

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2022

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

Decision (including any steps ordered)

1. The complainant requested from the Home Office information relating to the death of asylum seekers. By the date of this notice the Home Office had not issued a substantive response to this request.
2. The Commissioner's decision is that the Home Office 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 Home Office to take the following steps 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 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 28 September 2021, the complainant wrote to the Home Office and requested information in the following terms:

"I am writing to you under the Freedom of Information Act 2000 to request the following information:

On 9 September, you sent a response to my [reference redacted] in the form of an Excel spreadsheet (Annex 1), which was comprised of the details of 95 asylum-seekers who had died in asylum accommodation. I attach that spreadsheet here for ease of reference. It is my understanding that such deaths are logged in a database held by yourselves, which is often referred to as the Incident Database. Please could you give me all the entries from the database that correspond to the 95 deaths in Annex 1? E.g. if the first death in Annex 1 relates to John Smith, please provide the relevant entry for John Smith in the database of deaths. I understand that the database likely has multiple fields, please provide all fields for each entry (e.g. name, DOB, incident). If you need to redact or omit any of the fields, please explain why and please note that time taken for redactions does not usually count towards the cost limit."

6. The Home Office wrote to the complainant on 29 September 2021 to acknowledge the request.
7. The Home Office wrote to the complainant on 26 October 2021 and stated that it was extending the time to respond to the request in order to complete its public interest test.
8. The Home Office stated that it was considering the public interest test in line with section 10(3) of the FOIA. It stated that it was currently assessing the public interest test in relation to section 38 (health and safety). The Home Office stated that it intended to respond to the request in full by 23 November 2021.
9. By the date of this notice, the Home Office has not provided the complainant with a substantive response to their request.

Scope of the case

10. The complainant contacted the Commissioner on 20 December 2021 to complain about the delay in the Home Office's consideration of the public interest test.

11. The Commissioner contacted the Home Office on 6 January 2022 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. The Commissioner also contacted the complainant on 6 January 2022 to explain that the Home Office had been given 10 working days from that date within which to provide a response to their request.
13. By the date of this notice, the complainant has not received a substantive response to their information request.
14. The scope of this notice and the following analysis is to consider whether the Home Office has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

15. 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.”
16. 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”.
17. 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.
18. 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.
19. In this case, the total time taken by the Home Office to respond to this request 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 test within a reasonable timeframe, the Home Office has not complied with section 17(3).

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

Right of appeal

21. 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

22. 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.
23. 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
Team Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF