

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2018

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

Decision (including any steps ordered)

1. The complainant requested information regarding the deportation of Caribbean migrants over the past ten years.
2. The Commissioner's decision is that the Home Office has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA. The Commissioner also finds that the Home Office has breached section 10(1) of the FOIA.
3. The Commissioner requires the Home Office to take the following step to ensure compliance with the legislation.
 - The Home Office must issue a substantive response to the request in accordance with its obligations under the FOIA.
4. The Home Office must take this step 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 18 April 2018, the complainant wrote to the Home Office and requested information in the following terms:

"1. List the number of people who were born in Caribbean countries who have been deported from the UK in the past ten years including;

- a. Name of each person*
- b. Date of birth or age of each person when deported*
- c. Gender of each person*
- d. Country each person was deported to*
- e. Reason for each deportation*

2. Provide the number of out of country appeals against deportation to Caribbean countries over the past ten years.

- a. How many of which were successful*
- b. Unsuccessful"*

6. The Home Office replied on the same day and asked the complainant to clarify the request. Specifically, it asked whether the request was for information relating to deportations or removals and provided the following definitions:

"Deportation is the way in which a person is removed from the UK if he/she has been convicted of a criminal offence, or his/her presence in the UK is otherwise not conducive to the public good.

Removal is when the person no longer has any legal right to be in the UK, and when his/her appeal rights have been exhausted. This is typically when a person:

- is refused 'leave to enter' at a port (land, sea or air);*
- has entered the UK illegally (for example if they came in the back of a lorry);*
- has overstayed his/her leave (for example, remained longer than a visa allows);*
- has breached conditions attached to his/her leave;*
- is a dependent family member of any of the above."*

7. On the same day, 18 April 2018, the complainant confirmed that she was requesting a breakdown of both deportations and removals.
8. Without explicitly confirming whether it held information within the scope of the request, the Home Office wrote to the complainant on 17 May 2018 to confirm that it needed more time to consider the balance of the public interest in relation to the exemption at section 22 (Information intended for future publication). The Home Office confirmed that they expected to be able to provide a full response by 15 June 2018.

9. The Home Office wrote to the complainant again on 25 June 2018 apologising for the delay, it explained that this was due to "*internal delays with our FOI process*".

Scope of the case

10. The complainant contacted the Commissioner on 20 June 2018 to complain about the Home Office's failure to provide a substantive response to her information request.
11. On 26 June 2018 the Commissioner wrote to the Home Office, reminding it of its responsibilities and asking it to provide a response to the complainant within 10 working days.
12. Despite this intervention the Home Office has failed to respond to the complainant.

Reasons for decision

13. Section 1(1) of FOIA 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."

14. Section 10(1) of the FOIA states that a public authority must respond to a request "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
15. Under section 10(3) of the FOIA, where necessary, a public authority may extend the time for compliance "*until such time as is reasonable in the circumstances*" in order to properly consider the balance of the public interest.
16. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.

17. Although the FOIA does not define what constitutes a reasonable time, 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. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
18. In this case, the total time taken by the Home Office has exceeded 40 working days, which it attributes to internal delays. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the Home Office has not complied with section 17(3).
19. The Commissioner also finds that the Home Office breached section 10(1) and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

20. 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

21. 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.
22. 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.
23. 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

Ben Tomes
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