

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2018

Public Authority: Foreign & Commonwealth Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has asked four questions about export licences.
2. The Commissioner's decision is that the Foreign & Commonwealth Office ("the FCO") has issued a response to the first question but has failed to complete its deliberations on the balance of the public interest in relation to the remaining three questions within a reasonable time period and has therefore breached Section 17(3) of the Freedom of Information Act ("the Act").
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the Act, to questions 2, 3 and 4 of the request.
4. 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

5. On 21 September 2017, following a response to an earlier information request, the complainant wrote to the FCO and requested information in the following terms:
 - 1) *"I understand from your response that Criterion 2 assessments were conducted in relation to 27 applications in the period 1 July to 30 September 2016. I also see from HMG's quarterly licensing statistics relating to the same period that 73 SIELs were issued. Given that no licences were refused, I assume this was the total number of applications assessed in the period. Please could you tell me: on what basis were 27 applications assessed against C2, and the remaining 46 were not?"*
 - 2) *What were the specific C2 grounds on which six export licence applications were referred to FCO Ministers during this period? Please provide copies of any guidance or commentary provided by the FCO to Ministers and the Foreign Secretary.*
 - 3) *What evidence sources were consulted in making the decisions to approve these six export licence applications?*
 - 4) *What were the grounds on which the six licences were approved? Please provide copies of any guidance or commentary that accompanied the recommendation to officials at DIT in order to inform the final decision."*
6. The FCO replied to the complainant on 19 October 2017 to confirm that it held information within the scope of the request but it considered this to be exempt from disclosure on the basis of Section 27 (international relations) and Section 36 (prejudice to effective conduct of public affairs). However the FCO explained that it needed more time to consider the balance of the public interest in respect of those exemptions.
7. The FCO sent the complainant a further four (near-identical) letters on 16 November 2017, 14 December 2017, 16 January 2018 and 15 March 2018. In the last of these letters, the FCO explained that it hoped to have reached a decision in respect of public interest considerations by 12 April 2018, but that if this proved not to be possible, it would keep the complainant informed.
8. On 19 January 2018 the complainant requested an internal review of the way her request had been handled. The FCO responded on 16 February 2018. It stated that since its initial response, it had carried out "internal consultations" and "careful consideration of the information." It also

noted that a Judicial Review in relation to arms exports to Saudi Arabia, brought by the Campaign Against Arms Trade, was ongoing.

Scope of the case

9. The complainant contacted the Commissioner on 27 March 2018 to complain about the way her request for information had been handled.
10. The Commissioner contacted the FCO on 3 April 2018. She highlighted the fact that the FCO had set itself a target of 12 April 2018 to complete its public interest deliberations and stated that she expected a substantive response to have been issued to the complainant by close of business on that date.
11. At 15:21 on 12 April, the FCO responded to the Commissioner. It stated that it needed a further 20 working days to provide a response to all the elements of the request. However, it did explain that it would provide information to the complainant in respect of Question 1 of the request as it considered that this information was "not subject to the consideration of exemptions."
12. The FCO wrote to the complainant on 12 April 2018, providing information in response to Question 1 and stating that it had completed its deliberations in respect of section 27, but that it was yet to reach a decision in respect of section 36. It noted that "we plan to respond in full by 11 May 2018" but then appeared to allow for a possibility that the response might take longer.
13. In view of the lengthy delays, the Commissioner considers that a Decision Notice is appropriate in this case.
14. The Commissioner considers that the scope of her investigation is to determine whether the delay in responding to the entirety of the request is reasonable in the circumstances.

Reasons for decision

15. Section 1(1) of the Act states 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.

16. Section 8(1) of the Act states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

17. The Commissioner considers that the requests in question fulfilled these criteria and therefore constituted a valid request for recorded information under the Act.

18. Section 10 of the Act states that response to requests made under the Act must be provided *"promptly and in any event not later than the twentieth working day following the date of receipt."*

19. Section 10(3) of the Act states that, where a public authority is considering the balance of public interest, it can extend the 20 working day deadline *"until such time as is reasonable in the circumstances."*

20. 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 justify the time taken fully.

21. Had the FCO responded to the request in full on 12 April 2018, this would have been 139 working days after it received the request. The Commissioner cannot consider such a delay to be reasonable and the FCO has provided no justification for such an excessive delay.

22. In the Commissioner's opinion the FCO has failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that the FCO has not complied with Section 17(3) of the Act.

Right of appeal

23. 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

24. 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.
25. 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

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