

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 April 2015

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

Decision (including any steps ordered)

1. The complainant requested information relating to guidance issued to immigration officials concerning the implications of a court case. A delay ensued which the complainant alleged was the result of the Home Office failing to send a request for clarification when it claimed it had done so. Upon responding to the request, the Home Office disclosed the majority of the information, but withheld names of officials under the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that on the balance of probabilities the Home Office had sent a request for clarification at the time it claimed to have done and so there is no breach of the FOIA in relation to this allegation by the complainant. The Commissioner also finds that the Home Office cited section 40(2) correctly, but that it breached section 17(1) of the FOIA by failing to respond within 20 working days following the eventual provision of a clarified request by the complainant. That breach does not necessitate remedial action.

Background

3. The request mentions "*Surinder Singh*". This is a reference to a historic immigration law case, the implications of which are explained here: <https://www.gov.uk/family-permit/surinder-singh>.

Request and response

4. On 12 January 2014, the complainant wrote to the Home Office and requested information in the following terms:

"It appears clear that you have issued new Centre of Life guidance for Surinder Singh to case workers.

Can you please provide all policy updates, Home Office circulars, and full copies of guidance in relation to the new regulation 9.3 of EEA regs 2006 that was introduced on Jan 1. 2014."

5. The Home Office responded on 23 January 2014 and disclosed information, which it indicated was all the information it held that fell within the scope of the request.
6. The complainant responded on 26 January 2014 and made the following further information request:

"I believe that you send the policy updates as you have provided with an email communication. (I have seen a number of these previously).

Can you please provide me with a copy of the message that this guidance was attached to."

7. The Home Office responded on 3 February 2014 and asked for clarification about the information sought. The complainant responded with limited clarification on 4 February 2014.
8. Following this, the complainant has stated that he heard nothing further until he contacted the Home Office again on 29 March 2014 and 9 May 2014. The Home Office responded on 14 May 2014 and asked the complainant to respond with confirmation of what information he was seeking. It also stated that it had sent an earlier request for clarification to the complainant on 11 February 2014.
9. The complainant responded with clarification on 15 May 2014 and the Home Office responded on 17 June 2014, outside 20 working days from receipt of this clarification. It refused the request on cost grounds under section 12(1) of the FOIA.
10. The complainant responded on 17 June 2014 and requested an internal review. The Home Office responded with the outcome of the review on 28 August 2014. At this stage it withdrew the citing of section 12(1) and stated that the majority of the information requested had been disclosed to the complainant previously. One further email was disclosed at this

stage, with some of the content redacted under the exemption provided by section 40(2) of the FOIA.

Scope of the case

11. The complainant contacted the Commissioner initially on 14 June 2014 to complain about the way his request for information had been handled, whilst his correspondence with the Home Office was ongoing. An exchange of correspondence followed between the complainant and the ICO, during which there was a delay that the complainant stated was caused by his being unable to access his email account.
12. By February 2015 it was clarified that the scope of this case would cover the issue of whether the Home Office did send a request for clarification on 11 February 2014 and whether the Home Office cited section 40(2) correctly when withholding some of the content from the email which it disclosed to the complainant.

Reasons for decision

Sections 1 and 10

13. Section 1(3) of the FOIA provides that a public authority can, if necessary, request clarification about an information request and that it is not obliged to comply with such a request until the requester has responded with that clarification. Section 10(1) of the FOIA provides that a public authority is obliged to respond to an information request within 20 working days of receipt. The effect of section 1(3) is that the 20 working days period is 'paused' from the time that a request for clarification was sent, until the requester responds with the clarification sought.
14. In this case the Home Office stated that it sent a clarification request on 11 February 2014, but the complainant disputes this. If it was the case that the Home Office did not send a clarification request, this would mean that the delay in complying with the complainant's request between February and May 2014 would represent a breach of section 10(1). If, on the other hand, it did send this clarification request, there was no breach of the FOIA through the delay as the Home Office was entitled to wait for a response from the complainant before progressing the request.
15. The task for the Commissioner here is to reach a decision as to which party is, on the balance of probabilities, correct. The Commissioner has

taken the approach that the burden of evidence lies with the complainant; as the party that has made an allegation, he must substantiate it, rather than the main responsibility being on the Home Office to defend itself against this allegation.

16. Having taken this approach, the Commissioner finds that the complainant has not provided any evidence to substantiate his claim. The Commissioner's conclusion is, therefore, that on the balance of probabilities the Home Office did send a request for clarification on 11 February 2014 and so there was no breach of the FOIA associated with the delay between February and May 2014.

Section 17

17. Section 17(1) of the FOIA requires that a refusal of an information request must be sent within 20 working days of receipt. In failing to respond to the complainant's 15 May 2014 clarified request until 17 June 2014, the Home Office breached section 17(1) of the FOIA.

Section 40

18. The Home Office has cited the exemption provided by section 40(2) of the FOIA. This section provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
19. The first step when considering this exemption is whether the information in question constitutes the personal data of any individual. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

"personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".

20. The information in question here consists of names of the sender and recipients of one email. Clearly information that names individuals both relates to and identifies those individuals and so is their personal data according to the definition given in section 1(1) of the DPA.
21. Turning to whether disclosure would be in breach of any of the data protection principles, the Commissioner has focussed on the first

principle, which requires that personal data be processed fairly and lawfully. In forming a conclusion here, the Commissioner has taken into account the reasonable expectations of the data subjects and what consequences disclosure may have upon them, in particular whether disclosure would result in any damage or distress to them.

22. The Home Office has been specific that the staff members whose names it wishes to withhold are below Senior Civil Service level. The Commissioner's view is that in general it will be far less likely to be unfair to an individual to withhold personal data that relates to their professional capacity than it would be to disclose personal data relating to private life.
23. In this case, the Commissioner can see no convincing arguments as to why the data subjects would hold a reasonable expectation that this information would not be disclosed. This information relates to the data subjects in their professional capacities and there appears no reason why disclosure would result in any damage or distress to those individuals.
24. However, whilst section 40(2) is an absolute exemption, in order for disclosure to be in line with the first data protection principle, it is necessary for there be a legitimate public interest in disclosure of the personal data. In this case the Commissioner does not believe that the disclosure of these officials' names is necessary for the purpose of any legitimate public interest. All of the remaining content of the information requested by the complainant has been disclosed and so the public interest in that information has already been satisfied – disclosure of the names in question here would add nothing of value.
25. The conclusion of the Commissioner is, therefore, that disclosure of this personal data would be in breach of the first data protection principle. This means that the exemption provided by section 40(2) of the FOIA is engaged and so the Home Office was not obliged to disclose the content redacted from the email.

Right of appeal

26. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

27. 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.
28. 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

Rachael Cragg
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