

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2022

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

Decision (including any steps ordered)

1. The complainant requested information about correspondence exchanged between specified parties during specified dates relating to the 'European Super League'. By the date of this notice, the Department for Digital Culture, Media and Sport ("the DCMS") had not issued a substantive response to this 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 time and has therefore breached section 17(3) of the FOIA.
3. The Commissioner requires the DCMS 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 DCMS 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 28 October 2021, the complainant wrote to the DCMS and requested information in the following terms:

“Please could you provide me with the details of any correspondence (redacted if required) involving either the Minister for Sport and/or the then Secretary of State for the Department for Digital, Culture, Media and Sport that mentions the 'European Super League' (or its abbreviated term the 'ESL') between April 12th 2021 and April 30th 2021 inclusive.”

6. The DCMS acknowledged the request on 25 November 2021 and advised that it had “determined that some of this information may be exempt from release under the section 36 (Prejudice to effective conduct of public affairs) of the Act. This is a qualified exemption and, as such, it is necessary to carry out a public interest test to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”. The DCMS advised that they “hope to let you have a substantive response to your request by 24 December”. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 7 March 2022 to complain about the delay in the DCMS’ consideration of the public interest test.
8. The Commissioner contacted the DCMS on 15 March 2022, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
9. The Commissioner also contacted the complainant on 15 March 2022, to explain that the DCMS had been given 10 working days from that date within which to provide a response to their request.
10. The scope of this notice and the following analysis is to consider whether the DCMS has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

11. Section 1(1) of 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."

12. 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".

13. 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.

14. 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.

15. In this case, the total time taken by the DCMS 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 DCMS has not complied with section 17(3).

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

Right of appeal

17. 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

18. 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.
19. 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
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF