

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2016

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant submitted a request for information to the Ministry of Justice (the 'MOJ') for a report on air quality test results into the effects of second hand smoking in prisons. By the date of this notice, the MOJ has yet to provide a substantive response to this request.
2. The Commissioner's decision is that the MOJ breached section 10 of the FOIA in that it failed to provide a valid response to the request within 20 working days of receipt.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a response to the request set out in paragraph 5.
4. The MOJ 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

5. On 1 October 2015 the complainant wrote to the MOJ and requested information in the following terms:

"Please could you provide me a copy of:

The Report of Independent Medical Expert Report on the Air Quality Test Results by Professor John Britton, commissioned by NOMS into the effects of second hand smoking in prisons for both staff and offenders.

I would be grateful if the above information to be provided [sic] to me in electronic format to [email address redacted]."

6. The MOJ acknowledged receipt of the request on 16 November 2015 and said it was being progressed and was *"in the advanced stage of completion"*.
7. On 16 December 2015, the MOJ wrote to the complainant and apologised for the continuing delay in responding, which it said was due to consideration of the public interest test.

Scope of the case

8. The complainant contacted the Commissioner on 21 December 2015 to complain about the way his request for information had been handled.
9. On 22 December 2015 the Commissioner wrote to the MOJ to query the non-response and was advised that a response had been drafted and was awaiting final clearance.
10. The Commissioner has contacted the MOJ again on two further occasions, and was advised that the response had been submitted back to the relevant business unit to be redrafted as it required amendment.
11. No substantive response to the request had been provided by the date of this notice.

Reasons for decision

12. Section 8(1) of the FOIA states that requests for information should be in writing, bear the name and address of the applicant, and describe the information requested. The Commissioner considers that the request in this case fulfilled these criteria, and therefore constituted a valid request under the FOIA for recorded information.
13. 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. From the information provided to the Commissioner it is evident that the MOJ did not respond to the complainant within the statutory timeframe in respect of this request.

Conclusion

14. The Commissioner's decision is that the MOJ did not deal with the request for information in accordance with the FOIA. It breached section 10(1) of the FOIA by failing to provide a substantive response to the request within the statutory timeframe of 20 working days. At paragraph 2 above the MOJ is now required to respond to the request of 1 October 2015 in accordance with the FOIA.

Other matters

15. As well as finding above that the MOJ is in breach of the FOIA, the Commissioner has also made a record of the delay in this case. This may form evidence in future enforcement action against the MOJ should evidence from other cases suggest that there are systemic issues within the MOJ that are causing delays.
16. In this case, the MOJ told the complainant on 16 December 2015, that the reason for the delay was due to its consideration of the public interest test. Under FOIA a public authority can extend the timescale for a further 20 working days if necessary in order to consider the public interest test; however, this applies only to qualified exemptions. Although the MOJ advised the Commissioner it is seeking to cite section 22 (information intended for future publication), he can find no evidence that the MOJ has cited the exemption to the complainant. Therefore, no reference was made to the public interest until more than 40 working days had elapsed.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF