

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2013

Public Authority: Foreign & Commonwealth Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested the file contents of seven specific files. He complained about the time taken to deal with his request.
2. The Commissioner's decision is that the Foreign & Commonwealth Office has replied to the complainant 'promptly' for the purpose section 17(1) of the FOIA.
3. The Commissioner does not require the Foreign & Commonwealth Office to take any further steps

Request and response

4. On 30 November 2013, the complainant wrote to the Foreign & Commonwealth Office (FCO) and requested information in the following terms:

"Following my FoI request of 29 May and the information disclosed by the FCO on 20 September (your ref: 0605-12), I would like to submit a further request. I would like to see the contents of files NFB014/001/04; NFB014/002/04; NFB020/001/04; NFB026/001/04; NFB026/002/04; NFB027/001/04; and NFB121/001/04."

5. The FCO responded on 2 January 2013. It stated that it was applying section 27 to the requested information but would need a further 20 working days to consider the public interest.

Scope of the case

6. The complainant contacted the Commissioner on 11 July 2013 to complain about the way his request for information had been handled, in particular about the delay in responding to his request.
7. The Commissioner notes that FCO responded to the complainant on the twentieth working day, citing the section 27 exemption.
8. The Commissioner will consider whether the FCO has responded 'promptly' to the complainant for the purposes of section 17(1) of FOIA.

Reasons for decision

9. Section 17(1) of FOIA provides that when a public authority is relying upon exemptions, it must, within the time for complying with section (1)1, provide the applicant with a notice which:
 - (a) states that fact
 - (b) specifies the exemption on question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
10. Section 10(1) provides that the time for compliance is "*promptly and in any event not later than the twentieth working day following the date of receipt*". In this case, the FCO responded to the complainant on the twentieth working day, citing section 27. Therefore, it is necessary to investigate the FCO's actions in preparing its response, in order to determine whether the response was provided 'promptly'.
11. The Commissioner asked the FCO to explain why it had not responded to the complainant until the twentieth working day.

¹ Section 1(1) states: "*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 the information communicated to him*".

12. The FCO explained that the complainant's request was sent by email on Friday 30 November 2012. On Monday 3 December, the FCO's Information Management Department acknowledged the request and passed it to the North Africa Department for action. Over the following six days, the relevant files were retrieved from the FCO archives in Milton Keynes and another FCO department that was holding certain files at the time; photocopies of the material were made (which took three days); and files were distributed to staff across the Libya Team to carry out an initial assessment of the material and start identifying information where the public interest test would need to be considered.
13. At the same time, given the potential resource implications of the request to the core policy work of the Libya Team, the FCO was considering whether it could and/or should respond to the request, or refuse to do so under section 14 of the Act. The FCO consulted FOI experts in the Ministry of Justice on the matter. Upon receipt of guidance from MOJ on 2 January, the FCO decided that it would respond to Mr Cobain's request for information. However, given the magnitude of the request the FCO decided it would need more time to carry out the public interest test. It therefore sent the complainant a letter on 2 January notifying him that it would require a further 20 days to consider the public interest on the material requested.
14. The FCO also explained to the Commissioner that during this period, the Libya Team was also dealing with a heavy policy workload, including preparing FCO Minister Alistair Burt's visit to Tripoli on 12 December and the HMG-hosted London International Meeting on Libya on 17 December. The FCO also explained that at the same time the team were managing an FOI workload that ran to 12 requests.
15. The Commissioner has considered the FCO's explanation about responding to the complainant on the twentieth working day. He accepts the FCO did work on the request within the 20 working day time limit. He also notes that staff were carrying out their core functions during this time.
16. Therefore, he considers that the FCO did answer the complainant's request 'promptly' for the purposes of the FOIA. However, he notes that whilst the FCO stated that it was applying section 27 to all of the requested information, it did not provide an explanation as to why the section 27 exemption applied.
17. The Commissioner therefore considers that the FCO has breached section 17(1)(c).
18. The FCO sent the complainant a further nine emails stating that it still needed to consider the public interest. The Commissioner further notes

that the FCO then disclosed the contents of one of the files (BF014/001/04), withholding some of the information under section 27 and also applying more exemptions.

19. The Commissioner will deal with these issues in a separate decision notice.

Right of appeal

20. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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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