

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2018

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

Decision (including any steps ordered)

1. The complainant requested copies of documents created as a result of a previous information request.
2. The Commissioner's decision is that the Foreign & Commonwealth Office ("the FCO") has failed to complete its deliberations on the balance of the public interest within a reasonable time period and has therefore breached Section 17(3) of the FOIA.
3. The Commissioner requires the FCO to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The FCO 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 26 July 2018, the complainant wrote to the FCO and requested information in the following terms:

"I am writing to request disclosure of information under the FOI Act, for all emails, memos, minutes and other communications and records in relation to FOI 0564 - 18.

I would like the information in electronic format.

If this work is expected to exceed £449 in cost, you may limit the information to documents between April 2017 and May 2018, to a cost of £449 but you must justify such limit by providing a full breakdown of the time taken to find and redact the documents."

6. The FCO replied to the complainant on 24 August 2018 to confirm that it held information within the scope of the request but it considered this to be exempt from disclosure on the basis of Section 36 (prejudice to effective conduct of public affairs). The FCO explained that it needed more time to consider the balance of the public interest in respect of that exemption.

Scope of the case

7. The complainant contacted the Commissioner on 8 October 2018 to complain about the failure, by the FCO, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the FCO on 9 October 2018 to highlight the outstanding response. She requested that the FCO issue a substantive response to the request within 10 working days.
9. The FCO replied to the Commissioner on 23 October 2018. It stated that the response was "going through clearance", that the request was "a priority" and that the complainant would get her response "as soon as possible."
10. The complainant contacted the Commissioner on 19 November 2018 to state that she had still not received a response to her request.
11. The Commissioner considers that the fact that the response remains outstanding, despite her intervention, means that a decision notice is appropriate in this case.
12. The scope of this notice is to determine whether the delay in responding to the request is reasonable in the circumstances.

Reasons for decision

13. Section 1(1) of the 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.*

14. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) *is in writing,*
 - (b) *states the name of the applicant and an address for correspondence, and*
 - (c) *describes the information requested.*
15. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
16. Section 10 of the FOIA states that responses to requests made under the Act must be provided *"promptly and in any event not later than the twentieth working day following the date of receipt."*
17. Section 10(3) of the Act states that, where a public authority is considering the balance of public interest, it can extend the 20 working day deadline *"until such time as is reasonable in the circumstances."*
18. 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 justify the time taken fully.
19. The FCO has not provided any explanation, to either the complainant or the Commissioner, as to the prevailing circumstances which have rendered it unable to complete its deliberations on the balance of the public interest.
20. The Commissioner's guidance states that a "reasonable" extension will normally be an additional 20 working days. The FCO has had an additional three months to consider this request and the Commissioner can is not aware of any circumstances which would be likely to justify such a lengthy delay.

21. In the Commissioner's opinion the FCO has failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that the FCO has not complied with Section 17(3) of the Act.

Right of appeal

22. 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

23. 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.
24. 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

Ben Tomes
Team Manager
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Cheshire
SK9 5AF