

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 September 2022

Public Authority: Department for Business, Energy and Industrial Strategy

Address: 1 Victoria Street
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant requested information from the Department for Business, Energy and Industrial Strategy ("the BEIS") about communications between the Secretary of State and a particular organisation since February 2021. By the date of this notice, the BEIS had not issued a substantive response to this request.
2. The Commissioner's decision is that the BEIS 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 FOIA.
3. The Commissioner requires the BEIS to take the following step to ensure compliance with the legislation.
 - Having confirmed whether or not information is held within the scope of the request: either disclose the requested information, if held, or, to the extent that information is to be withheld, issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The BEIS 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 8 June 2022, the complainant made the following request for information to the BEIS:

"This is a request for information under the Freedom of Information Act. I would like to request the following information:

(1) According to transparency releases, [redacted] had an "introductory call as new Secretary of State" with [redacted] on 18th February 2021. In light of this, please provide:

- A full list of attendees that were on the call, including the full names and titles of each attendee, as well as who each attendee represents
- The exact time, date and duration of when the call took place
- A description of what exactly was discussed
- A copy of the agenda
- Materials that were relied upon, handed out or received during the call, such as presentation slides, reports, data, and papers
- Minutes taken during the call, as well as any accompanying briefing notes and papers

(2) According to transparency releases, [redacted] had breakfast with [redacted] on 13th July 2021. In light of this, please provide:

- A full list of attendees, including the full names and titles of each attendee, as well as who each attendee represents
- The exact time, date and duration of when the meeting took place
- The location of the meeting
- A description of what exactly was discussed
- A copy of the agenda
- Materials that were handed out and received during the meeting, such as presentation slides, reports, data, and papers

(3) Since 8th January 2021, please provide all correspondence and communications between [redacted] and [redacted].

I would like to receive this information in an electronic format. If you feel that a substantive response to this request is not possible within a reasonable time frame, I would be grateful if you could contact me and provide assistance as to how I can refine the request. If you need any clarification, please contact

me. I look forward to receiving a response in 20 working days.
Many thanks.”

6. On 5 July 2022, the BEIS wrote to the complainant to explain that it held information relevant to the complainant’s request, but that it would need to extend the time taken to complete its public interest test considerations in respect of an exemption under section 43(2) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 8 August 2022 to complain about the delay in the BEIS’s consideration of the public interest test.
8. On 11 August 2022, the Commissioner wrote to the BEIS, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. To date, a substantive response has still not been provided.
9. The Commissioner has considered whether the BEIS has complied with its obligations in relation to section 17 of FOIA.

Reasons for decision

10. 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.”

11. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
12. Section 17(3) of 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.

13. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that "it is best practice for an extension to be for no more than a further 20 working days".¹ This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.
14. In this case, the total time taken by the BEIS has exceeded 40 working days. 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 BEIS has not complied with section 17(3).
15. The BEIS is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

16. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

Michael Lea
Team Manager
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Wycliffe House
Water Lane
Wilmslow
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