

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

### **Decision notice**

**Date:** 22 April 2015

**Public Authority:** The Foreign and Commonwealth Office

**Address:** King Charles Street

London

SW1A 2AH

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

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1. The complainant submitted a request to the Foreign and Commonwealth Office ('the FCO') for information regarding events around the Libyan Embassy protest on 17 April 1984. The FCO confirmed that it holds information relevant to the request. It repeatedly advised the complainant that it required further time to consider the public interest test. To date, the FCO has failed to provide the complainant with a substantive response. By failing to do so the Commissioner has concluded that the FCO breached section 17(3) of the FOIA.
2. The Commissioner requires the FCO to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with a substantive response to his information request. If the FCO decides to withhold any information then the complainant should be provided with a refusal notice giving a full explanation as to why the information will not be disclosed, including details of any public interest test considerations.
3. 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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4. On 23 May 2014, the complainant wrote to the FCO and requested information in the following terms:
  - "1. What steps were taken by the FCO to pass on the information received from the LPB [Libyan People's Bureau], by both Oliver Miles and the two Libyan diplomats who visited the Foreign Office on 16/17 April 1984?
  2. To whom and/or what agency(ies) was the information passed and when?
  3. Was a risk assessment carried out by FCO officials? Was this risk assessment communicated to other agencies (and importantly special branch of the police) prior to the protest taking place?
  4. What if any recommendations were made to mitigate the risk to the protestors, members of the public and to police officers assigned to cover the protest?
  5. What were Sir Anthony Duff's findings and why was the report never published?"
5. The FCO has contacted the complainant on 17 July 2014, advising her that it had yet to reach a decision on the balance of the public interest test with respect to the exemption at section 27 – International relations.
6. The FCO has subsequently sent the identical letter to the complainant each month. To date no substantive response has been received.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 9 February 2015 to complain about the way her request for information had been handled. She explained that since making her request she had received numerous letters referencing the public interest test and the requirement for further time. She submitted a complaint to the FCO's internal review team on 8 December 2014 to which she has received no response.
8. The Commissioner initially wrote to the FCO on 26 February 2015 to inform it of the complaint. He wrote again on 10 March 2015 asking for its submission on the application of section 27.

9. The FCO contacted the Commissioner on 1 April 2015 to inform him that it was not yet able to provide a submission but was "working actively to provide a substantive response to both the requester and to yourself".
10. The FCO went on to explain that it had conducted extensive consultation with a number of FCO and other government departments and organisations, with some "stakeholders" yet to provide their responses. The FCO advised that it had also met with the Metropolitan Police Service as it considered MPS to be a significant stakeholder. It advised that it now considered some of the information fell to be withheld under section 23 – Information supplied by, or relating to, bodies dealing with security matters. No date for a substantive response was provided to the Commissioner or the complainant.

### **Reasons for decision**

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8. Section 1(1) of the FOIA provides that any person making a request for information to a public authority is entitled:  
  
*'(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*  
  
*(b) if that is the case, to have that information communicated to him.'*
9. Section 10(1) of the FOIA provides that 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. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response including public interest considerations by a maximum of a further 20 working days, which would allow a public authority 40 working days in total.
11. In the circumstances of this case, although the FCO has repeatedly informed the complainant of the delay while the public interest is considered, the total time taken has well exceeded 40 working days. Even if exceptional circumstances may prevail, the Commissioner's position is that no public authority should still be deliberation about a substantive response, including the balance of the public interest test, after 11 months from the date of the request. As the Commissioner does not consider this to be a reasonable timescale he finds that the FCO has not complied with section 17(3).

## Right of appeal

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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 123 4504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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 .....**

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