

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 January 2021

Public Authority: Foreign, Commonwealth and Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information from the Foreign, Commonwealth and Development Office (FCDO) concerning contracts between the FCDO and Torchlight Group Ltd. A substantive response to the request had not been issued by the date of this notice.
2. The Commissioner's decision is that the FCDO 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 FCDO 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 FCDO 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.

Request and response

5. On 10 July 2020, the complainant wrote to the FCDO and requested information in the following terms:

"I would like:

- all of the active contracts between the FCO and Torchlight Group Ltd and/or Torchlight Solutions Ltd

- All of the contracts signed since 01/07/2019 with Torchlight Group Ltd and/or Torchlight Solutions Ltd."
6. The FCDO acknowledged the request but did not provide a substantive response.
7. On 29 October 2020, the FCDO wrote to the complainant to explain that it held information relevant to their request, but that it would need to extend the time taken to complete its public interest test considerations in respect of section 43 of the FOIA. To date, a substantive response to the request has not been issued.

Scope of the case

8. The complainant contacted the Commissioner on 2 November 2020 to complain about the failure, by the FCDO, to respond to the request.
9. In line with her usual practice, the Commissioner contacted the FCDO on 27 November 2020 to highlight the outstanding response. She requested that the FCDO provide a substantive response to the request within 10 working days.
10. On 11 December 2020, the FCDO contacted the Commissioner to explain that, due to increased service pressures, it would be unable to meet the deadline.
11. On 22 December 2020, the FCDO wrote to the complainant to advise that a further extension was required to carry out the public interest test and that they planned to be able to provide a response by 21 January 2021.
12. The scope of this notice and the following analysis is to consider whether the FCDO has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

13. 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.*

14. 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.*

15. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

16. 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.*"

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 FCDO has exceeded 40 working days. The Commissioner, whilst sympathetic to the circumstances facing the FCDO, finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the FCDO has not complied with section 17(3).

20. The FCDO 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: 0300 1234504
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

Ben Tomes
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