

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2017

Public Authority: Department for International Development
Address: 22 Whitehall
London
SW1A 2EG

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for International Development (DFID) for information about Adam Smith International. DFID confirmed that it held information falling within the scope of the request but explained that it needed additional time to consider the balance of the public interest test. To date, DFID has failed to complete its public interest test deliberations. By failing to complete these deliberations within a reasonable timeframe the Commissioner has concluded that DFID has breached section 17(3) of FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a substantive response to his information request. If DFID decides to withhold any information then the complainant should be provided with a refusal notice giving a full explanation as to why the information will not be disclosed, including details of any public interest test considerations.
3. The public authority 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

4. The complainant submitted the following request to DFID on 10 March 2017:

'I am sending this request under the Freedom of Information Act.

- 1) Please provide copies of ALL reports completed by DFID into Adam Smith International concerning the provision of commercially sensitive information to Adam Smith International BY DFID staff.
- 2) Please state the total value in contracts assigned to Adam Smith by DFID in the following financial years, and provide a description of each contract.
 - i) 2017-18
 - ii) 2018-19
- 3) Please state the number of occasions that commercially sensitive information has been leaked by staff from DFID, a description of the sort of information leaked, and the action taken against the staff involved in each case.'

5. DFID contacted the complainant on 7 April 2017 and confirmed that it held some information falling within the scope of the request. However, DFID explained that it considered this to be exempt from disclosure on the basis of section 43 (commercial interests) of FOIA and it needed additional time to consider the balance of the public interest test.
6. DFID sent the complainant similar letters on 24 April, 11 May, 25 May, 9 June, 23 June, 7 July and 21 July 2017 further extending the time it needed to consider its public interest test considerations. To date DFID has not completed its public interest considerations.

Scope of the case

7. The complainant contacted the Commissioner on 26 July 2017 to complain about DFID's failure to provide him with a substantive response to his request.

Reasons for decision

8. Section 1(1) of the FOIA provides that 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 that information communicated to him.'

9. 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.
10. 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.
11. In the circumstances of this case, at the point that this notice is being issued DFID has taken 139 working days to consider the public interest test. In the Commissioner's opinion DFID has therefore failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that DFID has not complied with section 17(3).

Right of appeal

12. 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

13. 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.
14. 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

Jonathan Slee
Senior Case Officer
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Wycliffe House
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Wilmslow
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SK9 5AF