

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2023

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice (MOJ) relating to Dominic Raab and the use of a non-governmental email address. By the date of this notice the MOJ had not issued a substantive response to this request.
2. The Commissioner's decision is that the MOJ 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 MOJ 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 MOJ 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 24 November 2022, the complainant made the following request for information to the MOJ:

“Please state the number of occasions on which Dominic Raab has used a private (non-governmental) email address for government business since he returned to the role of Justice Secretary in October 25th 2022”.
6. After receiving a letter from the Commissioner requiring the MOJ to provide a response on 7 February 2023, the MOJ wrote to the complainant on 27 February 2023 to explain that it held information relevant to the complainant’s 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 24(1) of FOIA. Having viewed a copy of the original request, the Commissioner is satisfied that it was sent originally to a valid MOJ email address on 24 November 2022.

Reasons for decision

7. 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.”
8. 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”.
9. 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.
10. 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.

11. On 20 March 2023 the Commissioner wrote to the MOJ, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. On 30 March 2023 the MOJ wrote to the complainant, explaining that they again required additional time due to the complexity of the information request.
13. However, the total time taken by the MOJ to provide any substantive response has significantly exceeded 40 working days. The Commissioner finds that by failing to complete its deliberations on the public interest within a reasonable time frame, the MOJ has not complied with section 17(3).
14. The MOJ is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

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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

15. 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

16. 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.
17. 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
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