

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 December 2016

Public Authority: The Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (the FCO) for information related to allegations of breaches of international humanitarian law in Yemen. 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 their 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 consideration.
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 contempt.

Request and response

4. On 25 July 2016, the complainant wrote to the FCO and requested information in the following terms:

"I would be grateful if you could provide me with all emails, notes, letters, or other documents or records relating to the FCO exercise of reviewing all correspondence and parliamentary proceedings on the subject of allegations of breaches of international humanitarian law (IHL) in Yemen by the Saudi-led Coalition and the publication of the Written Ministerial Statement on this matter."

5. The FCO contacted the complainant on 22 August 2016 and confirmed that it held information falling within the scope of the request but advised that it had yet to reach a decision on the balance of the public interest test with respect to section 35 of the FOIA – formulation of government policy. The FCO explained that it therefore needed an additional twenty working days to consider the balance of the public interest test.
6. The FCO subsequently sent two further, almost identical, letters to the complainant in consecutive months. In an email accompanying a letter dated 18 October 2016, it acknowledged that *"the delays are unfortunate and I am sure you will appreciate the situation on Yemen has risen up the political agenda recently particularly in the past week and is all encompassing"*.
7. Following the Commissioner's intervention, the FCO provided a letter dated 14 November 2016 which set out that the FCO intended to issue a substantive response by 25 November 2016.
8. A further letter was sent to the complainant on 25 November 2016 explaining that a response would be issued by 2 December 2016.

Scope of the case

9. The complainant contacted the Commissioner on 9 November 2016 to complain about the way their request for information had been handled.
10. The Commissioner contacted the FCO and asked it to provide the complainant with a substantive response by 25 November 2016 or provide the Commissioner with an explanation as to why it was reasonable in the specific circumstances of the request to continue to extend its public interest test considerations.
11. The FCO responded on 25 November 2016 and explained that it would not be able to meet the Commissioner's timeframe but hoped it could provide a response by 2 December 2016.
12. By the date of this notice, no substantive response has been issued.

Reasons for decision

13. Section 1(1) of the FOIA provides that any person making a request for information 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”*
14. 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.
15. 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.
16. 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. Any extension beyond 40 working days would require there to be exceptional circumstances, fully justified by the public authority.
17. In the circumstances of this case, the total time has well exceeded 40 working days; over 90 working days have now elapsed since the date of the request on 25 July 2016. The FCO set out to the Commissioner that the time taken to consider the public interest test was due to the requirement to consult with a wide range of stakeholders, the request being received at a *“very busy period”*, staff shortages and a number of high profile visits to the region.
18. The Commissioner has issued clear guidance that a further 20 working days should be sufficient when considering the public interest test and only in exceptional circumstances should this exceed a total of 40 working days from the date of the request. Whilst the Commissioner acknowledges the pressures faced by the FCO in dealing with this request she does not consider that this is sufficient justification to take in excess of 90 working days to issue a substantive response.
19. The Commissioner does not, therefore, consider this to be a reasonable timescale and she has concluded that the FCO has not complied with section 17(3).

Right of appeal

20. 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

21. 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.
22. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF