

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 December 2017

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

### Decision (including any steps ordered)

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1. The complainant requested a copy of a detention services order. By the date of this notice the Home Office had failed to respond substantively to this request and the Commissioner's decision is 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.
  - Provide a substantive response to the request.
3. The Home Office must take this step 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

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4. On 28 June 2017 the complainant wrote to the Home Office and requested information in the following terms:

*"I refer to the following Guardian article:*

*<https://www.theguardian.com/uk-news/2017...>*

*The article refers to a detention services order as follows:*

*'The DSO, written by a Home Office official, said: "Whilst £1 per hour seems high I am reluctantly recommending that we accept this as the basic pay rate." The official said reducing the rate to the preferred level of 75p would be "too risky", warning that: "We would be heavily*

*criticised by the likes of NGOs, IMBs (independent monitoring boards) and HMIP [the prisons inspectorate]".'*

*I would like to ask for a copy of that DSO, if indeed it is a DSO which contained the quoted text. If the text quoted in the article was actually included in guidance annexed to a DSO, in a submission or note relating to a DSO or in some other adjacent file, I would like to see that document as well.*

*For avoidance of doubt, even though the Guardian refers to having seen a redacted document, I would like to request access to the full document, unless any redactions can be justified by any exemptions under the FOIA."*

5. The Home Office had not responded substantively to this request by the date of this notice.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 2 August 2017 to complain about the failure by the Home Office to respond to his information request.
7. The Commissioner contacted the Home Office on 15 November 2017 and asked it to respond substantively to the request within a maximum of a further 10 working days. The Home Office did not respond to confirm that it had done so.

### **Reasons for decision**

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#### **Sections 1 and 10**

8. 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*".
  9. In this case the Home Office has breached sections 1(1) and 10(1) by failing to respond substantively 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 the FOIA.
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## **Other matters**

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10. 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

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11. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

12. 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.
13. 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 .....**

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**