

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2023

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking information about the cost of repainting two aircraft in the union flag livery.
2. After some delay, the Cabinet Office disclosed some of the requested information but sought to withhold the remainder of the information on the basis of section 43(2) (commercial interests) of FOIA. During the Commissioner's investigation the Cabinet Office also disclosed the information initially withheld on the basis of section 43(2).
3. The Commissioner's decision is that the Cabinet Office breached sections 10(1) and 17(1) of FOIA as result of its initial delayed response and further breached section 10(1) by failing to disclose the disputed information within 20 working days.
4. No steps are required.

Request and response

5. The complainant submitted the following request to the Cabinet Office on 20 July 2021:
 - "a) the cost of repainting the two Airbus aircraft leased from Titan Airways in the new Union flag/United Kingdom livery;
 - b) number of seats in each aircraft, by class;
 - c) start date of lease of each;
 - d) expiry date of each lease; and
 - e) who is entitled to use them and for what purpose."
6. The Cabinet Office responded on 28 September 2021. It provided all the requested information except the cost of repainting the aircraft, as it considered it to be exempt from disclosure on the basis of section 43(2) (commercial interests) of FOIA.
7. The complainant requested an internal review on 30 September 2021, and the Cabinet Office provided the outcome of that internal review on 17 November 2021. The Cabinet Office maintained its reliance on section 43(2) of FOIA in respect of the withheld information in part a) of the request.

Scope of the case

8. The complainant contacted the Commissioner on 5 January 2022 to complain about the Cabinet Office's refusal to provide him with the information falling within part a) of his request. He was also dissatisfied with the Cabinet Office's initial delays in responding to his request.
9. During the Commissioner's investigation the Cabinet Office reconsidered its position in relation to the information sought by part a). On 28 February 2023 it provided the complainant with the requested cost information.
10. Following this disclosure, the complainant confirmed that he did not wish to withdraw his complaint.
11. The Commissioner understands that the complainant is frustrated that it has taken 17 months to receive the information requested in July 2021. However, the Commissioner will generally try to resolve a case informally where possible. A public authority may agree to disclose information in the interests of informal resolution. Equally, a requester

may agree to withdraw their complaint if they receive the requested information. The Commissioner recognises that this may save time and resources for everyone involved.

12. For this reason, where a public authority relies on an exemption to withhold information, but subsequently discloses it, the Commissioner will not usually investigate whether the exemption was appropriately cited. Since the Cabinet Office has now disclosed the requested information in this case the Commissioner's decision is limited to the Cabinet Office's compliance with the procedural requirements of FOIA.
13. The scope of this decision notice therefore focuses on whether the Cabinet Office has complied with sections 10 and 17 of FOIA.

Reasons for decision

14. 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."

15. Section 10(1) of FOIA requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receiving the request.
16. Section 17(1) of FOIA says that if a public authority is refusing to meet either of the duties in section 1(1), it is required to issue a refusal notice to the requester explaining why and to do so no later than 20 working days after the date of receiving the request.
17. In this case the Cabinet Office took more than two months to issue its initial response to the request. This delay in disclosing the information sought by parts b) to e) constitutes a breach of section 10(1). The Cabinet Office also breached section 17(1) by failing to issue its section 43(2) refusal notice within 20 working days.
18. With regard to the information sought by part a), although the Cabinet Office has now provided the complainant with the information, it did not do so within 20 working days. The Cabinet Office therefore committed a further breach of section 10(1) of FOIA.

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

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