

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 November 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 information about the individuals scheduled to have been deported on charter flights to two named African countries on specified dates. The Home Office confirmed that it held the relevant information but withheld some of it relying on the FOIA exemptions in sections 31(1)(e) (law enforcement as it relates to the operation of the immigration controls) and 27 (international relations). The Home Office extended the response period to conduct a public interest balancing test but has still not completed the test.
2. The Commissioner decided that, although it has complied with section 17(1) FOIA in stating which exemptions are to be relied upon, by failing to complete its public interest test consideration within a reasonable time period the Home Office had breached section 17(3) FOIA.
3. The Commissioner also found breaches of sections 1(1) and 10(1) FOIA.
4. 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.
5. 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

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6. On 12 June 2017, the complainant wrote to the Home Office and requested information in the following terms:

*1 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 are still in the UK?*

*2 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 have an ongoing legal case?*

*3 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 have an ongoing asylum claim?*

*4 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 have an ongoing claim that is not asylum related?*

*5 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 disclosed that they feared persecution due to their sexual identity and/or gender identity if deported?*

*6 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 were assessed as 'not fit to fly' by a medical professional?*

*7 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 were not of Nigerian or Ghanaian nationality?*

*8 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 had legal representation to assist them with their applications to remain in the UK?*

*9 How many of the individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 who challenged the decision to deport them succeeded in their cases?*

*10 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 did not have legal representation to assist them with their applications to remain in the UK?*

*11 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 that have since been deported have appealed out of country?*

*12 How many of those present on the scheduled Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 were Escorts and/or Security Guards and/or Immigration Officers?*

*13 What is the working ratio of Escorts and/or Security Guards and/or Immigration Officers to deportees on Scheduled Charter Flights to Nigeria and Ghana?*

*14 Since the 4th November 2011, how many individuals deported by charter flight to Nigeria and Ghana have been assessed as 'not fit to fly' by a medical professional?*

*15 Since the 4th November 2011, what proportion of individuals deported by charter flight to Nigeria and Ghana have identified as lesbian, gay, bisexual or transgender (LGBT)?*

*16 Of those LGBT individuals that have been deported by Charter Flight to Nigeria and Ghana, since the 4th November 2011, what proportion of them raised their LGBT status as a factor in their applications to remain in the UK?*

*17 Since the 4th November 2011, what proportion of Nigerians and Ghanaians deported by Charter Flight, had legal representation to assist them with their applications to remain in the UK?*

*18 Since the 4th November 2011, what proportion of Nigerians and Ghanaians deported by Charter Flight have not had legal representation to assist them with their applications to remain in the UK?*

*19 Since the 4th November 2011, how many complaints of ill treatment by Escorts and/or Security Guards have been lodged by deportees in relation to both commercial or charter flights?*

*20 Since the 4th November 2011, how many complaints of ill treatment by Escorts and/or Security Guards have been lodged by deportees occurred on charter flights?*

*21 Since the 4th November 2011, how many complaints of ill treatment by Escorts and/or Security Guards have been lodged by deportees occurred on commercial flights?*

*22 Since the 4th November 2011, how many complaints of ill treatment by Escorts and/or Security Guards have involved assaults against deportees on commercial flights?*

*23 Since the 4th November 2011, how many complaints of ill treatment by Escorts and/or Security Guards have involved assaults against deportees on charter flights?*

*24 Since the 4th November 2011, how many Escorts and/or Security Guards have been dismissed or otherwise disciplined for assaults against deportees on commercial flights?*

*25 Since the 4th November 2011, how many Escorts and/or Security Guards have been dismissed or otherwise disciplined for assaults against deportees on charter flights?*

7. The Home Office responded on 10 July 2017 and said that some of the information held was being considered under the section 31(1)(e) FOIA exemption. It stated that it aimed to provide a full response by 4 August 2017 but had still not communicated further with the complainant nor responded substantively by the date of this notice.
8. On 26 June 2017 the complainant again wrote to the Home Office and requested the following information:

*1 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 were not convicted offenders?*

*2 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 were convicted offenders?*

*3 Please list the offences people have been convicted of.*

*4 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 had been convicted of a violent offence?*

*5 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 had been convicted of an offence related to migration?*

*6 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 had been convicted and received a sentence of more than 12 months imprisonment?*

*7 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 had received a prison sentence of more than 4 years?*

*8 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 had been issued with 94B certificates?*

*9 How many individuals scheduled to be on the Charter Flight bound for Nigeria and Ghana leaving from Stansted Airport on the 28th March, 2017 have lodged out of country appeals?*

*10 Is any specific training provided for security guards present on a charter flight that is focused on restraint techniques suitable for the confined space of an aircraft?*

*11 Are 'reserves' (i.e. the practise of taking additional deportees to the airport as 'back ups' in the event of another deportee being removed*

*from the flight) being used for Nigeria and Ghana? If not, when did this practise end?*

*12 Does the Home Office have targets to deport people of particular nationalities?*

*13 What checks do the Home Office conduct to ascertain the adequacy of NGO support to prevent hate crime attacks upon the return of deportees?*

*14. In terms of those being returned to Nigeria, please disclose full details of any agreement with Nigeria to facilitate such a return, including the issuing of Nigerian travel documents.*

*15 In terms of those being returned to Ghana, please disclose full details of any agreement with Ghana to facilitate such a return, including the issuing of Ghanaian travel documents.*

9. The Home Office responded on 21 July 2017 and said that some of the information held was being considered under the section 31(1)(e) FOIA exemption and section 27 FOIA (international relations). It stated that it needed to extend the response period to consider the public interest balancing test. It said that it aimed to provide a full response by 17 August 2017 but had still not communicated further with the complainant nor responded substantively by the date of this notice.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 1 August 2017 and subsequently to complain about the way her requests for information had been handled. Since the request deals with two similar requests made within days of each other and which raise identical issues, the Commissioner has addressed both in a single notice.
11. In correspondence with the Commissioner on 7 November 2017, the Home Office confirmed that its response remained outstanding.

## **Reasons for decision**

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12. Section 1(1) FOIA states that upon receipt of a request a public authority must confirm or deny whether information is held, and if that information is held it must be communicated to the requester.
13. Section 10(1) of the FOIA states that public authorities must comply with section 1(1) within 20 working days of receipt of the request.

14. Section 17(1) states that, where a public authority refuses a request for information, it must provide the applicant with a refusal notice explaining the exemption(s) relied upon. This notice must be provided within the timescale set out in section 10(1) FOIA, i.e. 20 working days.
15. Section 17(3) FOIA states that if a public authority is relying on a qualified exemption, such as those at sections 27 and 31 FOIA, 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 FOIA does not define what is a reasonable time, 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 Home Office informed the complainant of the delay while the public interest is considered, the total time taken by H has significantly exceeded 40 working days. As the Commissioner does not consider this to be a reasonable timescale she finds that HO has not complied with section 17(3) FOIA.
18. The Commissioner also finds that HO breached sections 1(1) and 10(1) FOIA.
19. 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(s) outweighs the public interest in disclosing the information.

### **Other matters**

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20. The delay in responding to this request will be logged as part of ongoing consideration of HO's non-compliance with FOIA.

## Right of appeal

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**