

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 May 2016

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

Decision (including any steps ordered)

1. The complainant has requested information about police powers under Section 136 of the Mental Health Act to detain mentally disordered persons found in public places. By the date of this notice the Home Office had not responded to the request.
2. The Commissioner's decision is that by failing to respond to the request, the Home Office breached sections 1(1) and 10(1) of the FOIA.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Issue a response to the request under the FOIA by either complying with section 1(1) or issuing a valid refusal notice.
4. 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 31 October 2015, the complainant wrote to the Home Office and requested information in the following terms:

"136 Mentally disordered persons found in public places.

(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 135 above.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved mental health professional and of making any necessary arrangements for his treatment or care.

(3) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(4) A person taken to a place of a safety under subsection (3) above may be detained there for a purpose mentioned in subsection (2) above for a period ending no later than the end of the period of 72 hours mentioned in that subsection.'

What qualifies a constable to take decisions regarding the mental health of a member of the public, and how is this not a breach of human rights.

This is a particularly important request in the context that police forces are unlawfully detaining innocent members of the public by use of this Act."

6. The complainant did not receive a response and so on 28 November 2015, 9 January 2016 and 1 February 2016 he wrote to the Home Office again asking it to respond. The Home Office acknowledged receipt of this correspondence but the complainant did not subsequently receive a response to the request.

Scope of the case

7. The complainant contacted the Commissioner on 29 February 2016 to complain about the way his request for information had been handled.
8. The Commissioner wrote to the Home Office on 14 March 2016, reminding it of its obligations in respect of such requests and asking it to respond to the complainant within 10 working days.

9. On 15 April 2016 the complainant confirmed to the Commissioner that he had received neither a response to the request nor a refusal notice from the Home Office.
10. The Commissioner wrote to the Home Office again on 18 April 2016, asking it to clarify whether it had responded to the request. The Home Office responded on 19 April 2016 saying that the request had initially been logged as an FOIA request, but subsequently dealt with as a course of business request. It said it was checking on the matter and would update the ICO in due course. The Commissioner heard nothing further from the Home Office and on 2 May 2016 the complainant confirmed to the Commissioner that he still had not received a response to the request.

Reasons for decision

11. Section 1(1) of the FOIA states that:

1(1) Any person making a request 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.

12. Section 10(1) of the FOIA states 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.
13. From the information provided to the Commissioner it is evident that the Home Office did not respond to the complainant within the statutory timeframe in respect of this request.
14. Therefore, the Commissioner's decision is that the Home Office did not deal with the request for information in accordance with the FOIA. It breached sections 1(1) and 10(1) of the FOIA by failing to provide a substantive response to the request or a refusal notice within the statutory timeframe of 20 working days. As at paragraph 3 above, the Home Office is now required to respond to the request in accordance with the FOIA.

Other matters

15. As well as issuing this notice, the Commissioner has made a separate record of the failure by the Home Office to respond to the complainant's request. This issue may be revisited should evidence from other cases suggest that this is necessary.

Right of appeal

16. 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

17. 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.
18. 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

Samantha Bracegirdle
Senior Case Officer
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Wycliffe House
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SK9 5AF