

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 February 2022

Public Authority: The Foreign, Commonwealth and Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested from the Foreign, Commonwealth and Development Office (FCDO) information relating to Dominic Raab's ministerial diaries. By the date of this notice, the FCDO had not issued a substantive response to the request.
2. The Commissioner's decision is that the FCDO 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.
3. The Commissioner requires the FCDO to take the following steps to ensure compliance with the legislation.
 - Having confirmed that information is held within the scope of the request, either disclose the requested information or, issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The FCDO 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 15 October 2021 the complainant wrote to the FCDO and requested information in the following terms:

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

From 1st June 2021 to 15th September 2021 this request is processed, please provide a copy of Dominic Raab's ministerial diaries.

Please note, I am making this request out of the public interest. It is absolutely essential for the public to know - in full detail - the calls, events and meetings that took place at the time of the Afghanistan crisis.

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. The FCDO wrote to the complainant on 18 October 2021 to acknowledge the request.
7. The FCDO wrote to the complainant on 12 November 2021 and stated that it was extending the time to respond to the request in order to complete its public interest test.
8. The FCDO stated that it was considering the public interest test in line with section 10(3) of the FOIA. It stated that it was currently assessing the public interest test in relation to section 27 (international relations), section 35 (formulation of government policy) and section 38 (health and safety). The FCDO stated that it intended to respond to the request in full by 10 December 2021.
9. By the date of this notice, the FCDO had not issued a substantive response to the request.

Scope of the case

10. The complainant contacted the Commissioner on 9 December 2021 to complain about the delay in the FCDO's consideration of the public interest test.
11. The scope of this notice and the following analysis is to consider whether the FCDO has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

12. Section 1(1) of the 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."
13. Section 10(1) of the 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".
14. 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.
15. 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.
16. On 15 December 2021 the Commissioner wrote to the FCDO to remind it of its responsibilities and asked it to provide a substantive response to the complainant within 10 working days.
17. The FCDO wrote to the Commissioner on 30 December 2021 to ask for further time to respond to the complainant's request.

18. The Commissioner responded to the FCDO on 4 January 2022 and asked the FCDO to provide a the complainant with a response to their request by 14 January 2022.
19. Despite this intervention, the FCDO has failed to respond to the complainant.
20. In this case, the total time taken by the FCDO to respond to this request 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 test within a reasonable timeframe, the FCDO has not complied with section 17(3).
21. The FCDO is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

Right of appeal

22. 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

23. 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.
24. 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
Cheshire
SK9 5AF