

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 May 2016

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

Decision (including any steps ordered)

1. The complainant requested information concerning plans for the placement of Syrian refugees. The Home Office refused this request under section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 40(2) incorrectly and it is now required to comply with the request. The Commissioner also found that the Home Office breached section 17(1) of the FOIA in this case through its failure to respond to the request within 20 working days of receipt.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Respond afresh to the complainant, disclosing the answers required by the first and third parts of the request and seeking clarification about the second part of the request.
4. 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 27 October 2015 the complainant wrote to the Home Office and requested information in the following terms:

“Could you please indicate if any plans exist to place Syrian refugees in Northumberland.

If no plans exist, what plans are there and at what date to develop such a plan?

When will a distribution plan be formed for refugees across English counties or county councils?”

6. After a delay, the Home Office responded on 18 December 2015. It stated that the request was refused under section 40 of the FOIA. Whilst no subsection of section 40 was specified, it appeared that section 40(2) (personal information) was relied upon.
7. The complainant responded on 22 December 2015 and requested an internal review. The Home Office responded with the outcome of the review on 29 January 2016. The conclusion of this was that the refusal of the request under section 40(2) was upheld.

Scope of the case

8. The complainant contacted the Commissioner on 29 January 2016 to complain about the refusal of his information request. The complainant indicated that he did not agree that the information he had requested would be the personal data of any individual.
9. At the outset of the investigation of this case, the Home Office was contacted and advised that the Commissioner's initial view on this case was that the information requested was unlikely to constitute personal data and so would not engage the exemption provided by section 40(2) of the FOIA.
10. The Commissioner's staff told the Home Office that, in order to comply with the first part of the request, it appeared that it would be necessary only to have confirmed or denied whether the requested information was held. The second part of the request was unclear and the Home Office was advised that it should have sought clarification from the requester about it. The third part of the request appeared to require the disclosure of a date, or a timeframe.
11. Given that it appeared very unlikely that these requests would involve any disclosure of personal data, the Home Office was advised by the Commissioner that it should issue a fresh response to the complainant that did not rely on section 40(2). Alternatively, the Home Office was asked to respond to the ICO with a copy of the withheld information and an explanation as to how this constituted personal data.

12. The Home Office responded on 15 March 2016 and stated that it agreed that section 40(2) had been cited incorrectly and that a revised response would be sent to the complainant. Despite further contact from the ICO, no such revised response had been sent by the date of this notice.
13. The following analysis covers the citing of section 40(2), as well as the breach of the FOIA through the delay in responding to the request.

Reasons for decision

Section 17

14. Section 17(1) of the FOIA requires that a response that refuses an information request must be sent within 20 working days of receipt of the request. The Home Office failed to respond within 20 working days in this case and in so doing breached the requirement of section 17(1).

Section 40

15. The Home Office cited section 40(2) of the FOIA, which provides an exemption for information which constitutes the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
16. Covering first whether the information constitutes the personal data of any individual, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

"'personal data' means data which relate to a living individual who can be identified-
 - (a) from those data, or*
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".*
17. As noted above, when the Commissioner brought to the attention of the Home Office that it did not appear that the requested information would constitute personal data, the Home Office replied accepting that point. The Commissioner confirms here that, as the requested information would clearly not identify any individual, it would not be personal data according to the definition in section 1(1) of the DPA. The exemption provided by section 40(2) was not, therefore, engaged.

18. At paragraph 3 above, the Home Office is now required to issue a fresh response to the requests that answers the first and third parts of the request and seeks clarification on the second part.

Other matters

19. First, as well as his finding above, the Commissioner wishes to record here his concern that the Home Office did not identify and correct the clearly incorrect citing of section 40(2) of the FOIA before it was necessary for the complainant to raise this matter with the ICO. In particular, the internal review appears to have been of no value in this case. The Home Office should ensure that those handling information requests have a proper understanding of what constitutes personal data and that its internal review process is capable of recognising obviously deficient reasoning for the refusal of a request.
20. Secondly, a separate record has been made of the delay in responding in this case. The issue of its response times has been raised with the Home Office by the ICO recently. The ICO will continue to pay close attention to the extent to which the Home Office is meeting its obligations to respond to requests within 20 working days and may take action about this issue.

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@hmcts.gsi.gov.uk

Website: <http://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

Gerrard Tracey
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