

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 September 2018

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

Decision (including any steps ordered)

1. The complainant requested information regarding Operation Perceptor.
2. The Commissioner's decision is that the Home Office has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA. The Commissioner also finds that the Home Office has breached section 10(1) of the FOIA.
3. The Commissioner requires the Home Office to take the following step 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 Home Office must take this step 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 27 April 2018, the complainant wrote to the Home Office and requested information in the following terms:

"Please provide information on meetings and correspondence concerning 'operation Perceptor' between:

- Immigration Enforcement*
- Office of Secretary of State*
- Junior Home Office Ministers*

For meetings please provide attendees, briefing notes & minutes.

Time Period: September 2015 - January 2016.

Please provide information in original form rather than digested extracts"

6. The Home Office wrote to the complainant on 30 May 2018 to confirm that it needed more time to consider the balance of the public interest in relation to the exemption at section 35 (Formulation of government policy). The Home Office confirmed that it expected to be able to provide a full response by 27 June 2018.

Scope of the case

7. The complainant contacted the Commissioner on 12 July 2018 to complain about the Home Office's failure to provide a substantive response to her information request.
8. On 13 August 2018 the Commissioner wrote to the Home Office, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
9. Despite this intervention the Home Office has failed to respond to the complainant.

Reasons for decision

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

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

(b) if that is the case, to have that information communicated to him."

11. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt."*
12. Under section 10(3) of the FOIA, where necessary, a public authority may extend the time for compliance *"until such time as is reasonable in the circumstances"* in order to properly consider the balance of the public interest.
13. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
14. Although the FOIA does not define what constitutes a reasonable time, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
15. In this case, the total time taken by the Home Office has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the Home Office has not complied with section 17(3).
16. The Commissioner also finds that the Home Office breached section 10(1) and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

17. 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

18. 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.
19. 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

Andrew White
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Cheshire
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