

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 February 2018

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

#### Decision (including any steps ordered)

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1. The complainant requested details of all Home Office spending of more than £25,000. The Home Office refused to disclose this information and cited the exemption provided by section 22(1) (information intended for future publication) of the FOIA.
2. The Commissioner's decision is that the Home Office cited this exemption incorrectly and it is now required to disclose the requested information.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Disclose details of spending of over £25,000 for the three months November and December 2016 and January 2017.
4. 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 8 March 2017 the complainant wrote to the Home Office and requested information in the following terms:

*"I'd like to make a request under the Freedom of Information Act for all transactions over £25,000 from November 2016 until the end of January 2017. Please provide the data in a machine readable format (preferably csv). As a minimum, please make sure to include the date, value and recipient of each transaction. Please also provide details on the procurement category of each transaction if you have it."*

6. The Home Office responded on 29 March 2017. It stated that the request was refused and cited the exemption provided by section 22(1) (information intended for future publication) of the FOIA.
7. The complainant responded on 10 April 2017 and requested an internal review. The Home Office responded with the outcome of the review on 20 June 2017. The conclusion of this was that the refusal under section 22(1) of the FOIA was upheld.

## Scope of the case

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8. The complainant contacted the Commissioner on 2 August 2017 to complain about the refusal of her information request. The complainant indicated that she did not agree with the reasoning given for the refusal of her request and noted that the requested information had still not been published by that time.

## Reasons for decision

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### Background

9. In May 2013, the Government published guidance to support its policy of ensuring that all government spending over £25,000 was published regularly.<sup>1</sup> At paragraph 2.6 it says:

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<sup>1</sup> <https://www.gov.uk/government/publications/guidance-for-publishing-spend-over-25000>

*"2.6 Consistent with producing raw data quickly, the expectation is that the published data reflects how each individual item was originally recorded in financial systems. You are not currently required to reflect corrections/journals, if you subsequently find that an amount paid was incorrectly posted. We strongly recommend, however, that you correct significant errors."*

10. At paragraphs 2.10 – 2.12 it says:

*"2.10 Spend is to be published one month in arrears, ie by the last working day of the month following the month to which the data relates. If the data is available before the end of the month, it should be published as soon as the department has cleared it for release. This data is to be published in individual monthly files."*

*"2.11 You should not hold up the publication of your data where you have unresolved individual queries. You should publish the cleared data within the publication timescales, and amend the data at a later date if necessary. See section 2.5 for further detail on applying redactions to the data [actually section 2.14 onwards]"*

*2.12 If you identify an error or wish to make an amendment to a previously published file (for example, adding a new item which you had previously withheld pending clearance), you should update it as soon as the changes have been approved. You need to amend the metadata description and related narrative accordingly".*

11. As the complainant's request indicates, at the time of her request no data of this kind had been published by the Home Office since October 2016.

## **Section 22**

12. Section 22(1) provides that –

*"Information is exempt information if-*

*(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*

*(b) the information was already held with a view to such publication at the time when the request for information was made, and*

*(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)."*

13. Section 22(1) is qualified by a public interest test and there are, therefore, four questions to consider:

- Was there at the time the request was made an intention to publish the requested information at some future date?
- Was the information already held with a view to publication at the time the request was made?
- Was it reasonable to withhold the information from disclosure until the intended date for publication?

Where the answer to the above three questions is "yes", the exemption is engaged but a fourth question must be addressed:

- Did the public interest favour maintaining the exemption or disclosing the information?

*Was there an intention to publish the requested information at some future date?*

*Was the information already held with a view to publication at the time the request was made?*

14. The Commissioner is aware of no reason to dispute that the requested information was held at the time of the request and so is satisfied that it was held at that time.

15. The commitment to publish all spending of more than £25,000 was in place at that time, so the information was held with a view to publication at the time of the request.

*Was it reasonable to withhold the information from disclosure until the intended date for publication?*

16. The Home Office argued that it was necessary to withhold the information owing to a need for "*validation, formatting compatibility and verification*" prior to publication. The Home Office further clarified that this process included checking the accuracy of the information and removing any sensitive content from the data prior to publication.

17. However, the Commissioner notes that the published guidance does not require fully accurate spend data to be published and that any amendments can be completed retrospectively. The published guidance is also mindful of the importance of redacting sensitive information, including to comply with the requirements of the Data Protection Act 1998. This is referred to at paragraphs 2.14 onwards of the guidance.
18. For example, at paragraph 2.19, the guidance says the following regarding concerns about publishing sensitive information:

*"2.19 You should seek guidance from your departmental information rights specialists, where necessary. Issues with individual pieces of data should not be used to hold back spending data releases. Any items in question should be withdrawn from the files for publication until the issue has been resolved. Upon clarification of the issue, and if appropriate, the item should be added to the previously published data."*
19. In light of the fact that the guidance makes specific reference to the need to publish promptly and to resolve any issues about accuracy retrospectively, it is difficult to conclude that the Home Office has withheld information reasonably. The guidance also specifies how to handle sensitive information and specifies that it should not be a reason for withholding non-sensitive information in the same batch of data.
20. From a detailed reading of the government's guidance on the publication of spend data, it is clear that there are high expectations for relevant authorities to publish this data. There are also a number of safeguards in place to take account of matters of accuracy and sensitivity. In light of this, the Commissioner is unable to conclude that it was reasonable to withhold the information from disclosure until the revised publication date, which according to the latest Home Office estimate will be the end of February 2018. The Commissioner has no doubt that publication was intended. However, there was a published expectation that data would be published a month in arrears and this was missed by a considerable margin.
21. The Commissioner's finding is that it was not reasonable for the Home Office to withhold the requested information until the revised date of publication. Her conclusion is, therefore, that the exemption provided by section 22(1) of the FOIA is not engaged. Having reached this conclusion, it has not been necessary to go on to consider the balance of the public interests.
22. At paragraph 3 above the Home Office is now required to disclose the requested information.

## Right of appeal

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23. 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>

24. 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.
25. 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**