

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2017

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

Decision (including any steps ordered)

1. The complainant has requested numbers of reports of self-harm at an immigration removal centre, from the Home Office (the "HO"). The HO required additional time in which to consider the public interest in disclosure but, to date, has failed to complete its deliberations. The Commissioner's decision is that the HO breached sections 1 and 10 of the FOIA in that it failed to provide a valid response to the request within 20 working days of receipt. Furthermore, by failing to complete its public interest deliberations within a reasonable timeframe, the Commissioner finds that it has breached section 17(3) of FOIA. The Commissioner requires the HO to comply with the request or issue a valid refusal notice as set out in section 17 of the FOIA.
2. The HO 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.

Request and response

3. On 4 May 2017 the complainant wrote to the HO and requested information in the following terms:

"How many incidents of self-harm requiring medical attention have been recorded in Yarl's Wood immigration removal centre for each of the following months: September 2015 [through to] April 2017..."

4. On 5 May 2017 the HO acknowledged the request. It advised the complainant that it intended to respond by 2 June 2017, twenty working days from the date of receipt.
5. On 2 June 2017, the HO wrote to the complainant and advised that it needed more time in which to consider the public interest in disclosure. It told her:

"Some of the information you have requested is being considered under the exemptions in sections 31(1) (e) & (f) of the Act, which relate to; the operation of immigration control; and the maintenance of security and good order in prisons or other detention facilities. 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 29 June".

6. On 7 June 2017 the complainant responded, raising the following queries:

"The Home Office has previously responded to Freedom of Information requests about the number of incidents of self-harm in immigration removal centres – see, for instance, this response on the www.gov.uk website:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/392938/FOI_33569_data.pdf

As this information has previously been released, it is not clear to me why it is considered that the information I have requested might affect the operation of immigration control, or the maintenance of security and good order in prisons or other detention facilities.

I would therefore be grateful if you could explain to me further why you believe that the information I have requested may fall under the exemptions you have set out.

I also note that you state that "some of the information you have requested is being considered under the exemptions in sections 31(1) (e) & (f) of the Act". The information I have requested is completely uniform, as I have asked about the number of incidents of self-harm requiring medical attention that have been recorded in Yarl's Wood immigration removal centre in each month from September 2015 to April 2017. It is, therefore, unclear to me why "some of the information" I have requested is being considered under these exemptions, rather than all of it.

I would therefore be grateful if you could explain to me further why some of the information I have requested is being considered under these exemptions, and not all of it. I would also be grateful if you could immediately release to me the information that you consider does not fall under the exemptions you have cited".

7. Having received no response the complainant wrote to the HO again on 4 July 2017.

8. On 17 July 2017 (subsequent to this complaint) the HO wrote to the complainant. It acknowledged the email of 4 July 2017 but made no reference to the one of 7 June 2017 and provided no explanation about its reasons for the partial citing of section 31. It told the complainant:

"We are still progressing your requests, however. I regret that we are unable to send you full responses to your requests within the time frame required by the Act; this is due to internal delays with the Freedom of Information process. I would like to apologise on behalf of the Department for this delay, but I can assure you that we are dealing with your request and we will send you a full reply as soon as possible".

9. To date, the Home Office has not responded.

Scope of the case

10. The complainant contacted the Commissioner on 11 July 2017 to complain about the lack of response to her information request.

11. Having ascertained that a response remained outstanding, the Commissioner contacted the HO on 19 October 2017 and asked it to issue a response within 5 working days.

12. On 24 October 2017 the HO acknowledged the Commissioner's letter. It advised:

"The draft response ... is with Special Advisers awaiting clearance. ... it is unlikely that it will be sent by 26 October. We note the intention to issue a decision notice".

13. No substantive response to the request had been provided by the date of this notice.

Reasons for decision

Section 10 – time for compliance

14. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
15. Section 10(1) of the 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. From the information provided to the Commissioner it is evident that the HO has not responded to the complainant within the statutory timeframe in respect of this request.

Section 17 – refusal notice

16. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. 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, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken. The HO has failed to offer such justification in this case.
17. The Commissioner's decision is that the HO did not deal with the request for information in accordance with the FOIA. In this case it has breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days, and section 17(3) by exceeding a reasonable time in which to consider the public interest. The HO is now required to respond to the request of 4 May 2017.

Other matters

18. As well as finding above that the HO is in breach of the FOIA, the Commissioner has also made a record of the delay in this case. This may form evidence in future enforcement action against the HO should evidence from other cases suggest that there are systemic issues within the HO that are causing delays.

Right of appeal

19. 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

20. 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.
21. 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

Carolyn Howes
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