

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 September 2020

**Public Authority:** Department for Digital, Culture, Media & Sport  
**Address:** 100 Parliament Street  
London  
SW1A 2BQ

### Decision (including any steps ordered)

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1. The complainant requested information about correspondence between the Department for Digital, Culture, Media & Sport (DCMS) and two external organisations, between February and April 2020, relating to the Covid-19 outbreak. By the date of this notice DCMS had not issued a substantive response to the request.
2. The Commissioner's decision is that the DCMS has failed to complete its deliberations on the balance of the public interest within a reasonable timeframe and therefore finds that the DCMS has breached section 17(3) of the FOIA.
3. The Commissioner requires the DCMS to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response, under the FOIA, to the request.
4. The DCMS 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

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5. On 23 April 2020, the complainant wrote to the DCMS and requested information in the following terms:

*"I would like to submit two FOI queries if possible.*

*I would like to be sent any and all correspondence between DCMS and the Premier League from the period between February 1 2020 and April 22, 2020 that has any relation to the Covid-19 outbreak.*

*I would also like to be sent any and all correspondence between DCMS and the British Horseracing Authority and also the Jockey Club/Cheltenham Racecourse concerning the Cheltenham Festival between February 1 2020 and April 22, 2020."*

6. The DCMS issued an initial response to the request on 22 May 2020. It confirmed that it held information within the scope of the request but that it considered that the information would be covered by the exemption at section 36 of the FOIA (prejudice to the effective conduct of public affairs). The DCMS stated that it needed further time to consider whether the balance of the public interest lay in favour of disclosure or in maintaining the exemption.
7. The DCMS had yet to provide a substantive response by the date of this notice.

## Scope of the case

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8. The complainant contacted the Commissioner on 25 June 2020 to complain about the failure, by DCMS, to respond to the request.
9. In line with her usual practice, the Commissioner contacted the DCMS on 4 August 2020 to highlight the outstanding response. She requested that the DCMS respond to the request within 20 working days. The correspondence was neither acknowledged nor responded to.
10. The complainant contacted the Commissioner on 4 September 2020 to request a decision notice considering the DCMS's compliance with the FOIA.
11. The scope of this notice and the following analysis is to consider whether DCMS has complied with section 10 and section 17 of the FOIA.

## Reasons for decision

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12. 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.*

13. 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.*

14. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

15. 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.*"

16. 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.*"

17. 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.

18. The DCMS 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.

19. In the Commissioner's opinion the DCMS has failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that the DCMS has not complied with Section 17(3) of the Act. At paragraph 3 above it is now required to issue a substantive response to the request.

## Right of appeal

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20. 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@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**