

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 12 March 2018

Public Authority: Foreign and Commonwealth Office

Address: foi-dpa.imd@fco.gov.uk

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) seeking a list of correspondence it had exchanged with the Ministry of Defence about the 'Policy Review and Feasibility Study into the Resettlement of the Chagos Archipelago'. The FCO has failed to respond to this request and has therefore breached section 10(1) of FOIA and, as the request also seeks environmental information, regulation 5(2) of the EIR.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue the complainant with a substantive response to the request under FOIA and the EIR, or issue a valid refusal notice in line with the requirements of section 17 of FOIA and regulation 14 of the EIR.
3. The public authority 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

4. The complainant submitted the following request to the FCO on 15 January 2018:

'Following our discussions today (Mon 15 Jan) I understand that a refined request, as below, will not trigger the time/cost limitations, nor is there a need to identify what is or is not 'environmental information'.

List/Schedule of Correspondence with MOD

*Please could I be supplied with a List/Schedule of all correspondence between (1) the Foreign and Commonwealth Office (FCO), (2) the British Indian Ocean Territory Administration (BIOTA), **and** the Ministry of Defence (MOD) concerning the Policy Review and Feasibility Study into the Resettlement of the Chagos Archipelago (BIOT) between 31 January 2015 and 16 November 2016.*

'Correspondence' is intended to include e-mails, telegrams, signals, and other electronic messages; letters, internal memoranda, minutes, and other documents; spreadsheets; other attachments. 'MOD' includes the Department itself and any contractor, agent, organisation, or other body or individual working for or on behalf of the Department.

Please could the lists be either in MS Word document or PDF format and sent to me by e-mail.

Please would you also consider whether your team can meet this request within a shorter time limit of 15 working days (i.e. by 5 February) in view of the fact that (1) some of the searches will already have been undertaken, and (2) my original request was now nearly a year ago.¹

¹ As this request suggests, the complainant had previously submitted two similar requests to the FCO. These were submitted in March 2017 and sought a list of the correspondence exchanged between the FCO and a) the MOD and b) DFID concerning the same subject matter. The FCO refused these requests on the basis of regulation 12(4)(b) of the EIR. Following an investigation into the FCO's handling of these requests the Commissioner concluded that the FCO had a legitimate basis to refuse to comply with them on the basis of regulation 12(4)(b) (manifestly unreasonable) and section 12(1) (cost limit) of FOIA, albeit that in refusing these requests the FCO had failed to provide the complainant with advice and assistance to allow him to submit refined request(s). Further details are available in the decision notice [FER0680464](#).

5. The FCO contacted the complainant on 17 January 2018 and acknowledged receipt of the request.
6. The FCO contacted the complainant again on 13 February 2018 and explained that:

'We regret that we are still working on the response to your Freedom of Information request (our ref 0047-18). Please rest assured that it is a priority and we will release the information list to you as soon as it is ready. We apologise for the delay.'

7. The Commissioner contacted the FCO on 15 February 2018. The Commissioner explained that it was her understanding, based upon her consideration of the complainant's previous related requests, that the information requested would fall within the scope of both the EIR and FOIA. The Commissioner also informed that the FCO that:

'Under FOIA, there is no provision for a public authority taking more than 20 working days to comply with a request. The only exception to this is if a public authority needs additional time, under section 10(3), to consider the balance of the public interest in relation to a qualified exemption. This scenario does not appear to apply to this request.'

Under the EIR, again public authorities must respond to a request within 20 working days. The exception to this is under regulation 7(1) which allows public authorities to take an additional 20 working days to comply with a request if it is complex and voluminous. The FCO's email of 13 February does not suggest that this is the case with regard to this request.'

Therefore, at this stage, it appears that the FCO is in breach of both FOIA and the EIR by failing to comply with this request within 20 working days. As result, the ICO requires the FCO to provide [the complainant] with a response to his request as soon as possible and in any event within the next 10 working days. If no response is issued by then, we will issue a decision notice ordering the FCO to comply with the request. Given the history of this particular request I would hope that such formal action will not be necessary.'

Should it be the case that the FCO considers either section 10(3) of FOIA or regulation 7(1) of the EIR to apply, then it should inform [the complainant] accordingly, copying the ICO into any such correspondence.'

Scope of the case

8. The complainant contacted the Commissioner on 1 March 2018 and explained that he had not received any further communication from the FCO in relation to his request.

Reasons for decision

Time for compliance

9. Section 1(1) of the FOIA states:

'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.'*

10. Section 10(1) of the FCO states:

'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.'

11. The EIR also places similar requirements on public authorities with regulation 5(2) stating that:

'Information shall be made available....as soon as possible and no later than 20 working days after the date of receipt of the request.'

12. As the above chronology demonstrates the FCO has failed to respond to the request within 20 working days.
13. It has therefore breached section 10(1) of FOIA and regulation 5(2) of the EIR.

Other matters

14. The decision notice, [FER0680464](#), which the Commissioner issued in relation to the complainant's previous requests emphasised her concerns that the complainant had not been provided with advice and assistance by the FCO when it had refused those requests. As that notice explains, the FCO's failure to provide that advice and assistance led to a

considerable delay in the complainant being able to submit a refined request.

15. It is therefore of particular concern to the Commissioner that the refined request submitted by the FCO was not responded to within the time limits set out by both FOIA and the EIR. Furthermore, as the Commissioner's email to the FCO of 15 February 2018 makes clear (see paragraph 7 above), a public authority cannot arbitrarily allow itself further time to consider a request beyond 20 working days as would appear to be the case with the FCO's handling of this particular request.
16. Whilst this decision notice, in line with the Commissioner's policy, requires compliance with the notice within 35 calendar days, given the history and circumstances of this request she would encourage the FCO to respond to the request as soon as possible.

Right of appeal

17. 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

18. 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.
19. 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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