

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 March 2017

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

Decision (including any steps ordered)

1. The complainant requested information relating to the "Pan-European Freight Security and The Migrant Crisis" conference held in London on 27-28 April 2016.
2. By the date of this notice the Home Office had not responded substantively to the request.
3. The Commissioner's decision is that, although it has complied with section 17(1) in stating which exemption is to be relied upon, by failing to complete its public interest test considerations within a reasonable time period the Home Office has breached section 17(3) of the FOIA.
4. The Commissioner also found breaches of sections 1 and 10 of the FOIA.
5. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation:
 - issue a substantive response to the complainant's request, either disclosing the requested information or issuing a refusal notice which includes the outcome of the public interest considerations.
6. 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

7. On 10 September 2016, the complainant wrote to the Home Office and requested information in the following terms:

"Under the Freedom of Information Act, I am requesting all documentation you may have of the "Pan-European Freight Security And The Migrant Crisis" Conference held in London, UK from April 27-28, 2016. Please share any documents you may have related to this event, including but not limited to texts prepared, powerpoint presentations, video documentation, photo documentation and related email exchanges".
8. The Home Office wrote to the complainant on 7 October 2016. Without confirming whether it held information within the scope of the request, the Home Office claimed extra time in order to consider the public interest test with respect to the exemptions at sections 35(1)(a) and (d) (formulation of government policy) and 43(2) (commercial interests).
9. The Home Office told the complainant that it aimed to provide its full response by 4 November 2016.
10. Despite the complainant being assured, in subsequent correspondence, that her request was "*under active consideration*" the Home Office had not responded substantively by the date of this notice.

Scope of the case

11. The complainant contacted the Commissioner on 22 November 2016 to complain about the way her request for information had been handled
12. Despite the intervention of the Commissioner, the Home Office's substantive response remained outstanding at the date of this notice.

Reasons for decision

13. 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.
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. Section 17(3) states that if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is 'reasonable in the circumstances', and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosure.
16. Although the FOIA does not define what a reasonable time is, the Commissioner considers it reasonable to extend the time to provide a full response including public interest considerations by up to a further 20 working days - which means that the total time spent dealing with the request should not exceed 40 working days. 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, although the Home Office has informed the complainant of the delay while the public interest is considered, the total time taken by the Home Office has significantly exceeded 40 working days. As the Commissioner does not consider this to be a reasonable timescale she finds that the Home Office has not complied with section 17(3).
18. The Commissioner also finds that the Home Office breached sections 1(1) and 10(1) of the FOIA.
19. The Home Office is required to conclude its consideration of the public interest test and either disclose the requested information or explain why the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

Other matters

20. The delay in responding to this request will be logged as part of ongoing monitoring of the Home Office's compliance with the FOIA.

Right of appeal

21. 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

22. 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.
23. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF