

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2022

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office about specified correspondence relating to a named report. By the date of this notice, the Cabinet Office had not issued a substantive response to this request.
2. The Commissioner's decision is that the Cabinet 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 FOIA.
3. The Commissioner requires the Cabinet Office to take the following step to ensure compliance with the legislation.
 - Having confirmed whether or not information is held within the scope of the request: either disclose the requested information, if held, or, to the extent that information is to be withheld, issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The Cabinet Office 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 13 April 2022, the complainant made the following request for information to the Cabinet Office:

“Under the Freedom of Information Act, I would be grateful for copies of email correspondence to and from [redacted], between 1st April 2019 and 1st October 2019 in relation to the PMIU’s report on the effectiveness of support for vulnerable people claiming Universal Credit?”

6. The complainant advises that the Cabinet Office wrote to the complainant to explain that it held information relevant to their request but that it would need to extend the time taken to complete its public interest test considerations in respect of an exemption under section 36 of FOIA. The Cabinet Office sent the complainant further monthly communications extending the time to consider the public interest, the most recent being received on 8 November 2022.

Scope of the case

7. The complainant contacted the Commissioner on 11 November 2022, to complain about the delay in the Cabinet Office’s consideration of the public interest test.
8. On 16 November 2022, the Commissioner wrote to the Cabinet Office, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. To date, a substantive response has still not been provided.
9. The Commissioner has considered whether the Cabinet Office has complied with its obligations in relation to section 17 of FOIA.

Reasons for decision

10. Section 1(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.”

11. 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”.
12. Section 17(3) of 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.
13. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that “it is best practice for an extension to be for no more than a further 20 working days”.¹ This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.
14. In this case, the total time taken by the Cabinet Office has exceeded 40 working days. The Commissioner finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the Cabinet Office has not complied with section 17(3).
15. The Cabinet Office is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

16. 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

17. 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.
18. 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