

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2018

Public Authority: The Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for information it held concerning the transfer of the Stone of Scone to Scotland in 1996. The Cabinet Office responded to the request - outside of the 20 working days required by FOIA - and withheld all of the information falling within the scope of the request. Some 18 months after the request, and during the Commissioner's investigation of this complaint, the Cabinet Office disclosed the majority of the requested information. In withholding the remainder of the information the Cabinet Office sought to rely on the exemptions contained at the following sections of FOIA: 27(1)(a) (international relations), 37(1)(a) (communications with the Sovereign), 40(2) (personal data), and 41(1) (information provided in confidence). The complainant does not dispute the application of these exemptions but is dissatisfied with the Cabinet Office's delays in handling his request. The Commissioner has concluded that such delays resulted in the Cabinet Office breaching the procedural requirements of FOIA contained at sections 10(1) and 17(1) of FOIA.

Request and response

2. The complainant submitted the following request to the Cabinet Office on 19 January 2017:

'Please provide me with copies of--

1. Any correspondence, memorandums, or other materials documenting discussions between the Office of the Prime Minister and the Dean and Chapter of Westminster Abbey or the Archbishop of Canterbury regarding the transfer of the Stone of Scone to Scotland in 1996;

2. Any internal internal briefings [sic], memorandums, or other materials documenting internal discussions within the Office of the Prime Minister regarding the transfer of the Stone of Scone to Scotland in 1996; and

3. Any correspondence, memorandums, or other materials documenting discussions between the Office of the Prime Minister and other government departments (for example, the Home Office or the Scottish Office) regarding the transfer of the Stone of Scone to Scotland in 1996.

4. Any correspondence, memorandums, or other materials documenting discussions between the Office of the Prime Minister and the leadership of the Church of Scotland regarding the transfer of the Stone of Scone in 1996.

To clarify, I am only interested in information created before the stone was handed over in November 1996.'

3. The Cabinet Office responded to this request on 16 March 2017. It confirmed that it held information falling within the scope but it considered this to be exempt from disclosure on the basis of the following exemptions in the FOIA:

- Section 35(1)(a) – formulation and development of government policy;
- Section 35(1)(b) – Ministerial communications;
- Section 37(1)(a) – communications with or on behalf of the Sovereign;
- Section 40(2) – personal data; and
- Section 41(1) – information provided in confidence.

4. The complainant contacted the Cabinet Office on the same day in order to ask for an internal review to be conducted.
5. The Cabinet Office completed the internal review on 16 November 2017, albeit that the review itself was undated. The review upheld the application of the exemptions cited in the refusal notice.

Scope of the case

6. The complainant contacted the Commissioner on 16 November 2017 and explained that he was dissatisfied with the Cabinet Office's handling of his request for information.
7. During the course of the Commissioner's investigation, on 12 June 2018 the Cabinet Office provided the complainant with some of the information falling within the scope of his request, noting that some of it had been redacted. The Cabinet Office's response to the complainant did not indicate which exemptions had been applied.
8. Shortly after this disclosure, the Cabinet Office confirmed to the Commissioner that the information redacted from the disclosures made to the complainant were on the basis of sections 37(1)(a) and 40(2) of FOIA. It also explained to the Commissioner that it had withheld a number of further documents on the basis of section 37(1)(a) and one document on the basis of section 27(1)(a) of FOIA. (It noted that sections 41(1) and 40(2) also applied to all of the information which it considered to be exempt on the basis of section 37(1)(a).) The Cabinet Office provided the Commissioner with detailed submissions to support its reliance on these exemptions. The Cabinet Office confirmed that it no longer sought to rely on the exemptions contained at sections 35(1)(a) and 35(1)(b) of FOIA.
9. The Commissioner subsequently informed the complainant that she was satisfied that the information which the Cabinet Office continued to withhold, ie both the redacted information and the documents withheld in full, were exempt on the basis of the exemptions contained at the following sections of FOIA: 27(1)(a), 37(1)(a) and 40(2).
10. The complainant does not seek to dispute the Commissioner's findings in respect of the application of these exemptions. However, he remains dissatisfied with the Cabinet Office's delays in processing his request, its delays in disclosing part of the requested information and its delays in engaging with the Commissioner in relation to his complaint.
11. This decision notice therefore considers whether the Cabinet Office has complied with the procedural requirements of the FOIA when handling

this request. The Other Matters section of the notice also comments further on the Cabinet Office's handling of this request and subsequent complaint.

Reasons for decision

Section 17 – refusal notices

12. Section 17(1) states that:

'(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.'

13. The time for complying with section 1(1) of FOIA is 20 working days as set out by section 10(1) of FOIA:

'Subject to subsections (2) and (3), 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.'

14. In handling this request the Cabinet Office committed two breaches of section 17(1) of FOIA. The first was its failure to issue its refusal notice to the complainant within 20 working days; the request was submitted on 19 January 2017 but the refusal notice was not issued until 16 March 2017. The second concerns the Cabinet Office's belated reliance on section 27(1)(a) of FOIA as it also failed to inform the complainant that it was seeking to rely on this exemption within 20 working days of his request.

Section 10 – Time for compliance

15. As noted above, section 10(1) of FOIA requires a public authority to comply with section 1(1) of FOIA within 20 working days.

16. 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.'

17. As is clear from the chronology above, the Cabinet Office did not provide the complainant with the information it was prepared to disclose under FOIA within 20 working days; again, to reiterate the request was submitted on 19 January 2017 but the information was not disclosed under 12 June 2018. This constitutes a breach by the Cabinet Office of section 10(1) of FOIA.

Other matters

18. The complainant expressed his concern to the Commissioner about the length of time it took the Cabinet Office to complete its internal review. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days.
19. In this case the complainant submitted his request for an internal review on 16 March 2017. The Cabinet Office informed him of the outcome of the internal review on 16 November 2017, some eight months year later. The Commissioner clearly considers this to be an unsatisfactory period of time.
20. Furthermore, the Commissioner wishes to also record the fact that she had to serve an Information Notice under section 51 of FOIA on the Cabinet Office given its delays in responding to her enquires. The Commissioner initially wrote to the Cabinet Office on 20 November 2017 in relation to this complaint. Having failed to receive a response to her letter she served the Information Notice on 21 May 2018.
21. As is clear from the above, the Cabinet Office's delays in responding to the Commissioner's enquiries followed a delay in it initially responding to the request and the delay in it completing the internal review. The cumulative effect of these delays meant that it was not until some 18 months after his request that the complainant was provided with the parts of the requested information to which he was entitled under FOIA. In the Commissioner's view such delays clearly undermine the purpose

and value of the legislation and a requester's right of access to information.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Jonathan Slee
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