

Freedom of Information Act 2000

Decision notice

Date: 18 June 2015

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information relating to polling conducted about the Scottish independence referendum. The Cabinet Office confirmed that it held information relevant to the request but needed further time to consider the balance of the public interest. The Commissioner's decision is that Cabinet Office has breached section 10 of the Freedom of Information Act 2000 (the Act) as it has not provided a full response within the statutory time limit.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a response to the complainant's request in accordance with the Act by either complying with section 1(1)(b) or issuing a valid refusal notice.
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

4. On 23 September 2014, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Please could you send information regarding:

1. The number of opinion polls conducted by or on behalf of the UK Government between October 2012 and 18 September 2014 ascertain the attitudes and voting intentions of voters in relation to Scottish independence;

2. Copies of all the questions asked in each poll.

3. Copies of all the requests obtained from each poll.

4. The cost of each poll."

5. The Cabinet Office responded on 21 October 2014, and stated that it had located information that came within the scope of the request. However, the Cabinet Office applied section 10(3) of the Act as the information was exempt under section 35(1)(a) and it required further time to consider the public interest balance.
6. To date the Cabinet Office has not provided the complainant with the requested information or a valid refusal notice.

Scope of the case

7. The complainant contacted the Commissioner on 23 February 2015 to complain about the way her request for information had been handled.
8. The Commissioner considers the scope of the case to be whether the Cabinet Office has complied with section 10 of the Act.

Reasons for decision

9. Section 1(1) of the Act states that upon receipt of a request a public authority must confirm or deny whether information is held, and if that information is held it must be communicated to the requester.
10. Section 10(1) of the Act states that public authorities must comply with section 1(1) within 20 working days of receipt of the request.

11. Section 10(3) enables an authority to extend the 20 working day limit up to a 'reasonable' time in any case where it requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption.
12. In this instance, the Cabinet Office has applied section 10(3). This is because it has located information which is exempt under section 35(1)(a), and as that is a qualified exemption and therefore subject to a public interest test, the Cabinet Office has extended the time for its response in order to further consider where the balance of the public interest lies.
13. Section 10(3) states that a public authority need not comply with section 1(1) "until such time as is reasonable in the circumstances". The Act does not define what is meant by "reasonable", but in the Commissioner's view this should not normally be more than a further 20 working days, unless there are specific circumstances justifying a longer extension of time. The Commissioner is not aware of any such circumstances in this case.
14. The Cabinet Office issued its response on 21 October 2014, so has clearly had much more than 20 working days to consider the public interest balance. Therefore it has breached section 10 of the Act. The Commissioner requires the Cabinet Office to issue a response to the complainant's request in accordance with the Act by either complying with section 1(1)(b) or issuing a valid refusal notice.

Right of appeal

15. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

16. 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.
17. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF