. Following this disclosure, the Commissioner contacted the complainant and explained that he considered that the exemptions had been applied appropriately to the remaining information. The complainant confirmed that he was satisfied with the Commissioner's view regarding the application of the exemptions and would not be pursuing this part of his complaint any further.
14. The Commissioner notes that the FCO answered the request initially on the twentieth working day after receipt. He has already dealt with this in a separate decision notice – FS50505248. However, at the time of his investigation, the FCO had not responded to the request in full.
15. The Commissioner will therefore consider the length of time taken by the FCO to consider the public interest and the length of time to respond.

Reasons for decision

16. Section 1(1) of FOIA provides that a public authority must confirm whether it holds requested information and if it does, it should be given to the applicant.
17. Section 17(1) provides that if a public authority is going to rely on any exemptions, it must respond to an applicant within the time for complying with section 1(1).

18. Section 10(1) provides that the time for complying with section 1(1) is "*promptly and in any event not later than the twentieth working day following the date of the receipt.*"
19. Although the FCO initially stated which exemptions it was applying to the withheld information, it extended the 20 working day limit to consider the public interest considerations several times.

Section 17

20. Section 17(3) states that a public authority can, within such time as is reasonable in the circumstances, extend the time taken to consider the public interest. However, the FOIA does not define 'reasonable'.
21. The Commissioner considers it to be reasonable to extend the time to provide a full response including public interest considerations by a maximum of a further 20 working days. This would allow a public authority 40 working days in total.
22. In this case, the Commissioner notes that the FCO issued six public interest letters explaining that it needed to extend the time taken to consider the public interest by 20 working days each time. Furthermore, during the Commissioner's investigation, the FCO issued at least one further public interest letter, extending the time taken to consider the public interest by a further 20 working days.
23. At the time of the decision notice, the FCO confirmed to the Commissioner that it had responded in full to the request.
24. The Commissioner considers this is an unacceptable length of time for the FCO to consider the public interest and answer the request in full.
25. The Commissioner therefore considers that the FCO has breached sections 10(1) and 17(3).

Other matters

26. The Commissioner is concerned to note that in its internal review response of 24 June 2013, the FCO stated that it did not have a dedicated team within its Libya team to deal with requests for information. He also notes that the FCO regarded it as necessary to engage in apparently detailed internal consultation, and obtain clearance from senior FCO managers which might take several months to obtain.
27. The Commissioner reminds the FCO that it is under the same obligation as any other public authority to comply with the provisions of the FOIA.

It is not acceptable to process information requests in a way that will inevitably result in unjustifiable delays.

Right of appeal

28. 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

29. 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.
30. 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
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