

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2021

Public Authority: Foreign, Commonwealth and Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information from the Foreign, Commonwealth and Development Office (FCDO) about the seizure of specified tankers and legal advice surrounding the matter. By the date of this notice FCDO had not issued a substantive response to this request.
2. The Commissioner's decision is that FCDO has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires FCDO to take the following step to ensure compliance with the legislation.
 - FCDO must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. FCDO must take this step 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 24 July 2020, the complainant wrote to FCDO via the Royal Mail postal service and, as part of a three page letter, requested information in the following terms:

"1) To ask if HMG requested or received any legal advice from the government's law officers regarding the legality of the seizure of the Iranian tanker Grace in the Straits of Gibraltar...

2) To ask if the FCO, in the light of the Iranian seizure of the Swedish owned, British registered tanker in the Arabian Gulf has commissioned any analysis or report identifying potential risks to the security of this country or its military personnel by allowing vessels that essentially have nothing to do with the U.K. to register as British through the relevant documentation.

3) For any kind of documentation that would indicate whether there has been any kind of review of the implications (including the implications for respect for international law) of the significant, if largely unreported change of HMG policy when William Hague was Foreign Secretary that allows HMG to follow the policy of the U.S. in recognising governments rather than countries in the absence of any UNSC-authorisation to do so.

4) To ask for any documentation that would indicate whether the FCO or HMQ requested and/or received any legal advice from the law officers before sequestering the gold held by the Bank of England on behalf of the UN/internationally-recognised Venezuelan government of Nicholas Maduro."

6. FCDO did not acknowledge the request. To date a substantive response to the request for information has not been provided.

Scope of the case

7. The complainant contacted the Commissioner on 12 December 2020 to complain about FCDO's failure to respond to their request.
8. The Commissioner has considered whether FCDO has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. 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."

10. 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"*.
11. On 29 January 2021, the Commissioner wrote to FCDO, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days. The Commissioner provided FCDO with a copy of the request itself.
12. On 1 February 2021, FCDO informed the Commissioner that it had no record of having received the request. FCDO explained that, due to the lockdown restrictions which were in place at that time, it was unable to reply to the request via post as staff were not permitted access to its offices. The Commissioner passed on the complainant's telephone details to enable FCDO to make contact and agree a way forward. The complainant does not have internet access so requires a postal response.
13. FCDO made contact with the complainant and both parties agreed that, due to the continuing lockdown restrictions, a response could not be provided at the current time. It was agreed that a response would be sent once the lockdown restrictions eased. The complainant expressed his willingness to compromise and confirmed to the Commissioner that he was mindful of the difficulties faced by public authorities during the lockdown.
14. On 14 June 2021, the Commissioner wrote once more to FCDO to gauge whether it now had the capacity to send a postal response to the request for information. The complainant had contacted the Commissioner via telephone to explain that a response was still outstanding. In light of the partial easing of lockdown restrictions, the Commissioner decided that it was appropriate to review the status of the request.
15. FCDO replied to the Commissioner on 28 June 2021 to state that
"at the moment we do still have very restricted access to our buildings. We have gradually been working through requests on hold because of restricted access to hard copy material. This includes some highly complex and voluminous SARs. As we continue to process current FOIs and can only admit a small

number of our team to the building at any one time we will continue to have difficulties responding to all cases.

With the request mentioned below, we agreed with the requester that it would be handled outside of the FOIA as it was not framed in a way that we could helpfully answer under the Act."

16. The complainant contacted the Commissioner by telephone once more. He believed that there had been a misunderstanding in his discussions with FCDO; whilst he would welcome the provision of information outside the FOIA, if deemed appropriate, he still wished to receive a formal response in accordance with the FOIA itself.
17. On 7 July 2021, the Commissioner wrote to FCDO and instructed it to provide a formal response to the request for information in accordance with the FOIA within 10 working days.
18. Despite this intervention FCDO has failed to respond to the complainant.
19. From the evidence provided to the Commissioner in this case, it is clear that FCDO did not deal with the request for information in accordance with the FOIA. The Commissioner finds that FCDO has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Other matters

20. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA. She is mindful of the logistical difficulties experienced by public authorities during the lockdowns.

Right of appeal

21. 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

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

22. 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.
23. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF