

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 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 relating to the passengers on a charter flight to Nigeria and Ghana on 28 March 2017. By the date of this notice the Home Office had not provided a substantive response to this request.
2. The Commissioner's decision is that the Home Office has failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request in accordance with its obligations under the FOIA.
4. The Home Office 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

5. On 27 October 2020, the complainant wrote to the Home Office via the What Do They Know website and requested information in the following terms:

"You've previously confirmed that there are 11 persons still in the country that were meant to be on the charter flight to Nigeria and Ghana on 28-3-17. Please check your records thoroughly and confirm as of today's date:

- 1. how many of the 11 still remain in the UK;*
- 2. what is the basis of their claim to remain in the country (eg. asylum, human rights, domestic violence, etc.)*
- 3. how many of these persons have since been granted the right to remain*
- 4. please confirm on what basis those persons have been granted the right to remain*
- 5. how many of these persons have been granted asylum*

Please respond within the lawful time limit to avoid me having to refer this matter to the ICO.¹"

6. The Home Office wrote to the complainant on the same date to acknowledge the request.
7. On 24 November 2020, as the complainant had not received a response, she wrote to the Home Office to ask for an update on the status of her information request.
8. The Home Office responded to the complainant on 25 November 2020 and apologised for the delay in responding to her request.
9. On 30 November 2020, the complainant wrote to the Home Office again to ask for an update on the Home Office's response to her request.

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https://www.whatdotheyknow.com/request/status_of_persons_scheduled_to_b_5?nocache=incoming-1689162#incoming-1689162

10. The Home Office responded on the same date and informed the complainant that a response would be provided as soon as possible.
11. On 4 December 2020, as the complainant had not received a response to her request, she wrote to the Home Office and requested an internal review.
12. The Home Office provided the complainant with the outcome of its internal review on 9 December 2020. In its internal review, the Home Office accepted that it had not responded to the complainant's information request within 20 working days and apologised for this delay.
13. By the date of this notice, the Home Office had not provided the complainant with a substantive response to her request.

Scope of the case

14. The complainant contacted the Commissioner 12 December 2020 to complain about the Home Office's failure to respond to her request.
15. The Commissioner contacted the Home Office on 11 January 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
16. The Commissioner also contacted the complainant on 11 January 2021 to explain that the Home Office had been given 10 working days from that date within which to provide a response to their request.
17. The complainant has provided evidence that she has received an acknowledgement from the Home Office but, by the date of this notice, had not received a substantive response to her information request.
18. The scope of this notice and the following analysis is to consider whether the Home Office has complied with section 10 of the FOIA.

Reasons for decision

19. Section 10 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.*
20. The Commissioner considers that the request in question fulfilled the above criteria and therefore constituted a valid request for recorded information under the FOIA.
 21. 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.*"
 22. The Home Office did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that the Home Office has breached section 10 of the FOIA.

Right of appeal

23. 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

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

24. 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.
25. 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