

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2015

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested access to the Home Office guidance to its UK Border Force officers. The Home Office failed to respond substantively to this request and the Commissioner finds that, in so doing, it breached sections 1(1) and 10(1) of the FOIA.
2. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Respond to the request.
3. The Home Office 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. The complainant wrote to the Home Office on 10 April 2015 asking for a copy of its UK Border Force guidance to officers, specifically that about Tier 4 students, student visitors and academic visitors. He added that he needed just enough to enable him to give proper advice to the University's Tier 4 and "short term" students plus the occasional academic visitor.
5. On 11 May 2015 the Home Office responded saying that it would apply the section 36 FOIA exemption (Prejudice to effective conduct of public affairs) to some of the requested information. However, as this is a

qualified exemption, the Home Office said that it would need to conduct a public interest balancing test which it would do by 9 June 2015.

6. On 15 June 2015 the Home Office wrote to the complainant apologising for the delay but promising a response in due course.
7. At the time of writing, despite a reminder from the complainant on 22 June 2015 and reminders from the Commissioner's staff on 7, 13 and 27 October 2015, the Home Office has failed to respond substantively to this information request.

Scope of the case

8. The complainant contacted the Commissioner on 11 September 2015 to complain about the failure of the Home Office to respond to his information request.

Reasons for decision

Sections 1 and 10

9. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "*not later than the twentieth working day following the date of receipt*".
10. In this case the Home Office has breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days. At paragraph 2 above the Home Office is now required to respond to the complainant's request in accordance with FOIA.

Other matters

11. As well as the finding above that the Home Office has breached the FOIA in this case, a record has been made of the failure to respond to the complainant's information request and this issue may be revisited in future enforcement action.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

Jon Manners
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