

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 2 November 2017

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to food refusals across the detention estate.
2. To date he has not received a substantive response.
3. The Commissioner's decision is that, although it has complied with section 17(1) in stating which exemption is to be relied upon, by failing to complete its public interest test considerations within a reasonable time period the Home Office has breached section 17(3) of the FOIA.
4. The Commissioner also found breaches of sections 1 and 10.
5. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation:
  - issue a substantive response to the complainant's request, either disclosing the requested information or issuing a refusal notice which includes the outcome of the public interest considerations.
6. 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.

#### **Request and response**

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7. On 2 May 2017, the complainant wrote to the Home Office and requested information in the following terms:

Reference: FS50691973



*"Number of reported 'Food Refusals' across the detention estate Q1 January/February/March 2017 Inclusive*

*From which IRC's [immigration removal centres] were the reports made and how many".*

8. The Home Office wrote to the complainant on 31 May 2017.
9. Without confirming whether it held information within the scope of the request, the Home Office claimed extra time in order to consider the public interest test with respect to the exemption at sections 31(1)(e) and (f) of the FOIA (the operation of immigration control and the maintenance of security and good order in prisons or other detention facilities, respectively). The Home Office told the complainant that it aimed to provide its full response by 27 June 2017.
10. Despite the complainant being assured, in subsequent correspondence, that the Home Office was progressing his request, the Home Office had not responded substantively by the date of this notice.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 17 July 2017 to complain about the way his request for information was being handled.
12. In correspondence with the Commissioner, the Home Office confirmed on 26 October 2017 that its response remained outstanding.

### **Reasons for decision**

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13. Section 1(1) of the FOIA states that upon receipt of a request a public authority must confirm or deny whether information is held, and if that information is held it must be communicated to the requester.
14. Section 10(1) of the FOIA states that public authorities must comply with section 1(1) within 20 working days of receipt of the request.
15. Section 17(1) states that where a public authority refuses a request for information it must provide the applicant with a refusal notice explaining the exemption(s) relied upon. This notice must be provided within the timescale set out in section 10(1), i.e. 20 working days.
16. Section 17(3) states that if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is "reasonable

in the circumstances”, and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosure.

17. Although the FOIA does not define what a reasonable time is, 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 means that the total time spent dealing with the request should not exceed 40 working days. Any extension beyond 40 working days would require there to be exceptional circumstances, fully justified by the public authority.
18. In the circumstances of this case, although the Home Office has informed the complainant of the delay while the public interest is considered, the total time taken by the Home Office has significantly exceeded 40 working days. As the Commissioner does not consider this to be a reasonable timescale she finds that the Home Office has not complied with section 17(3).
19. The Commissioner also finds that the Home Office breached sections 1(1) and 10(1) of the FOIA.
20. The Home Office is required to conclude its consideration of the public interest test and either disclose the requested information or explain why the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

### **Other matters**

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21. The delay in responding to this request will be logged as part of ongoing consideration of the Home Office’s non-compliance with the FOIA.

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**Right of appeal**

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22. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.

24. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**