

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2018

Public Authority: Department for International Trade
Address: King Charles Street
Whitehall
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for International Trade (DIT) seeking copies of email correspondence sent between named individuals. The DIT confirmed that it held information falling within the scope of the request but explained that it needed additional time to consider the balance of the public interest test. To date, the DIT has failed to complete its public interest test deliberations in relation to the request. By failing to complete these deliberations within a reasonable timeframe the Commissioner has concluded that the DIT has breached section 17(3) of FOIA in respect of its handling of this request.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a substantive response to her information request of 4 May 2018. If the DIT decides to withhold any information in response to this request then the complainant should be provided with a refusal notice giving a full explanation as to why information will not be disclosed, including details of any public interest test considerations.
3. 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

4. The complainant submitted the following request to the DIT on 4 May 2018:

'Under the Freedom of Information Act, I would like to request any email correspondence from 1 March 2018 to the date you receive this request between Shanker Singham, in his role as a) Chairman of the Legatum Institute Special Trade Commission and b) in his role Director of the International Trade and Competition Unit (ITCU) of the Institute of Economic Affairs and each of the members of the board and the executive committee of the Department for International Trade.

If the request is too broad and would trigger section 12, then I would agree to narrow it down to the following individuals:

*Rt Hon Dr Liam Fox MP
Rt Hon Greg Hands MP
Baroness Rona Fairhead
Mark Garnier MP
Antonia Romeo
Crawford Falconer
John Alty
Louis Taylor
Catherine Vaughan
Louis Taylor
John Hill
Antony Phillipson
John Mahon
Graham Stuart*

Please include any email correspondence sent on behalf of either Shanker Singham or of any of the individuals listed above (e.g. by a secretary or PA)'

5. The DIT acknowledged receipt of the request on the same day.
6. The DIT then contacted the complainant on 5 June 2018 and explained that it considered a qualified exemption to apply to the information she requested and it required more time, in line with the provisions of FOIA, to consider the balance of the public interest test. The DIT's response did not explain which qualified exemption(s) it considered to apply however it did explain to the complainant that it hoped to have completed its public interest test considerations by 3 July 2018.
7. Having received no further communication from the DIT, the complainant contacted it on 6 and 11 July 2018 in order chase up a response to her request.

8. The DIT responded on 13 July 2018 and explained that it would provide her with a response to her request imminently.

Scope of the case

9. The complainant contacted the Commissioner on 2 August 2018 to complain about the DIT's failure to provide her with a substantive response to her request.

Reasons for decision

10. Section 1(1) of FOIA provides 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 FOIA provides that 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.
12. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. 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, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.
13. In the circumstances of this request the DIT has taken more time than the Commissioner's guidance recommends for public interest test considerations. In the Commissioner's opinion the DIT has therefore failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that it has not complied with section 17(3) of FOIA in respect of its handling of the complainant's request.

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

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