

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2018

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

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office regarding Rule 35 reports and detainees being released or detention maintained.
2. The Commissioner's decision is that the Home Office has breached section 10(1) of the FOIA as it has failed to give a substantive response to the request within the reasonable timeframe specified by section 10(3).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Home Office must issue a substantive response to the request in accordance with its obligations under the FOIA.
4. The public authority 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

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

"Please provide the following information, broken down by month and by IRC for the period from September 2016 until the present:

1.1. The number of Rule 35 (1) reports

1.2. Of those in how many cases was (a) the detainee released; (b) detention maintained?

2.1. The number of Rule 35 (2) reports

2.2. Of those in how many cases was (a) the detainee released; (b) detention maintained?

3.1. The number of Rule 35 (3) reports

3.2. Of those in how many cases was (a) the detainee released; (b) detention maintained?

4. how many detainees were assessed, on entering detention, to be 4.1 level 1 risk (AAR)

4.1.1 Of those, how many were still detained; how many were not detained as a result?

4.2. level 2 risk (AAR)

4.2.1 Of those, how many were still detained; how many were not detained as a result?

4.3. level 3 risk (AAR)

4.3.1 Of those, how many were still detained; how many were not detained as a result?

5. how many detainees were assessed, when already in detention, to be 5.1 level 1 risk (AAR)

5.1.1 Of those, how many were still detained; how many were not detained as a result?

5.2. level 2 risk (AAR)

5.2.1 Of those, how many were still detained; how many were not detained as a result?

5.3. level 3 risk (AAR)

5.3.1 Of those, how many were still detained; how many were not detained as a result?"

6. The Home Office responded on 10 July 2017. It stated that:

"Some of the information you have requested is being considered under the exemptions in section 31(1) (e) and (f) of the Act, which relate to law enforcement; the operation of immigration control and the maintenance of security and good order in prisons or other detention facilities.

These are qualified exemptions and to consider the public interest test fully we need to extend the 20 working day response period."

7. Despite the complainant sending a follow up email to the Home Office a substantive response has not been issued.

Scope of the case

8. The complainant contacted the Commissioner on 11 October 2017 to complain about the way his request for information had been handled.
9. Following receipt of the complaint the Commissioner contacted the Home Office, reminding it of its responsibilities and asking it to respond to the complainant within 10 working days.
10. Despite this intervention the Home Office has failed to respond to the complainant.

Reasons for decision

11. Section 10(1) of the FOIA states that an authority must comply with section 1(1) of the FOIA '...promptly and in any event not later than the twentieth working day following the date of receipt'. However, section 10(3) enables an authority to extend the 20 working day limit up to a 'reasonable' time in cases where the public interest test attached to the application of a qualified exemption is being considered.
12. The FOIA does not define what constitutes a 'reasonable' extension of time. It is the view of the Commissioner that an authority should normally take no more than an additional 20 working days to consider the public interest test, meaning that the total time spent dealing with the request should not exceed 40 working days.
13. The Commissioner has found that the time taken to produce a substantive response to this request considerably exceeds the 40 working days and is therefore not reasonable. She has therefore decided that the Home Office has breached section 10(1) of the FOIA.

Right of appeal

14. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. 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.
16. 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

Alun Johnson
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