

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2019

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

Decision (including any steps ordered)

1. The complainant has requested to know whether Queen's Consent was sought by the Secretary of State during a specified period and, if it was, for copies of correspondence regarding it. The Home Office advised the complainant that it did not hold any information.
2. The Commissioner's decision is that, on the balance of probabilities, the Home Office does not hold the requested information. However, she found that because the Home Office failed to respond to the request within the statutory time for compliance, it breached section 1 and section 10 of the FOIA.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 17 July 2018, the complainant wrote to the Home Office and requested information in the following terms:

"My request concerns the issue of 'Queen's Consent' which is a process whereby Ministers consult The Queen on aspects of bills and proposed legislative changes which have implications either for her as The Duke of Lancaster or her Duchy of Lancaster estate.

Please note that in the context of this request the reference to The Queen should include The Queen, the Queen in her role as the Duke of Lancaster, the Queen's private office and any legal representatives or agents acting specifically on behalf of the Duchy of Lancaster.

Please note that the reference to the Secretary of State should include the Secretary of State and their private office.

...

Please note that I am only interested in information generated between 1 November 2017 to the present day.

- 1. During the aforementioned period did the Secretary of State write to The Queen requesting Queen's Consent for any particular bill or legislative change. If the answer is yes can you please provide copies of this correspondence and communication including emails*
- 2. During the aforementioned period did The Queen reply to this request for Queen's Consent. If the answer is yes can you please provide copies of this correspondence and communication including emails."*
5. The Home Office failed to respond to the request and so, on 14 September 2018, the complainant asked for an internal review of its handling of the request.
6. The Home Office responded on 2 October 2018. It acknowledged that it had breached section 10(1) of the FOIA by failing to respond and it apologised. It said that the request was still under "active consideration".
7. Following the Commissioner's intervention, the Home Office responded to the request on 23 January 2019. It told the complainant:

"The Home Office does hold the information you have requested.

The Queens Consent has not been sought in the time frame that you specify, therefore there are no copies of correspondence regarding this matter."
8. The complainant requested a further internal review on 20 February 2019. He expressed dissatisfaction with the delays in processing the request. He also said that he did not have any faith in the response itself.

9. The Home Office provided the outcome of its internal review on 18 March 2019. It repeated its apology for breaching section 10, but offered no explanation as to why the delays had occurred. It said it was satisfied that the content of the response was correct.

Scope of the case

10. The complainant initially contacted the Commissioner on 18 December 2018 to complain about the Home Office's failure to respond to the request. On receipt of the internal review, he contacted the Commissioner again to complain about the Home Office's overall handling of his request. He was concerned at the length of time it had taken the Home Office to respond to the request. He also considered that its response of 23 January 2019 suggested both that it did and did not hold information falling within the scope of the request. He asked the Commissioner to clarify that point with the Home Office.
11. The analysis below considers the timeliness of the Home Office's response. It also considers whether, on the balance of probabilities, the Home Office held the information described in the request.

Reasons for decision

Reasons for decision

Section 1 – general right of access

Section 10 - time for compliance

12. 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.
13. Section 10(1) of the FOIA states that, on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
14. The complainant submitted his request for information on 17 July 2018 and the Home Office provided its response on 23 January 2019, 132 working days later. The Home Office therefore breached sections 1(1) and 10(1) of the FOIA by failing to respond to the request within 20 working days.
15. The Commissioner considers that this was a straightforward request, which did not include the consideration of exemptions, the public

interest test or voluminous information. She is therefore concerned at the length of time the Home Office took to respond to it. She also notes that it was very slow to respond to her own enquiries about the matter.

16. Commenting on the excessive delay in complying with the request, the Home Office said:

"We accept that the delay to the original in this case was extreme and unacceptable. It would seem that the main reason was staff changes and shortages, as a consequence of which no action was taken on the request for some time. Once searches were undertaken, the response was prepared and issued quite quickly.

We also recognise that the Information Rights Team should have intervened at an earlier stage. We now monitor progress on late responses more closely and intervene to prevent such lengthy delays occurring".

17. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"¹ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"².

Section 1 – held/not held

18. As set out in paragraph 12, above, section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
19. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

The complainant's position

20. The complainant referred the Commissioner to the apparent contradiction between the Home Office's assertion that it "*does hold the information*" and that "*there are no copies of correspondence regarding this matter*", saying that he did not know what to make of it. He asked the Commissioner to clarify with the Home Office precisely what information it held.

The Home Office's position

21. The Home Office explained that the request asked to know if Queen's Consent had been sought by the Secretary of State within a specified period and, if it had, for copies of the correspondence that passed between them. It explained that its response that no correspondence was held flowed from the fact that Queen's Consent had not been sought. It acknowledged that the statements highlighted by the complainant were, on the face of it, contradictory, but it maintained that the overall meaning of its response was, nevertheless, clear: that Queen's Consent had not been sought.
22. The Home Office explained to the Commissioner that Queen's Consent is required before Parliament can consider a bill affecting the prerogatives or the interests (including hereditary revenues and personal property) of the Sovereign. This extends to matters affecting the Duchy of Lancaster. It said that Queen's Consent is only very rarely required in respect of a Home Office bill: it understood that in the last 15 years there has only been one such instance.
23. The Home Office explained that the request was handled in Private Office. Given the rarity of cases of Queen's Consent, and the fact that any such Consent would involve Ministerial approval, Private Office could be expected to know whether any Consent had been sought.
24. As Queen's Consent, by definition, involves a bill, the starting point was any Home Office bill current in the period 1 November 2017 to 17 July 2018, the date the request was made. Five such bills were identified by the Parliamentary Team:
 - Offensive Weapons Bill
 - Counter-Terrorism and Border Security Bill
 - Crime (Overseas Production Orders) Bill
 - Immigration Bill

- Stalking Protection Bill

25. The Home Office explained that Private Office contacted the Bill Manager for each bill and received confirmation that in no case had Queen's Consent been sought. This, in its view, was conclusive: the Bill Manager would know whether or not Consent had been sought for the bill for which he or she was responsible, given that it would have been an unusual, important and noteworthy procedure. The Home Office therefore felt it reasonable to conclude from this that no correspondence within scope of either part of the request was held.

The Commissioner's conclusion

26. The Commissioner agrees with the Home Office's assessment that the request has two component parts. The effect of a "yes" answer to the first part (whether Queen's Consent had been sought), must then activate consideration of the second part of the request (to receive copies of relevant correspondence). Logic dictates that a "no" answer to the same question must necessarily result in the second part of the request not being activated.

27. It is clear from the Home Office's submissions to the Commissioner that the comment that it did hold the requested information referred only to its ability to answer the question about whether or not Queen's Consent had been sought. As regards the steps it took to ascertain this, the Commissioner is satisfied that the Home Office has demonstrated that it took adequate steps to establish whether Queen's Consent was sought during the period specified in the request. Having determined that Queen's Consent was not sought, the Commissioner concurs with the Home Office's conclusion that no subsequent exchange of correspondence exists and thus that the Home Office does not hold the requested information.

28. That being the case, and while she accepts that the initial response was a little ambiguously worded, the Commissioner is satisfied that, on the balance of probabilities, the Home Office does not hold the correspondence described in the request, on the basis that Queen's Consent was not sought. She therefore finds no breach of section 1 in this regard.

Right of appeal

29. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Samantha Bracegirdle
Senior Case Officer
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