

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2020

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

Decision (including any steps ordered)

1. The complainant requested information from the Home Office relating to the creation of a video posted on the Home Office's official Twitter account. By the date of this notice, the Home Office had not issued a substantive response to this request.
2. The Commissioner's decision is that the Home Office has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Having confirmed that information is held within the scope of the request, either disclose the requested information or, issue a refusal notice in accordance with the requirements of 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 27 August 2020, the complainant wrote to the Home Office and requested information in the following terms:

"I am writing to request the following information under the FOI act relating to the tweet linked below and video within it from the Home Office Twitter account.

Link:

<https://twitter.com/ukhomeoffice/status/1298674067323727872?s=19>

Any emails or other communications (including but not limited to WhatsApp messages) which include ministers (including the Home Secretary) or civil servants about the creation of this tweet and video."

6. The Home Office wrote to the complainant on 21 September 2020 and stated that it was extending the time to respond to the request in order to complete its public interest test in line with section 10(3) of the FOIA.
7. It stated that it was currently considering the public interest test in relation to section 35(1)(b) of the FOIA (ministerial communications). The Home Office stated that it intended to respond in full by 23 October 2020.
8. On 23 October 2020, as the complainant had not received a substantive response, he wrote to the Home Office for an update on the status of his information request.
9. The Home Office responded on 26 October 2020 and stated that it was not yet in a position to provide a full response to the complainant's request as the public interest was still being considered.

Scope of the case

10. The complainant contacted the Commissioner on 29 October 2020 to complain about the delay in the Home Office's consideration of the public interest test.
11. The Commissioner contacted the Home Office on 17 November 2020 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.

12. The Commissioner also contacted the complainant on 17 November 2020 to explain that the Home Office had been given 10 working days from that date within which to provide a response to his request.
13. The complainant contacted the Commissioner on 7 December 2020 to inform her that the Home Office had still not responded to his request.
14. The complainant has provided evidence that he has received an acknowledgement from the Home Office but, by the date of this notice, had not received a substantive response to his information request.
15. The scope of this notice and the following analysis is to consider whether the Home Office has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

16. Section 1(1) of the 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. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *“not later than the twentieth working day following the date of receipt”*.
18. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a “reasonable” extension of time to consider the public interest in maintaining the exemption or disclosing the information.
19. Although the FOIA does not define what constitutes a reasonable time, 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. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
20. In this case, the total time taken by the Home Office to respond to this request has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by

failing to complete its deliberations on the public interest test within a reasonable timeframe, the Home Office has not complied with section 17(3).

21. The Home Office is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

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@justice.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

Ben Tomes
Team Manager
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