

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 March 2018

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested from the Ministry of Justice (MoJ) information concerning communications with the Duchy of Lancaster. The MoJ's response to this request was severely delayed. In so doing, the MoJ breached section 10(1) of the FOIA.

Request and response

2. On 9 May 2016 the complainant wrote to the MoJ and requested information in the following terms:

"During the aforementioned period [9 May 2015 to 9 May 2016] has the Duke of Lancaster exchanged correspondence and communications including emails with a Minister which in any way relates to legislation and its possible implications for the Duchy of Lancaster. If the answer is yes can you please provide copies of this correspondence and communications including emails. Please note that I am interested in receiving both sides of the correspondence".
3. Following an extremely lengthy delay, the MoJ responded substantively in a letter dated only as January 2017. Some information was disclosed to the complainant, but the remainder was withheld under section 37(1)(a) (communications with Her Majesty) of the FOIA.

4. The complainant responded on 10 May 2017 and requested an internal review. The complainant specified the serious delay in responding to his request and the citing of section 37(1)(a) in his internal review request.
5. Following a further extremely lengthy delay, and only after the intervention of the Commissioner, the MoJ responded with the outcome of the internal review on 15 February 2018. The outcome of this was that the MoJ stated that the information that had previously been withheld under section 37(1)(a) was not actually within the scope of the request. Therefore, the information that had been disclosed to the complainant previously represented all the information held by the MoJ within the scope of the request.

Scope of the case

6. The complainant contacted the Commissioner on 18 June 2017 to complain at that stage about both the part refusal of his information request and the failure by the MoJ to carry out the internal review promptly.
7. The Commissioner contacted the MoJ initially to raise the issue of its failure to complete the internal review. When that failed to result in a response, the Commissioner progressed the case and moved to considering the part refusal under section 37(1)(a), without waiting any longer for the MoJ to complete the review.
8. After the MoJ contacted the complainant with the notification that it was no longer withholding any information within the scope of his request, the complainant confirmed to the Commissioner that he wished a decision notice recording the delay in responding to his request to be issued.
9. As well as the finding below, the Commissioner comments further on the very poor handling of this request in the "Other matters" section of this notice.

Reasons for decision

Section 10

10. Section 10(1) of the FOIA requires that a public authority should respond to a request for recorded information within 20 working days of receipt. In this case the MoJ took approximately eight months to

respond to the request and, in so doing, breached section 10(1) of the FOIA.

Other matters

11. The Commissioner wishes to record in this notice her disquiet at the severity of the delay in responding to the complainant's information request and the poor level of engagement she received from the MoJ when making her enquiries in this case.
12. Her view is that eight months to respond to a request is grossly excessive and entirely unacceptable. That the delay was repeated at internal review stage, and that it was discovered at that stage that the MoJ had not managed to accurately identify the information it held within the scope of the request during those eight months, is particularly poor.
13. The issues the complainant experienced were echoed in the Commissioner's experiences in dealing with the MoJ in this case, in which it was necessary for the Commissioner to issue an information notice under section 51 of the FOIA after the MoJ significantly delayed in responding to her enquiries.
14. The Commissioner considers that the MoJ must take steps to ensure that there is no repeat of this mishandling in relation to any future information requests, either in terms of the considerable delays in responding to the request and completing the internal review, or in the poor level of engagement the Commissioner herself encountered from the MoJ in this particular case. The Commissioner will review the MoJ's complaints handling going forward, and in the event of a repeat of such poor performance, she will consider issuing an enforcement notice.

Right of appeal

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

16. 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.
17. 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
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