

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2022

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 about the number of migrants crossing the English Channel illegally and the number of Hong Kong Chinese nationals given the right to come to the UK. The Home Office provided information in response to the first part of the request but stated that it did not hold information relating to the second part of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Home Office does not hold further recorded information within the scope of the request. The Commissioner also finds that the Home Office breached section 10 of FOIA by failing to respond to the request within 20 working days.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 17 October 2021, the complainant wrote to the Home Office and requested information in the following terms:

"Dear sirs,

I have written and emailed the Home Office - including making complaints - on several occasions beginning in June of 2021 and

received no reply to any of those communications. I had asked for an answer to two questions: Firstly, how many migrants who had crossed the English channel had been returned to France? And, secondly how many Hong Kong Chinese nationals does the Prime Minister expect to arrive following his giving the 'right' for them to come to the UK?"

5. The Home Office wrote to the complainant on 20 October 2021 and requested clarification of the request. The complaint provided the following clarification that same day:

"Here is the information you request: With regard to the first question I posed I can confirm that, in this instance, I refer to migrants who have crossed the English Channel clandestinely in small boats and dinghies including those picked – up by the UK Border Force. You also asked me to provide a timescale for the information I require regarding this subject and provide an example. Ideally, I would like to know how many migrants in total have crossed the English Channel illegally in small boats and dinghies since this particular activity became prevalent and how many have been returned to France? However, if you believe that request is unreasonable I can give you a timescale of September 2016 - September 2021.

As to my second question regarding the Hong Kong Chinese nationals which the Prime Minister has given the 'right' to come to the United Kingdom, I shall rephrase the questions for the purpose of you to respond in a more factual way: What is the total number of Hong Kong Chinese nationals which the Prime Minister has given the 'right' to come to the United Kingdom?"

6. The Home Office responded on 3 February 2022 to provide some of the information requested in the first part of the request. The Home Office also stated that the information in the second part of the request was exempt under section 21 of FOIA – information accessible by other means, and provided the link where the information could be found.
7. The complainant expressed dissatisfaction with that response on 5 February 2022.
8. Following an internal review, the Home Office wrote to the complainant on 17 March 2022 and advised that, rather than citing section 21 of FOIA, it should have stated that no recorded information within the scope of the second part of the request was held.

Scope of the case

9. The complainant contacted the Commissioner on 26 December 2021, to complain about the way their request for information had been handled.
10. The Commissioner has considered whether, on the balance of probabilities, the Home Office holds further recorded information within scope of the request and whether it has complied with section 1(1) of FOIA.

Reasons for decision

Section 1 general right of access

11. Section 1 of 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”.

12. The Commissioner has sought to determine whether, on the balance of probabilities, the Home Office holds the requested information for part 2 of the request.
13. The Home Office has explained that the request relates to the Hong Kong British National (Overseas) route and a press release issued in April 2021 about the estimated number of individuals who could choose this route. The Home Office explained that the route is application based with individuals needing to be assessed on a case-by-case basis. Therefore no individuals on this route have the ‘right’ to enter the UK.
14. The Home Office provided the complainant with links to the latest published information about the estimated numbers of individuals who could apply for this route but acknowledged that it did not give the complainant the specific information he requested in the second part of his request. The Home Office concluded that, given the narrow scope of the request, it did not hold the specific information.
15. On the balance of probabilities the Commissioner is satisfied that further recorded information is not held by the Home Office, as he has not been provided with any evidence to the contrary.

16. The Commissioner is satisfied that the Home Office has complied with its obligations under section 1(1)(a) FOIA in this case. On the balance of probabilities, the Home Office holds no further recorded information within scope of the request.

Section 10 of FOIA

17. 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”.
18. From the evidence provided to the Commissioner in this case, it is clear that 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

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

Website: 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