

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 5 October 2022

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

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office regarding minutes from monthly use of force governance meetings from May 2020. The Home Office eventually supplied some information, citing section 40 of FOIA for redactions of personal information, and section 14 of FOIA for information in part two of the request. They advised that the minutes for the November meeting could not be located, therefore they were unable to provide them.
2. The Commissioner's decision is that, on the balance of probabilities, the remaining information, namely the minutes for the November meeting, sought by the complainant is not held. However, the Commissioner finds the Home Office breached section 10 of FOIA, as they failed to respond within 20 working days.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 14 June 2021, the complainant requested the following information:

"According to the Independent Monitoring Board for Brook House IRC's 2020 annual report (page 17), use of force governance meetings are held monthly by Serco. Please can you provide the following information from these meetings:

1. Copies of the minutes of all Brook House use of force governance meetings held from 21 May 2020 to date. I understand these may be redacted for personal information but I ask that you redact only exempted information and justify the use of those exemptions. I also kindly remind you that the time taken for redactions does not usually contribute towards the cost cap under FOI.

2. Copies of all film footage which has been reviewed during Brook House use of force governance meetings from 21 May 2020 to date. I understand these may be redacted for personal information but I ask that you redact only exempted information and justify the use of those exemptions, as above.

3. Lists of who attended all Brook House use of force governance meetings from 21 May 2020 to date. I understand these may be redacted for personal information but I ask that you redact only exempted information and justify the use of those exemptions, as above.

4. Copies of any written documents that were distributed those attending each Brook House use of force governance meeting from 21 May 2020 to date. I understand these may be redacted for personal information but I ask that you redact only exempted information and justify the use of those exemptions, as above.

5. Copies of any presentations, such as PowerPoint slideshows, which were shown during Brook House use of force governance meetings from 21 May 2020 to date.

If this request is too wide or unclear, I would be grateful if you could contact me as soon as possible, as I understand that under the Act you are required to advise and assist requesters. If any of this information is already in the public domain, please can you direct me to it, with page references and URLs if necessary."

5. The Home Office responded on 20 August 2021 to advise the response was going through clearance. After intervention by the Commissioner, they finally responded on 26 October 2021. They provided some information deemed to be within scope of the request which they redacted citing section 40(2) as the basis for doing so. With regard to part 1, they advised that the November 2020 meeting minutes could not be located and cited section 14(1) in response to part 2 of the request.
6. On 1 November 2021, the complainant asked for clarification around the missing meeting minutes for November 2020. The Home Office advised that this was a new request and aimed to respond by 29 November 2021.

Scope of the case

7. The complainant contacted the Commissioner on 5 November 2021 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of this case is to determine whether it is likely, on the balance of probabilities, the Home Office holds information which would fall within the scope of the complainant's request, namely minutes from the November 2020 meeting.

Reasons for decision

Section 1 – General right of access to information

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 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The Complainant's position

13. The complainant argues that the Home Office should hold the requested information in line with its own policies and procedures.
14. They said: "I believe the Home Office has only partially fulfilled my original request and provided an unsatisfactory explanation for why it could not provide the November meeting minutes. It has had 99 working days to locate the minutes. Presumably they are all saved in one folder and were sent between officials by email at the time.

I am concerned that these minutes are likely to contain information strongly in the public interest and that the Home Office is trying to delay – through interpreting my request as a new FOI - its disclosure as it considers it contentious or embarrassing."

The Home Office's position

15. The Home Office argues that it has conducted relevant searches and has provided all the information it held within scope of the request.
16. The Home Office clarified its response and said "Minutes for the Use of Force meetings are usually typed up live by a member of Serco staff as the meeting itself was ongoing, saving automatically to a Microsoft Teams/SharePoint site. When asked for this information as part of the FOI, the supplier staff were unable to find the minutes on their system and believed they had been deleted in error. This was referred to the supplier IT team, who established that the most likely explanation was that the minutes document had in fact not saved onto the Teams site properly as they were being taken (if they were being taken), likely due to a connectivity or Wi-Fi issue, and that the November minutes had never existed. All that was saved in their place was a blank document, based on the previous month's minutes.

The above incident was reported to the Home Office ODPO as a data loss incident. The supplier has now implemented a new system of

emailing copies of the minutes out to attendees, rather than simply issuing a link.”

17. The Home Office further explained that: “The supplier use uploads onto Microsoft Teams to store their documents, and circulate a link, as opposed to a copy of the document. The document attached to that link was the blank version of the minutes. The HO would usually receive a copy of the minutes via email, but it appears that copy was never received, and the failure to receive it was not identified at the time.”
18. They also said that “Serco has asked all the relevant parties who normally attend the meeting if they had received any minutes but no one had received them.”

The Commissioner’s conclusion

19. The Commissioner has considered the Home Office’s position, in conjunction with the request.
20. The Commissioner recognises that the complainant believes that the information requested should be recorded, and that the Home Office are obliged to hold the information.
21. The Home Office has confirmed to the Commissioner that after conducting relevant searches, including asking the service involved, it has been confirmed that a copy of any recorded information relevant to this part of the request is not held.
22. They have also confirmed that changes have been made to ensure meeting minutes are stored securely, and a new more robust method of circulating minutes to prevent a recurrence of the issue has been implemented.
23. There is no contradictory evidence available to the Commissioner that indicates the Home Office’s position is wrong.
24. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Section 10

25. Section 10(1) of 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.”
26. From the evidence provided to the Commissioner in this case, the Home Office did not deal with the request for information in accordance with

FOIA. The Commissioner finds that the Home Office has breached section 10(1) by failing to respond to the request within 20 working days.

Right of appeal

27. 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

28. 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.
29. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF