

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 January 2018

**Public Authority:** Foreign and Commonwealth Office  
**Address:** King Charles Street  
London  
SW1A 2AH

#### Decision (including any steps ordered)

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1. The complainant submitted two requests to the Foreign and Commonwealth Office (FCO). The FCO failed to respond to these requests within 20 working days and therefore breached section 10(1) of FOIA. As the FCO has now responded to the complainant's second request, which essentially sought the same information as the complainant's first request, no steps are required by this notice.

#### Request and response

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2. Following on from previous correspondence he had exchanged with the office of the UK's Permanent Representative to NATO, the complainant sent a further email on 29 August 2017 which contained the following information request:

*'I ask you very specifically if the UK Delegation to NATO, as a member of the North Atlantic Council, has approved a divergence from the NATO Civilian Personnel Rules, being the Balkan Civilian Staff Rules. If such approval has been given, how was it done and through which means?'*

3. The complainant contacted the FCO (more specifically the office of the UK's Permanent Representative to NATO) on 7 September 2017 and asked it to confirm receipt of his earlier email along with an indication as to when he would receive a response.

4. Having failed to receive a substantive response to his email of 29 August 2017 the complainant submitted the following further request directly to the FCO's Information Rights Team on 27 September 2017:

*'I have written to the UK Joint Delegation to NATO on 21 June and on 7 September 2017. I have received acknowledgment of receipt but no response to my enquiries. I therefore submit this Freedom of Information Request to you.*

*Has the UK government, through the Foreign & Commonwealth Office and its Joint Delegation to NATO, in its capacity as a member of the North Atlantic Council approved the use and application of the Civilian Staff Rules for Crisis Response Operation (CRO) Headquarters in the Balkans brought into effect in March 2012?*

*If this approval has been given, in which way was it manifested? Please cite or provide the North Atlantic Council document or any other means by which that approval or assent was given.*

*To ensure that there is no confusion as to the staff rules in question, I attach a copy of this unclassified document which is already in the public domain.'*

5. The FCO responded on 3 October 2017 and stated that:

*'Thank you for your email and please accept my apologies for the delay in replying to you.*

*The information you have requested does not fall under the remit of a Freedom of Information request for the Foreign and Commonwealth Office. I have spoken to the UK Joint Delegation to NATO who are aware of your request and are currently working on providing you with a reply.*

*As I am sure you can appreciate this is a complex issue and UK Del are committed to providing you with a response but this may take some time. They will be in touch with you in due course.'*

6. The complainant contacted the FCO on 3 October 2017 and asked it to explain why it had concluded that the requested information did not fall under FOIA given that the request is similar to other requests which had previously been answered. The complainant sent a chaser email to the FCO on 9 October 2017.
7. The FCO responded on 10 October 2017 and confirmed that it would accept his request of 27 September 2017 and aimed to reply within 20 working days.

8. The FCO responded to the request on 14 November 2017 and confirmed that it did not hold any information falling within the scope of his request.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 6 November 2017 in order to complain about the FCO's failure to respond to his emails of 29 August and 27 September 2017 both of which he considered to be valid FOI requests. Although the FCO has now issued its response to the complainant's email of 27 September 2017, the complainant has confirmed that he remains dissatisfied with the time it took the FCO to respond to this request. He is also dissatisfied with its failure to respond to his earlier request of 29 August 2017, albeit that the FCO has now effectively responded to that request given it has responded to his later request.

## **Reasons for decision**

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### **Section 10 – time for compliance**

10. Section 10(1) of the FOIA states that:

*'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'*

11. The FCO responded to the complainant's request of 27 September 2017 on 14 November 2017, ie 34 working days later. The FCO therefore breached section 10(1) of FOIA by failing to respond to the case within 20 working days.
12. With regard to the complainant's email of 29 August 2017, the Commissioner accepts that this contains a valid request for information. This is because the request quoted above meets all of the requirements of section 8(1) of FOIA which states that a request must meet the following criteria:
  - be in writing;
  - include the requester's name and an address for correspondence; and,
  - describe the information being requested.
13. The Commissioner recognises that this does not mean that every written enquiry has to be treated as a formal FOI request. It will often be most

sensible and provide better customer service to deal with it under normal course of business procedures. The obligations of FOIA only come into force if:

- the public authority cannot provide the requested information straight away; or
- the requester makes it clear they expect a response under FOIA.

14. In the circumstances of this case it is clear that the FCO did not provide a substantive response to the complainant's email of 29 August 2017 straight away. Therefore, the provisions of FOIA came into force and as a result the FCO were under an obligation to respond to the request of 29 August within 20 working days. Its failure to do so also constitutes a further breach of section 10(1) of FOIA.

## Right of appeal

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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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**