

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 March 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested statistical information about the operation of electronic passport gates ("eGates") at Heathrow Airport. The Home Office said that it did not hold the requested information.
2. The Commissioner's decision is that the Home Office has not interpreted the request correctly and that, on the balance of probabilities, it holds information falling within the scope of the request.
3. The Commissioner does not require any steps as a result of this decision as the complainant has since pursued the same information under a new, reworded request.

#### **Background**

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4. eGates are automated self-service barriers located at immigration checkpoints in some airports across the UK. They are operated by UK Border Force, which is a law enforcement command within the Home Office. On arrival in the UK, eGates offer eligible travellers a faster alternative to using desks staffed by immigration officers. The gates use facial recognition technology to verify a traveller's identity against the data stored in the chip in their biometric passport, as well as running the

data against numerous databases to determine if the traveller is a security risk<sup>1</sup>.

5. The Commissioner understands that on 23 March 2022, the complainant was travelling into the UK through the eGates at Heathrow Airport when they failed to open and he was referred for manual processing at an immigration desk.

## **Request and response**

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6. On 24 March 2022, the complainant wrote to the Home Office and requested information in the following terms:

"I would like a 24-hr breakdown of that day [ie 23 March 2022] of what % were rejected by the machine please and what was the previous 30-day rolling average (not broken down by day or hour)."

7. The Home Office responded on 19 May 2022. It stated that the information was exempt from disclosure under section 31(1)(e) of FOIA.
8. Following an internal review, the Home Office wrote to the complainant on 2 November 2022. It revised its position, stating that eGates do not "reject" travellers; rather, they "refer" them to immigration officers. On that basis, it said it did not hold the information described in the request.

## **Reasons for decision**

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9. Section 1(1) FOIA provides 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."

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<sup>1</sup> The Home Office has produced a short explanatory video on eGates <https://www.youtube.com/watch?v=V00e8l--hso>

10. The Commissioner has considered whether, on the balance of probabilities, the Home Office holds the requested information in this case. In doing so, he has focussed on the interpretation of the request employed by the Home Office, when it conducted the internal review.
11. The complainant requested a percentage breakdown of the number of times the eGates "rejected" travellers on a particular date, and in the previous 30 days. When requesting the internal review, he explained to the Home Office that the eGates had recently failed to open for him a further time, with immigration officers apparently unable to identify a clear reason why.
12. The Home Office's refusal is based on its position that the eGates do not "reject" travellers:

"The response should have explained that the specific information you requested regarding the rejection at E-Gates at Heathrow is not available in the way you requested. As such, the information is not held. It may be helpful if I explain that E-Gates do not reject passengers, they undertake their security checks and if required, refer passengers to an officer. You should have been informed of this in the original response."
13. In his complaint to the Commissioner, the complainant argued that the intent behind his request was clear and that the Home Office should have interpreted it in line with its plain meaning:

"...the plain English definition of 'rejection' ought to encompass any outcome at the E-gate where the doors do not open."
14. He also felt that, even if they disagreed about the significance of an eGate not opening, the Home Office could nevertheless have responded to the request by substituting the word "referred" for "rejected", as it would have involved precisely the same information.
15. The Commissioner's published guidance on interpreting and clarifying requests<sup>2</sup> states that requests must be read objectively and that public authorities should take account of background and context when considering a request's meaning.
16. Although the Commissioner has not seen the wider correspondence which contained the initial request, from the wording of the request

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<sup>2</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/>

itself he understands that the complainant had explained that the eGates had failed to open the previous day. He also notes that his internal review request stated that it had happened to him a further time. The Commissioner therefore considers that it was clear from this that the complainant was interested in receiving information on the number of times the eGates had failed to open on a specific day and in the preceding 30 days. It was not necessary for both parties to agree on the precise significance of the eGates not opening, for the request to be responded to on that basis.

17. Having read the request objectively and in the context of the other information provided to the Home Office by the complainant, the Commissioner has decided that the Home Office employed an overly restrictive interpretation of the request. In light of its initial refusal notice, he considers that, on the balance of probabilities, the Home Office does hold information falling within the scope of the request.
18. The Home Office therefore breached section 1(1)(a) of FOIA.
19. In such cases, the Commissioner would normally order a public authority to issue a fresh response to the request. However, in this case, the complainant has said that he has since submitted a new request to the Home Office for the "referral rates" of eGates, and that he only wished the Commissioner to issue a decision on whether the Home Office's "not held" response to his original request was correct.

## **Other matters**

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20. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
21. Nevertheless, his position is that an internal review should be completed within 20 working days from the date it was requested. In exceptional circumstances it may take longer, but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
22. In this case, the Home Office took 115 working days to complete the internal review. The Commissioner considers this to be an unreasonable amount of time to conduct an internal review. He has made a separate record of this delay for monitoring purposes.

## **Right of appeal**

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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: 0203 936 8963

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)

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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**