

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2018

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information about a cancelled procurement process.
2. The Commissioner's decision is that the Cabinet Office has failed to complete its deliberations on the balance of the public interest within a reasonable time period and has therefore breached Section 17(3) of the FOIA.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The Cabinet 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 FOIA and may be dealt with as a contempt of court.

Background

5. In September 2017, Crown Commercial Service cancelled part of a tendering process for management consultancy services known as RM3745.
6. Crown Commercial Service is an executive agency of the Cabinet Office. Whilst the request was notionally made to the Crown Commercial

Service, this organisation is not a separate public authority for the purposes of the FOIA – it is part of the Cabinet Office. Therefore the Commissioner is issuing this decision notice to the Cabinet Office.

Request and response

7. On 21 May 2018, the complainant wrote to the Crown Commercial Service via whatdotheyknow.com and requested information in the following terms related to the award of Lot 1 of the Management Consultancy Framework (RM3745):

"Please can you provide the following information under the Freedom of Information Act:

- 1. When was the construct error first discovered by your team (approximately)? Given that the bids were submitted in March and details of the cancellation did not emerge until September, it appears likely that it was towards the latter end of this period.*
 - 2. Did your team evaluate the 177 tenders submitted for Lot 1 before the construct error was discovered?*
 - 3. Did you at any stage before the decision was made to cancel Lot 1 have a draft or initial list of the highest scoring suppliers?*
 - 4. If you had such a list, please can you provide details of how many of the top 30 suppliers on it were SMEs and how many were large firms?*
 - 5. Please can you supply a list of the names of any external private sector companies involved in the framework design and/or evaluation together with the roles they undertook.*
 - 6. Please can you provide any internal reports or memoranda discussing the construct error and the proposal to cancel the award of Lot 1."*
8. The Crown Commercial Service issued a response to the request on 19 June 2018. It confirmed that it held information relevant to the request but considered that a qualified exemption applied (Section 43 – prejudice to commercial interest) and that it required further time to consider the balance of the public interest.
9. On 17 July 2018, Crown Commercial Service wrote to the complainant again. It now stated that it considered the requested information to be

covered by Section 31 (prejudice to law and order) and that it required further time to consider the balance of the public interest in respect of that exemption. The letter did not mention Section 43.

Scope of the case

10. The complainant contacted the Commissioner on 11 September 2018 to complain about the failure, by the Cabinet Office, to respond to the request.
11. In line with her usual practice, the Commissioner contacted the Cabinet Office on 26 September 2018 to highlight the outstanding response. She requested that the Cabinet Office respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
12. The complainant contacted the Commissioner on 11 October 2018 to complain that he had still not received a substantive response to his request.
13. Given the delays that have occurred in this case, despite her intervention, the Commissioner considers that a decision notice is appropriate in this case.
14. The scope of this notice and the following analysis is to consider whether the delay in responding to the request is reasonable in the circumstances.

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 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) *is in writing,*
 - (b) *states the name of the applicant and an address for correspondence, and*
 - (c) *describes the information requested.*
17. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
 18. 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.*"
 19. Section 10(3) of the Act states that, where a public authority is considering the balance of the public interest, it can extend the 20 working day deadline "*until such time as is reasonable in the circumstances.*"
 20. Under Section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. 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, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to justify the time taken fully.
 21. At the point of issuing this decision notice, the Cabinet Office has already had more than 80 additional working days to respond to this request. It has not provided, to either the complainant or the Commissioner, any explanation or justification as to why such a lengthy delay is "reasonable in the circumstances."
 22. The Commissioner therefore concludes that the Cabinet Office has failed to complete its deliberations on the balance of public interest within a reasonable timeframe and has thus breached Section 17(3) 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@hmcts.gsi.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
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SK9 5AF**