

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2017

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

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office regarding the Undercover Policing Inquiry.
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) FOIA 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) FOIA.
4. The Commissioner also found breaches of sections 1(1) and 10(1) FOIA.
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 any 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

7. On 26 June 2017, the complainant wrote to the Home Office (HO) and requested information in the following terms:

"Pursuant to the Freedom of Information Act 2000, we ... request responses to the following questions:

- 1. Did the Home Office consult the Undercover Policing Inquiry [UCPI] about whether it had the capacity to cope with the Inquiry being extended to Scotland?*
- 2. If so, what was the answer?*
- 3. If the UCPI felt that it was able to accommodate Scotland as part of its remit, was a recommendation made to the Home Secretary?*
- 4. If so, what was that recommendation?*
- 5. What was the position of the Home Secretary or other senior civil servants as to the extension of the UCPI to Scotland?*

... If the release of any of this information is prohibited on the grounds of breach of confidence, we ask that you supply us with copies of the confidentiality agreement and remind you that information should not be treated as confidential if such an agreement has not been signed".

8. HO responded on 21 July 2017. Without confirming whether or not it held information within the scope of the request, HO claimed extra time in order to consider the public interest test with respect to the section 35(1)(a) FOIA exemption (formulation of government policy). HO said that it needed to extend the response time to consider the public interest test fully and that it intended to provide a full response by 21 August 2017. HO had still not responded substantively by the date of this notice.

Scope of the case

9. The complainant contacted the Commissioner on 27 October 2017 to complain about the way his request for information was being handled.
10. As at the date of this notice, HO has neither responded to the request nor the Commissioner's enquiries regarding this matter.

Reasons for decision

11. Section 1(1) FOIA states that upon receipt of a request a public authority must confirm or deny whether or not the information is held and, if that information is held, it must be communicated to the requester.
12. Section 10(1) FOIA states that public authorities must comply with section 1(1) within 20 working days of receipt of the request.
13. Section 17(1) FOIA 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), ie 20 working days.
14. Section 17(3) FOIA 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.
15. Although 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.
16. In the circumstances of this case, although HO has informed the complainant of the delay while the public interest is considered, the total time taken by HO has significantly exceeded 40 working days. As the Commissioner does not consider this to be a reasonable timescale she finds that HO has not complied with section 17(3) FOIA.
17. The Commissioner also finds that HO breached sections 1(1) and 10(1) FOIA.
18. HO 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.

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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF