

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 September 2021

**Public Authority:** Department for Digital, Culture, Media & Sport  
**Address:** 100 Parliament Street  
London  
SW1A 2BQ

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Department for Digital, Culture, Media & Sport ("DCMS") for a copy of the Secretary of State's diary and related information. By the date of this notice, the DCMS had not issued a substantive response to the request.
2. The Commissioner's decision is that the DCMS has failed 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 DCMS 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 DCMS 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

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5. On 30 April 2021, the complainant wrote to the DCMS and requested information in the following terms:

*"Please could I have a copy of the Secretary of State's diary, listing all engagements and meetings attended - including any that were cancelled or postponed, for the period 15-30th April 2021."*

6. The DCMS wrote to the complainant on 1 June 2021 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. The DCMS stated that it was considering the public interest test in relation to section 22 (Information to be published), section 24 (National Security), section 31 (Law enforcement), section 35 (formulation of government policy), section 36 (prejudice to effective conduct of public affairs) and section 38 (Health and safety) of FOIA. The DCMS stated that it intended to respond to the request in full by 29 June 2021.

## Scope of the case

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8. The complainant contacted the Commissioner on 2 August 2021 to complain about the delay in the DCMS's consideration of the public interest test.
9. The Commissioner contacted the DCMS on 24 August 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 20 working days.
10. The Commissioner also contacted the complainant on 24 August 2021 to explain that the DCMS had been given 20 working days from that date within which to provide a response to his request.
11. By the date of this notice, the DCMS had failed to respond to the information request.
12. The scope of this notice and the following analysis is to consider whether the DCMS has complied with its obligations in relation to section 17 of the FOIA.

## Reasons for decision

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13. 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.*

14. 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.”

15. 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.

16. 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.

17. In this case, the total time taken by the DCMS 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 DCMS has not complied with section 17(3).

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

## Right of appeal

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19. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**