

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 July 2013

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

Decision (including any steps ordered)

1. The complainant requested information regarding a Crown Censure in relation to safety failings.
2. The Commissioner's decision is that the Home Office has breached section 10(1) of FOIA as it has not provided the complainant with a full refusal notice within the statutory time for compliance. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation:
 - issue a response in compliance with section 1 of FOIA or otherwise
 - issue a full refusal notice, including public interest considerations, in accordance with section 17 of FOIA.
3. 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.

Background

4. According to the Health and Safety Executive (HSE) website¹, there is no Crown exemption from the Health and Safety at Work etc. Act and relevant statutory provisions. However, the Crown cannot be prosecuted for breaches of the law. A Crown censure is the way in which HSE formally records the decision that, but for Crown immunity, the evidence of a Crown body's failure to comply with health and safety law would have been sufficient to provide a realistic prospect of securing a conviction

Request and response

5. Further to earlier correspondence, the complainant wrote to the UK Border Agency (UKBA) on 24 January 2013 and requested information in the following terms:

"Thank you for your letter dated 24 Jan 12 [sic] relating to my FoI request for information related to the Crown Censure accepted by UKBA following their breach of ss2-3 HSAW Act 1974, where unqualified staff attempted to examine live ammunition ('the Incident').

I understand that my original request was broad, but did not expect it to be as broad as you intimated. To that end, I would clarify my request to include:

(a) copies of any incident log or paperwork raised after the Incident raised by UKBA staff at RH(DS) Airport;

(b) copies of any internal reports held by UKBA into the Incident;

(c) copies of any minutes of meetings held by UKBA after the Incident discussing UKBA's responses or investigations;

(d) copies of any communication between UKBA and the HSE, or minutes of any meetings between these two parties, concerning the Incident;

¹ <http://www.hse.gov.uk/enforce/enforcementguide/investigation/approving-enforcement.htm>

- (e) *a copy of the text of the Crown Censure received by UKBA after the Incident;*
- (f) *the details of any action taken by UKBA to prevent similar incidents occurring again, including details of any remedial action or disciplinary action taken.*

I understand that such requests may require the redaction of personal identifying information. Should any one of the above a) to f) cause further difficulties I would appreciate a response to those requests above that can be met separately from further clarification, if required.

Where I request copies of documents, electronic copies are perfectly acceptable”.

6. The UKBA responded on 21 February 2013, advising the complainant that it required additional time to consider the public interest test in relation to the section 31 exemption of FOIA.

Scope of the case

7. The complainant first contacted the Commissioner on 24 April 2013 to complain about the way his request for information had been handled.
8. He told the Commissioner:

“To date, UKBA have made no claim as to the Second Request being excessively broad in scope or similar. To that end, I believe the date of the Second Request should form the basis for calculating the elapsed time UKBA have taken to consider my request.

Aside from one automated reply e-mail confirming receipt, no substantive reply has been received at any point to date to the Second Request, only concerning the possibility of release being refused under statutory exemption”.

9. The Commissioner understands that, following organisational changes, from 1 April 2013 the UK Border Agency was split into two separate units within the Home Office. Accordingly the Commissioner wrote to the Home Office on 3 May 2013 requiring it to respond to the complainant as soon as possible and certainly within 20 working days of receipt of his letter.

10. The complainant subsequently contacted the Commissioner on 5 June 2013 telling him:

"I believe the deadline you set of 20 working days has now passed - and I have had no further communication whatsoever concerning my request from the Home Office or UKBA".

Reasons for decision

11. Section 1(1) of 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."

12. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

13. Under section 17(3) a public authority can extend the time to respond fully to a request to consider the public interest test. The Commissioner considers that it would be reasonable to extend the time to provide a full response including public interest considerations by a further 20 working days, which would allow a public authority 40 working days in total.

14. In that respect the Commissioner acknowledges that the Home Office told the complainant on 21 February 2013:

"Some of the information we hold is being considered under the exemptions in section 31 of the Act, which relate to Law enforcement. These are qualified exemptions and to consider the public interest test fully we need to extend the 20 working day response period.

We now aim to let you have a full response by 21st March".

15. However, the Commissioner understands that, at the time of writing, the complainant has not received a substantive response to his request. Therefore the Commissioner finds, in this case, that the Home Office has taken significantly longer than 40 working days to consider the public interest test. As the Commissioner does not consider this to be a reasonable timescale it has not complied with section 17(3). It follows

that the Home Office has breached section 10(1) in relation to its handling of this request.

Right of appeal

16. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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

Jon Manners
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