

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2017

Public Authority: Department for Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information regarding the proposal to locate the Holocaust Memorial in Victoria Tower Gardens. The Commissioner's decision is that the Department for Communities and Local Government has breached the statutory time for compliance with the request. However, she does not require the public authority to take any steps.

Request and response

2. On 8 March 2017, the complainant wrote to the Department for Communities and Local Government ('DCLG') and requested information in the following terms:

"Please could I have the following information about the proposal to locate the Holocaust Memorial in Victoria Tower Gardens:

A list of the dates on which:

(1) location of the Holocaust Memorial in Victoria Tower Gardens was first proposed or examined within the Government;

(2) the decision to locate the Holocaust Memorial in Victoria Tower Gardens was made by the Government;

(3) the following organisations were first informed or consulted about the proposed location: (a) Royal Parks, (b) Historic England, (c) Westminster City Council, (d) the Holocaust Commission;

(4) the bodies listed in (3) responded to the proposal;

(5) any other organisations (other than government departments) were consulted before the decision was made.

The name of the organisation or person which first proposed to or within government the Victoria Tower Gardens as a possible site for the Holocaust Memorial, indicating whether the proposal originated within or outside the Government.

A list of the papers or documents which informed the Government's decision that the location of the Holocaust Memorial should be Victoria Tower Gardens, and the dates of those papers.

The estimates made or considered by the Government (a) before the decision was made on the Memorial's location and (b) after the decision, of the number of visitors the Memorial would attract and the road traffic it would generate.

Any papers considered by the Government on the planning aspects of the proposed location of the Holocaust Memorial in Victoria Tower Gardens before the decision on the location was made.

Any assessment made by the Government of the extent to which the Holocaust Commission's proposal for a 'world-class learning centre' with a 'physical campus' could be accommodated in Victoria Tower Gardens."

3. DCLG acknowledged receipt of the request on 16 March 2017, stating that it aimed to respond by 6 April 2017.
4. On 6 April 2017, DCLG confirmed holding the requested information but said that it is considering the exemption concerning prejudice to the effective conduct of public affairs and that it estimates that it will take an additional 20 working days to decide where the balance of the public interest lies. It said it will try to respond by 9 May 2017.
5. On 10 May 2017, DCLG extended the time to respond to 7 June 2017 stating that it needs additional time to give consideration to the public interest.
6. The complainant responded on the same day requesting an internal review and pointing out that an extension beyond 40 working days

should be exceptional and justified. He also asked which section of the FOIA allows an infinite amount of extra time.

7. On 11 May 2017, DCLG said that it takes its obligations to respond to requests within 20 working days very seriously and apologised that the request had not been responded to within this timescale. It said that it has to consult various colleagues before responding and that it does not normally carry out internal reviews for time complaints.
8. DCLG wrote to the complainant on 7 June 2017 stating that it aimed to respond by 5 July 2017. It said that the exemption it is considering is section 36 concerning prejudice to effective conduct of public affairs and that it needs additional time to give extra consideration to the public interest in releasing it.
9. On 6 July 2017, DCLG wrote to the complainant stating that it will now try to respond by 3 August 2017.
10. Following the intervention of the Commissioner, a response to the request was provided to the complainant on 12 October 2017.

Scope of the case

11. The complainant contacted the Commissioner on 9 June 2017 to complain that his request for information had not been responded to.
12. The Commissioner has considered whether DCLG has complied with its obligations in relation to the time for compliance under section 10 of the FOIA.

Reasons for decision

Section 10 – Time for compliance

13. Section 10(1) states:

“Subject to subsections (2) and (3), 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.”

14. Section 10(3) enables an authority to extend the 20 working day limit up to a ‘reasonable’ time in any case where;
 - it requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption; or

- it needs further time to consider whether it would be in the public interest to confirm or deny whether the information is held.
15. DCLG received the request on 8 March 2017. As stated in paragraph 4, on 6 April 2017, it confirmed holding the requested information but said that it is considering the exemption concerning prejudice to the effective conduct of public affairs and that it estimates that it will take an additional 20 working days to decide where the balance of the public interest lies. It said it will try to respond by 9 May 2017.
 16. DCLG extended the time to respond on four more occasions before providing a response on 12 October 2017, some seven months after the request was received. The Commissioner notes that the response provided some of the requested information and withheld some under the qualified exemption for information related to the formulation or development of government policy at section 35(1)(a) of the FOIA. It also withheld names and contact details of private individuals.
 17. The FOIA does not define what might constitute a 'reasonable' extension of time. However, the Commissioner's view is that an authority should take no more than an additional 20 working days to consider the public interest, meaning that the total time spent dealing with the request should not exceed 40 working days.
 18. The Commissioner's guidance on 'Time limits for compliance under the Freedom of Information Act (Section 10)'¹ states the following:

"An extension beyond this should be exceptional. Examples of such circumstances could include extreme pressures placed on the public authority by a major incident or exceptional levels of complexity involving a number of external parties. Public authorities will need to demonstrate that the length of any time extension is justified."
 19. The Commissioner is not aware of any exceptional circumstances as to why the response in this case was provided seven months after it was received. Therefore she considers that DCLG has not complied with its obligations under section 10(1) of the FOIA in this case.

¹ <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

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: 0870 739 5836

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

Deborah Clark
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