

## **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)**

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1. The complainant has requested information from the Home Office regarding detainees in Immigration Removal Centres and crimes they have committed.
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

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5. On 3 May 2017, the complainant wrote to the Home Office and requested information in the following terms:

*"Please provide the following under the Freedom of Information Act:*

*1) Please state the numbers of individuals held in UK immigration detention centres that have*

*a) I) A UK criminal record*

*b) II) Have committed no offences apart from offences under Immigration Acts 1971 – 2016 as of July 5th in each of the following calendar years, or for the nearest possible data collection date.*

*i) 2015*

*i) 2016*

*ii) 2017*

*2) Please provide a breakdown of the number of Foreign National Offenders held nationally in immigration removal centres, by those who have committed:*

*i) i) Violent crime*

*ii) ii) Drug related crime*

*iii) iii) Sexual offence related crime*

*iv) iv) Misdemeanours / petty crime*

*Please provide a number for each type.*

*If detainees have committed multiple offences, please code them by the most recent offence that they have committed.*

*3) Please provide a breakdown of the specific legal powers in immigration law that individuals are held under nationally in immigration detention centres and the number of individuals held under each legal power.*

*Please provide information as of July 5th in each of the following calendar years, or for the nearest possible data collection date.*

*i) I) 2015*

*i) II) 2016*

*ii) III) 2017"*

6. The Home Office responded on 3 August 2017. They advised the complainant that his request was subject to the public interest test as some of the information he had requested was being considered under

the qualified exemption at 31(1)(f) of the FOIA, which relates to law enforcement and the maintenance of security and good order in prisons or other detention facilities. They added that they hoped to be able to respond by 30 August 2017.

7. The Home Office has not yet issued a substantive response.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 31 August 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**

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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

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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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**