

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2021

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

Decision (including any steps ordered)

1. The complainant requested information from the Home Office (HO) about audio recordings from a staff briefing at Brook House Immigration Removal Centre. By the date of this notice the HO had not issued a substantive response to this request.
2. The Commissioner's decision is that the HO 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.
3. The Commissioner requires the HO to take the following step to ensure compliance with the legislation.
 - Having confirmed that information is held within the scope of the request: either disclose the requested information or issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The HO 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

On 30 March 2021, the complainant wrote to the HO and requested information in the following terms:

"I understand that detention custody staff and/or escort staff at Brook House immigration removal centre have a verbal briefing at the muster point prior to removing detainees from their rooms to take them on to bus or van to an airport to be deported.

Please can you provide:

1. The audio recording of the staff briefing at the muster point which took place at Brook House between detention custody staff and/or escort staff removing detainees from their rooms to go on the 12 August 2020 charter flight to Germany and France. I understand this may be redacted for personal information, but I ask that you redact only exempted information and justify the use of those exemptions. If necessary, for purposes of redaction, we would be happy to receive a full written transcript in place of audio recordings. I also kindly remind you that the time taken for redactions does not usually contribute towards the cost cap under FOI.

2. The total number of staff who attended the briefing; the time it was held and the duration of the briefing.

If this request is too wide or unclear, I would be grateful if you could contact me as soon as possible, as I understand that under the Act you are required to advise and assist requesters. If any of this information is already in the public domain, please can you direct me to it, with page references and URLs if necessary.

I understand that you are required to respond to my request within the 20 working days after you receive this letter. I would be grateful if you could confirm in writing that you have received this request."

5. On 11 May 2021, the HO wrote to the complainant to explain that it held information relevant to the complainant's request, but that it would need to extend the time taken to complete its public interest test considerations in respect of an exemption under section 31 of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 22 August 2021 to complain about the delay in the HO's consideration of the public interest test.
7. On 31 August 2021 the Commissioner wrote to the HO reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. To date, a substantive response has still not been provided.
8. The Commissioner has considered whether the HO has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

9. 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."

10. 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"*.
11. 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.
12. 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.
13. In this case, the total time taken by the HO 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 HO has not complied with section 17(3).

14. The HO is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

Right of appeal

15. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. 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.
17. 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

Michael Lea
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