

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 May 2018

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

#### Decision (including any steps ordered)

---

1. The complainant requested copies of all guidelines issued by the public authority in relation to responding to requests for information concerning cyber attacks under the FOIA. The public authority withheld the guidance held within the scope of the request on the basis of the exemptions at section 23(1) and section 36(2)(b)(i) and (ii) FOIA.
2. The Commissioner's decision is that the public authority was entitled to rely on the exemption at section 23(1). She however finds the public authority in breach of the procedural provision in section 10(1) FOIA for failing to respond to the request within the statutory time limit.
3. No steps required.

## Request and response

---

4. On 17 January 2017, the complainant wrote to the public authority and submitted a request for information in the following terms:

"I write with a request for information under the FOIA.

My request is as follows:

Please provide copies of all guidelines issued in relation to responding to FOI requests related to cyber attacks.

I understand new/altered guidelines relating to this have been issued since November 2016.

My request is for copies of the new/altered guidelines and also copies of the guidelines which preceded the new/altered guidelines."

The public authority provided its response on 22 March 2017. It explained that it considered the information requested exempt from disclosure on the basis of the exemptions contained at section 36(2)(b)(i) and (ii) FOIA.

5. The complainant requested an internal review of the public authority's decision on 22 March 2017.
6. The public authority wrote to the complainant on 6 April 2017 with details of the outcome of the internal review. The review upheld the original decision.

## Scope of the case

---

7. The complainant contacted the Commissioner on 3 May 2017 to complain about the public authority's decision to withhold the information requested.
8. During the course of the investigation the public authority also sought to rely on the exemption at section 23(1) FOIA.
9. The Commissioner has therefore considered whether the public authority was entitled to rely on the exemptions contained at section 23(1) and section 36(2)(b)(i) and (ii) to withhold copies of the guidance held within the scope of the complainant's request.

## Reasons for decision

---

### Withheld information

10. The withheld information which she has inspected comprises of guidance issued in June 2015 and in September 2016, the latter updating the previous guidance issued in June 2015.
11. There is evidence that similar guidance was issued in 2013. The public authority however explained that it was unable to locate this guidance and provided the Commissioner with details of the nature of the searches officials had carried out in order to locate it. The Commissioner is satisfied that the search was thorough. She has therefore concluded that on the balance of probabilities the 2013 guidance is no longer held by the public authority.
12. There is no evidence that similar versions of the guidance preceded the 2013 guidance. There is however evidence that advice in relation to requests for information concerning cyber attacks may have been issued on a case by case basis (ie in relation to specific requests for information) prior to 2013. The Commissioner accepts the public authority's view that such advice if held would not fall within the scope of the request in this case. The public authority is also of the view that it would exceed the cost limit<sup>1</sup> to comply with a request for such advice.

### Section 23(1)

13. This exemption has been applied to both versions of the guidance held by the public authority.
14. The exemption states:

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”
15. In order to successfully engage the exemption, a public authority must be able to demonstrate that the relevant information was directly or indirectly supplied by, or relates to any of the bodies listed at section 23(3) FOIA.

---

<sup>1</sup> Thereby engaging the provisions in section 12 FOIA.

16. In support of its reliance on the exemption, the public authority provided the Commissioner with a letter from one of the security bodies listed in section 23(3) FOIA. The letter which was signed by an official at deputy director grade explains why the withheld information is considered exempt on the basis that it was supplied by or relates to a security body.
17. In the circumstances of this case the Commissioner accepts the explanation provided by the relevant security body in support of the public authority relying on section 23(1) to withhold copies of the guidance held within the scope of the complainant's request. The Commissioner has therefore concluded that the public authority was entitled to rely on section 23(1).
18. Section 23(1) is an absolute exemption which means that it is not subject to the public interest test set out in section 2(2)(b) FOIA. Once it is determined that the exemption is engaged, the information cannot be released under the FOIA.
19. In view of her decision the Commissioner has not considered the applicability of the remaining exemptions.

#### **Procedural matters**

20. A public authority is required by virtue of section 10(1) FOIA to respond to an applicant's request for information promptly and in any event no later than 20 working days following receipt of the request.
21. The request was submitted on 17 January 2017. The public authority provided its response on 22 March 2017 exceeding the statutory time limit. The Commissioner therefore finds the public authority in breach of its obligation under section 10(1).

## Right of appeal

---

22. 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)

23. 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.
24. 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** .....

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**