

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2017

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1 5AF

Decision (including any steps ordered)

1. The complainant has requested information relating to immigration officers attending the premises of a number of Byron restaurants across London on 4 July 2016.
2. The Commissioner's decision is that although it has complied with section 17(1) in stating which exemption is to be relied upon, by failing to complete its public interest test considerations within a reasonable time period the Home Office has breached section 17(3) of the FOIA. The Commissioner has also found breaches of sections 1 and 10 of the FOIA.
3. The Home Office is required to issue a substantive response to the complainant's request, either disclosing the requested information or issuing a valid refusal notice as set out in section 17 of the FOIA.
4. The Home Office 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 9 August 2016, the complainant wrote to the Home Office and requested information in the following terms:

"It has been reported in the press that immigration officers attended the premises of a number of Byron restaurants across London on 4th July

and that a number of its workers have been arrested and deported as a result.

I write to request the following information under the Freedom of Information Act 2000:

- 1. On what legal authority did UK Border Force enter the premises of the Byron restaurant chain on 4th July 2016?*
- 2. If the authority for entry to the premises is said to have been the consent of the occupiers (i.e. the Byron restaurant chain) please provide a copy of the correspondence relating to the obtaining of that consent. I am content that any details of suspected immigration offenders contained in such correspondence should be redacted.*
- 3. If the authority for entry was a statutory power, please explain on what basis the statutory criteria were considered to be met and provide relevant documentation. Again, I do not seek details of any individual suspected immigration offenders and am content that documentation should be redacted accordingly.*
- 4. Details of the total number of people who:*
 - (i) were questioned by immigration officers about their immigration status in the course of the operation*
 - (ii) were arrested either at the time or as a result of the operation*
 - (iii) remain in detention, and*
 - (iv) have been deported as a result of the operation."*
6. The Home Office acknowledged the request on 6 September 2016. It advised the complainant that it was considering the public interest test and stated that it was considering the exemptions at section 31(1)(e) and section 43(2).
7. The complainant chased the request on 10 October 2016. The Home Office provided an update apologising for the delay and stating that it would send a reply as soon as possible.
8. At the date of this decision notice, the Home Office had yet to respond substantively to the request.

Scope of the case

9. The complainant contacted the Commissioner 1 February 2017 to complain about the way his request for information had been handled.
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Reasons for decision

Section 10 – time for compliance

Section 17 – refusal of request

10. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
11. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
12. Section 17(3) states that if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is 'reasonable in the circumstances', and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosure.
13. Although the FOIA does not define what a reasonable time is, 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 means that the total time spent dealing with the request should not exceed 40 working days. Any extension beyond 40 working days would require there to be exceptional circumstances, fully justified by the public authority.
14. In the circumstances of this case, although the Home Office has informed the complainant of the delay while the public interest is considered, the total time taken by the Home Office has significantly exceeded 40 working days. No reasons were given for the delay and the Commissioner believes this to be unacceptable. As the Commissioner does not consider this to be a reasonable timescale she finds that the Home Office has not complied with section 17(3).
15. The Commissioner also finds that the Home Office breached sections 1(1) and 10(1) of the FOIA.
16. The Home Office is required to conclude its consideration of the public interest test and either disclose the requested information or explain why the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

Other matters

17. The delay in responding to this request will be logged as part of ongoing monitoring of the Home Office's compliance with the FOIA.

Right of appeal

18. 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

19. 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.
20. 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

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